Appendix F to
Concise Explanatory Statement
Chapter 173-442 WAC
Clean Air Rule
Chapter 173-441 WAC
Reporting of Emissions of Greenhouse Gases
Transcript from July 15, 2016 public hearing

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Appendix F 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

Prepared by
Capitol Pacific Reporting, Inc.

Air Quality Program
Washington State Department of Ecology
Olympia, Washington
WEBINAR PROCEEDINGS

PROPOSED AMENDMENT of GREENHOUSE GAS REPORTING RULE,
CHAPTER 173-441 WAC
and
PROPOSED NEW CLEAN AIR RULE, CHAPTER 173-442 WAC
JULY 15, 2016

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PROCEDINGS

MS. CONKLIN: I'm Becca Conklin, the hearing officer, for this hearing on the proposed amendment to the Greenhouse Gas Reporting Rule, Chapters 173-441 Washington Administrative Code; and the new proposed Clean Air Rule, Chapter 173-442 Washington Administrative Code.

We have a court reporter with us, who is transcribing the hearing.

Let the record show it is 10:45 a.m. on July 15th, 2016. And this hearing is being held as a webinar using WebEx.

Legal notice of this hearing was published in the Washington State Register, Number 16-12-098 on May 31, 2016.

On June 1st, 2016, Ecology issued a state-wide news release on the rulemaking and hearings; placed information on their website for the rule and in the online public calendar; and announcements went out by email to the following Listservs and distribution lists: The Clear Air Rule email distribution list; the Air Quality Rule and SIP Listserv; the GHG Reporting Listserv; Washington Carbon Reduction Listserv; and the WAC Track Listserv.

Ecology sent a reminder about the the public hearing dates and the times to the Clean Air Rule list on July 6,
2016.

We will now take formal comments from those who would like to make them. The web moderator will call you to testify in the order in which I see the raised hand webinar (sic).

The web moderator, Tim, will unmute your line and introduce you. At that time, please, state your name, and the company or organization you represent, if any.

We apologize in advance if we mispronounce your name. Please feel free to correct us.

Remember we're limiting comments to about 15 minutes.

When you have 30 seconds left to complete your testimony, the web moderator will notify you. When your time is up, the web moderator will mute your line. And I will call the next person to testify.

MODERATOR TIM: First we have William McPherson. Please speak clearly, William.

Go ahead.

WILLIAM McPHERSON: Can you hear me all right? Thank you. I was at the hearing last night but there was so many I couldn't stay for all the testimony. But I would like to talk today. And I want to thank the Department of Ecology for its efforts to giving the time for all of us to speak by using these webinars. I think
it's a very good idea.

I am William McPherson, president of the Unitarian Universalist Voices for Justice. I am a retired diplomat. I would like to set the context for the Clean Air Rule at the global, national, and state levels.

The U.S. agreed with 194 other countries on the Paris Agreement last December. Our pledge or nationally determined contribution is too weak, and along with other pledges it would lead to a 3.2 degree increase. The agreement says we should limit it to 2 degrees. So instead of the pledge we made at 28 percent reduction by 2025, the U.S. should pledge 40 percent reduction by that time.

To reach our stated goal the world is obligated to stay within a carbon budget of 1000 gigatons. Human induced emissions have amounted to 565 gigatons since the beginning of the investor lead privilege to cut pollution, which would leave about 435 gigatons until we reach a critical turning point. At the current rates of 30 gigatons a year, this would be exhausted in 15 years by the year 2030. So our reductions must accelerate.

How do we fit into the worldwide budget? Washington state is at about 10 tonnes per person, which is much better than the U.S. average about 20 tonnes per person. But we are actually behind California, Oregon, and British
Columbia. And we are more than twice the world average about 4.6 tonnes. Scientists recommend that worldwide per capita emissions should be no more than 2 tonnes. So we're at five times that limit.

If the carbon budget target were to be realized, we would need to reduce at a much more ambitious rate. It is a moral obligation for us to approach reductions not only in terms of tonnage in state reduction, but also in terms of tonnage per person.

I urge the Department of Ecology to analyze and report the effect of the carbon rule on tonnage per person.

Thank you.

MS. CONKLIN: Thank you.

Tim.

MODERATOR TIM: Next we have Miles Heller.

Go ahead, Miles.

MILES HELLER: Thank you. Miles Heller with Tesoro and thank you for the opportunity to comment today. There are many outstanding issues that we have with the regulation as currently written. And I will be providing and we will enumerate those in written comments next week. I just really want to focus on a couple issues today. Schedule and reporting.

Starting in 2017 is just too soon, given companies
like ours have three to five year planning horizons. While reporting could begin earlier, there should be no obligations on reductions on our opinion beginning on any entity and until 2020 at the earliest.

And why do I say this? Well, one, it's our opinion that the regulation is just not ready yet. There's many gaps, many unanswered questions. And despite a lot of the opinions I heard at the hearing last night, many of our suggested changes, which we think make the rule more workable have not been addressed. We believe there are real issues with the rule that's currently written and that both Ecology and the stakeholders would benefit by some additional rule development time and additional time to bring the requirements into force.

Also for those of us who start in 2017, don't believe it's fair or rational to require an obligation on facilities that we will not have determined with finality until 2018. We're almost really halfway through the first compliance period. And while I understand we might have a general idea of where that baseline will be set ahead of that, and I know that there's additional -- you know an additional year plus in the program in order to -- before the actual compliance deadline hits. It's just with three to five year planning cycles, it's just not fair to obligate anybody with a number that we will not know until
midway through that first compliance period.

Thirdly, there is a lot of issues with reporting, you know, we've provided a lot of information as to why we think the Department of Licensing reporting is superior to the proposed EPA Subpart MM. I'll talk a little bit about that today. But at any rate either reporting scheme would need substantive or augmentation or additional work. Of course we think the MM requires a whole lot more work. And it may, in fact, be impossible to overcome the difficulties with the reporting scheme. But even the DOL reporting to get at the particular value that Ecology is looking for, we understand that that would need some work. And so, some of this additional time period ahead of when obligations would come due could be spent developing the necessary reporting regime and filling any of the gaps the Ecology perceives there.

Specific to reporting, you know, we believe that the DOL reporting, which honestly is consistent with the current legislative direction to Ecology is the superior way to go. We think it avoids many, many accounting difficulties that are going to arise by trying to track emissions from production and then separately from imports and exports. All of that is done in one report under Department of Licensing. So that also rectifies an inequity that's built into the regulation now where fuel
importers have additional time over and above in state producers, by using the DOL reports and doing that over our extended time period that we're recommending, the -- both of those entities would come into the program at the same time. I think that's beneficial. So it's overall allowing a little bit more time to develop the right reporting protocols, enabling companies with a compliance obligation to know what that obligation is in advance of when they're required to comply with it. And just spending a little bit more time working on the regulation and filling in the gaps would be beneficial to all involved. And that's why we're recommending a delay in the schedule today.

Thanks for the time to comment.

MS. CONKLIN: Thank you.

MODERATOR TIM: All right.

Next we have Michael Foster.

Go ahead, Michael.

MICHAEL FOSTER: Thank you very much. I have a few questions. I asked one question in the last -- (indiscernible words spoken.)

(Clarifying interruption by the reporter.)

MODERATOR TIM: Michael, we're having trouble hearing you. Are you on a speaker phone?

MICHAEL FOSTER: Is that better?
MODERATOR TIM: Yes.

MICHAEL FOSTER: Thank you. Okay. Yeah, I'm interested in Ecology's thinking on Our Fair Share. What is our fair share in Washington of the global climate plan? What is the fair share of these particular corporations, companies that will be covered under this particular rule? And whether the companies and individuals who are doing a better job at keeping the air clean are polluting less than the average, should be advantaged out for any reason other than a financial one, to just give them a bonus or a pass. If we had a track team and our fastest runners were invited to sit in the bleachers for a few days because they were already so fast. I don't think that's going to get us what we want, which is a faster track team.

And in this case if we're trying to reduce the emissions, sincerely trying to reduce emissions, then don't we want the companies that are already interested in being more efficient to continue pushing themselves and using their processes to reduce emissions as quickly as possible?

So the whole three tier, more polluting, average polluting, less polluting, I would love to hear Ecology's rationale for that. Especially if it has anything to do with actually reducing emissions. Because it seems like
we're giving away our best talent.

Another thought about our fair share. The question I asked at the last webinar was about if everyone on earth, every individual, every farm, every emission was covered under this rule at 1.7 percent reductions, what would the temperature rise be? And the response in the webinar Q-and-A session was we haven't calculated that, which is telling because if we're thinking about these 19 corporations doing their fair share on a path to anything, we should know what path we're asking them to follow.

Are they on a 3.2 degrees Celsius path? Are they in a 4 degree Celsius path? What trajectory are they on, if they start in 2020? And there's a range that we can look at and, say, well given where we are today, given, you know, if emissions stay roughly the same for the next three years, where would that put us? And that seems like a necessary calculation for the Department of Ecology to make if they are going to simultaneously update our current emission's targets with the legislators.

This is my next big idea, is I'm curious can Ecology please explain in the formal record how it is possible to write a rule that claims to be about 1.7 percent at a time when all science since 10 years ago has been telling us that that number needs to be higher; and when Ecology has been presented with science that that determines that
needs to be higher?

I also ask on the record for Ecology to respond to
the idea that they -- that you are required somewhere in
the statute to do no more than 1.7 percent? I'm unable to
find that anywhere. My understanding by reading of the
statute is that the 1.7 percent is the floor, not a
celing. And it would be a critical understanding if
there is somewhere in the statute that I'm missing where
it says Ecology may not do anymore than this. It is clear
in the statute that Ecology is required to update the
legislature on current emissions targets. And it seems
like those two things are contradictory.

Then another question: This is about the -- using
the term two-thirds or 60 percent or saying that this
covers roughly two-thirds of our Washington state
emissions over and over. That I do understand you're also
saying that it does not cover agriculture, and it does not
cover transportation. It does not cover nonpoint source
emissions. So will Ecology, please, explain on the record
whether this 60 percent, two-thirds figure, which you've
been advertising, has anything to do with reality regarded
to Washington State Greenhouse Gas Emissions, which you
have said over-and-over it does. The number, the
percentage of total Washington State Greenhouse Gas
Emissions is not 60 percent. It can't be. These 19
corporations do not emit 60 percent of our statewide emissions. It is only point source then I request Ecology write into the record what is the percentage of the emissions for Washington state that this rule actually covers? Is it 20 percent? Is it 16 percent? What percentage are you actually trying to cover? That needs to be in the rule.

I've got one more question on the record and that is why not comply with the governor's executive action from 2014, I believe, directing you to update the emissions targets? This is of particular interest because there were several deadlines that were missed during the last two years. And Ecology actually said you were going to -- and you were going to do it. At least the governor said we missed your own deadline. So I need to know why has Ecology chosen not to update the legislature like last year, in 2015? And what has Ecology done in the last two years on this issue? Has there been a phone call to anyone at the Washington Climate Impacts Group? Has there been any document or, you know, a phone conference about what those targets should be and when those numbers should be released? I know there's a plan to do it soon. But there was a plan to do it in the 2016 session back in December. And it didn't happen. It's a remarkable and mystifying silence.
So the record needs to show what Ecology has done already to update the scientific targets, whether it was a phone call to climate impacts or whatever it was. This is the public's health issue, a security issue for our state, our nation. This affects all kinds of political decisions that are being made in the legislature. And the public and the legislature need to know what those targets are. Ecology has repeatedly chosen to not update the targets against multiple directives to do so.

So those are my main points, or my main questions about this.

Is this 60 percent, you know, point source; or is it the whole emissions, 100 percent of our statewide emissions? And what is the actual number of our entire statewide emissions? The question about what temperature trajectory are these corporations on if they were the whole planet, if everybody was on the same path with them? What temperature rise would we be seeing starting in 2020 or 2023 or whenever they actually start making those trajections? And this question about whether the 1.7 percent is somehow a ceiling that must not be crossed, must not go beyond, or whether there is something in the statute that says that because I can't find it?

Why not follow the directives of the last two years updating these targets?
I have one more question and this is about if the statute does limit, somehow, the amount of reductions, then when were these -- when was this plan supposed to go into effect? In other words, Ecology was given this authority back in 2008. This had nothing to do with the governor's directive or any lawsuit or anything, it was about the 2008 statute. And that's what you're doing is based on. If we had begun emissions reductions as ordered in 2008, where would the state be today? And if there's a limit in the statute that says you may not do more than 1.7 percent, which I can't find, then shouldn't that be retroactive for the last eight years worth of emissions? Clearly it is not in the interest of public health for our children to delay emissions reductions. The targets are inadequate. Ecology has said the targets are inadequate in your own reports. So the idea that you are listening to the companies and drafting this rule to make it easier for them, slower for them, and less expensive for them to keep polluting; that seems counter to the mission of the Department of Ecology.

So please answer these questions for me on the record.

Thank you very much.

MS. CONKLIN: Thank you.

MODERATOR TIM: Next, we have Rod Whittaker.
Go ahead, Rod.

ROD WHITTAKER: My name is Rod Whittaker, and I'm with the Washington Refuse and Recycling Association, or WRRA. WRRA primarily operates essentially all aspects of the private sector solid waste industry in Washington, including landfills and in combination for virtually every community in the state that are a successful public-private partnership. The industry is proud to perform a vital public service and it's there to protect human health and the environment through the safe handling and disposal of solid waste.

The solid waste industry has already made great strides in achieving emissions reduction including methane capture, sequestration, and the transition to seeing G vehicles.

We are the largest fuel recyclers in the state and have helped Washington to achieve its recycling rate of over 50 percent. However the Clean Air Rule is not a good fit for solid waste or for landfills.

First, the landfill is a unique facility from other cap and trade and similar carbon reduction programs across the nation and globe to identify themselves. And often do achieve landfill emission reductions through separate systems, which can clearly produce conditions and challenges of landfills.
Second, the Clean Air Rule produces a number of excellent green and innovative energy and fuel projects which use landfill gas as a feed stop from generation of emission production units, which often receive credit under similar existing programs.

Third, landfill emission production cannot be directly measured. Landfills are regulated heavily and federally with the EPA currently -- updated a rule that actually just released them today tailored toward landfill emission reduction.

Simply put, landfills are different and necessary and should be exempt from the Clean Air Rule. We support emissions reductions, but the Clean Air Rule itself is not a good fit for the solid waste industry. And WRRA will elaborate in written comment on all of the points made here and request the Department consider these comments before finalizing the rule.

Thank you.

MS. CONKLIN: Thank you.

MODERATOR TIM: Next we have Marty O'Malley.

Go ahead, Marty.

MARTY O'MALLEY: I'm sorry. I don't have any questions.

MS. CONKLIN: Thank you.

MODERATOR TIM: So I'm going to ask if you've
already testified to lower your hands unless you would
like to give additional testimony that way we know how
many more people we have who would like to testify.

Miles, did you want to give additional testimony,

Miles Heller?

MILES HELLER: No. I clicked on it.

MODERATOR TIM: Okay.

MILES HELLER: I'll click on it again.

MODERATOR TIM: Thank you.

MS. CONKLIN: All right. I believe that
everybody who has wished to testify has had an opportunity
to do so. If there is anybody else who would at this time
like to provide testimony please raise your hand in the
web feature.

Okay. We will close the hearing.

If you would like to send in comments, they must be
received by 5:00 p.m. on Friday, July 22nd, 2016. You may
submit comments by mail to Sam Wilson, W-I-L-S-O-N, at
Washington State Department of Ecology, Air Quality
Program; P.O. Box 47600; Olympia, Washington, 98504-7600.

Comments may also be emailed to
aqcomments@ecy.wa.gov; that's A-Q-C-O-M-M-E-N-T-S, at
E-C-Y, dot, W-A, dot, G-O-V; or they may be faxed to
360-407-7534. These addresses are also available on
Ecology's webpage.
Today's hearing is the last hearing on the proposed rules, Chapters 173-441 and 173-442 Washington Administrative Code.

We held additional public hearings on July 7th at 6:00 p.m. by webinar, July 12th at 6:00 p.m. at the Davenport Grand Hotel in Spokane; July 14th at 6:00 p.m. at the Red Lion Hotel in Olympia.

All testimony received at this hearing as well as emails and hard copy comments received by 5:00 p.m. on Friday, July 22nd, will be part of the official record for the proposed rule.

Ecology staff will respond to comments in a document called a Concise Explanatory Statement or CES. The CES will be available on Ecology's website after the rule is adopted. Ecology will send a notice about the availability of the CES to the Listservs mentioned before.

The next step is to review the comments and make a determination whether to adopt the rule. Ecology's director, Maia Bellon, will consider the documentation and staff recommendations and will make a decision about adopting the rule.

Ecology expects to adopt the rule no earlier than August 31st, 2016.

If we can be of further help to you please don't
hesitate to ask.

On behalf of the Department of Ecology, thank you for coming this morning.

Let the record show that this hearing was adjourned at 11:15 a.m.

You may now turn off the recorder, Tim. This concludes our webinar.

Thank you for joining us this morning.

(Proceedings concluded at 11:15 a.m.)
CERTIFICATE

I, KANDI CLARK, a duly authorized Court Reporter in and for the State of Washington, residing at Olympia, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify:

That the foregoing hearing transcribed by me by means of computer-aided transcription is a full, true, and complete transcript of the proceedings;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion, I shall herewith securely seal the original transcript and serve same upon appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of July, 2016.

Kandi Kathryn Clark
CCR License #3008