



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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

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*Transcript from July 15, 2016 public hearing*

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For more information contact:

Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Phone: 360-407-6800

Washington State Department of Ecology - [www.ecy.wa.gov](http://www.ecy.wa.gov)

- *Headquarters, Olympia* 360-407-6000
- *Northwest Regional Office, Bellevue* 425-649-7000
- *Southwest Regional Office, Olympia* 360-407-6300
- *Central Regional Office, Union Gap* 509-575-2490
- *Eastern Regional Office, Spokane* 509-329-3400

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# **Appendix F to Concise Explanatory Statement**

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**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

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W E B I N A R P R O C E E D I N G S

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

Department of Ecology  
300 Desmond Drive SE  
Lacey, Washington 98503

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Taken Before:  
Kandi Clark, CCR #3008  
of  
Capitol Pacific Reporting, Inc.  
Corporate Headquarters  
2401 Bristol Court SW, Suite C-103, Olympia, WA 98502  
360.352.2054 Fax 360.705.6539 Toll Free 800.407.0148  
Tacoma, WA            Seattle, WA            Aberdeen, WA  
253.564.8494            206.622.9919            360.532.7445  
  
Chehalis, WA            Bremerton, WA  
360.330.0262            360.373.9032  
www.capitolpacificreporting.com  
admin@capitolpacificreporting.com

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3  
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P R O C E E D I N G S

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 ListSrvs 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,

1 2016.

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

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

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

11 Remember we're limiting comments to about 15  
12 minutes.

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

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

19 Go ahead.

20 WILLIAM MCPHERSON: Can you hear me all right?  
21 Thank you. I was at the hearing last night but there was  
22 so many I couldn't stay for all the testimony. But I  
23 would like to talk today. And I want to thank the  
24 Department of Ecology for its efforts to giving the time  
25 for all of us to speak by using these webinars. I think

1 it's a very good idea.

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

6 The U.S. agreed with 194 other countries on the Paris  
7 Agreement last December. Our pledge or nationally  
8 determined contribution is too weak, and along with other  
9 pledges it would lead to a 3.2 degree increase. The  
10 agreement says we should limit it to 2 degrees. So  
11 instead of the pledge we made at 28 percent reduction by  
12 2025, the U.S. should pledge 40 percent reduction by that  
13 time.

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

22 How do we fit into the worldwide budget? Washington  
23 state is at about 10 tonnes per person, which is much  
24 better than the U.S. average about 20 tonnes per person.  
25 But we are actually behind California, Oregon, and British

1 Columbia. And we are more than twice the world average  
2 about 4.6 tonnes. Scientists recommend that worldwide per  
3 capita emissions should be no more than 2 tonnes. So  
4 we're at five times that limit.

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

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

13 Thank you.

14 MS. CONKLIN: Thank you.

15 Tim.

16 MODERATOR TIM: Next we have Miles Heller.

17 Go ahead, Miles.

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

25 Starting in 2017 is just too soon, given companies

1 like ours have three to five year planning horizons.  
2 While reporting could begin earlier, there should be no  
3 obligations on reductions on our opinion beginning on any  
4 entity and until 2020 at the earliest.

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

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

1 midway through that first compliance period.

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

17 Specific to reporting, you know, we believe that the  
18 DOL reporting, which honestly is consistent with the  
19 current legislative direction to Ecology is the superior  
20 way to go. We think it avoids many, many accounting  
21 difficulties that are going to arise by trying to track  
22 emissions from production and then separately from imports  
23 and exports. All of that is done in one report under  
24 Department of Licensing. So that also rectifies an  
25 inequity that's built into the regulation now where fuel

1 importers have additional time over and above in state  
2 producers, by using the DOL reports and doing that over  
3 our extended time period that we're recommending, the --  
4 both of those entities would come into the program at the  
5 same time. I think that's beneficial. So it's overall  
6 allowing a little bit more time to develop the right  
7 reporting protocols, enabling companies with a compliance  
8 obligation to know what that obligation is in advance of  
9 when they're required to comply with it. And just  
10 spending a little bit more time working on the regulation  
11 and filling in the gaps would be beneficial to all  
12 involved. And that's why we're recommending a delay in  
13 the schedule today.

14 Thanks for the time to comment.

15 MS. CONKLIN: Thank you.

16 MODERATOR TIM: All right.

17 Next we have Michael Foster.

18 Go ahead, Michael.

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

22 (Clarifying interruption by the reporter.)

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

25 MICHAEL FOSTER: Is that better?

1                   MODERATOR TIM: Yes.

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

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

22                   So the whole three tier, more polluting, average  
23 polluting, less polluting, I would love to hear Ecology's  
24 rationale for that. Especially if it has anything to do  
25 with actually reducing emissions. Because it seems like

1 we're giving away our best talent.

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

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

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

1 needs to be higher?

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

13 Then another question: This is about the -- using  
14 the term two-thirds or 60 percent or saying that this  
15 covers roughly two-thirds of our Washington state  
16 emissions over and over. That I do understand you're also  
17 saying that it does not cover agriculture, and it does not  
18 cover transportation. It does not cover nonpoint source  
19 emissions. So will Ecology, please, explain on the record  
20 whether this 60 percent, two-thirds figure, which you've  
21 been advertising, has anything to do with reality regarded  
22 to Washington State Greenhouse Gas Emissions, which you  
23 have said over-and-over it does. The number, the  
24 percentage of total Washington State Greenhouse Gas  
25 Emissions is not 60 percent. It can't be. These 19

1 corporations do not emit 60 percent of our statewide  
 2 emissions. It is only point source then I request Ecology  
 3 write into the record what is the percentage of the  
 4 emissions for Washington state that this rule actually  
 5 covers? Is it 20 percent? Is it 16 percent? What  
 6 percentage are you actually trying to cover? That needs  
 7 to be in the rule.

8 I've got one more question on the record and that is  
 9 why not comply with the governor's executive action from  
 10 2014, I believe, directing you to update the emissions  
 11 targets? This is of particular interest because there  
 12 were several deadlines that were missed during the last  
 13 two years. And Ecology actually said you were going to --  
 14 and you were going to do it. At least the governor said  
 15 we missed your own deadline. So I need to know why has  
 16 Ecology chosen not to update the legislature like last  
 17 year, in 2015? And what has Ecology done in the last two  
 18 years on this issue? Has there been a phone call to  
 19 anyone at the Washington Climate Impacts Group? Has there  
 20 been any document or, you know, a phone conference about  
 21 what those targets should be and when those numbers should  
 22 be released? I know there's a plan to do it soon. But  
 23 there was a plan to do it in the 2016 session back in  
 24 December. And it didn't happen. It's a remarkable and  
 25 mystifying silence.

1           So the record needs to show what Ecology has done  
2 already to update the scientific targets, whether it was a  
3 phone call to climate impacts or whatever it was. This is  
4 the public's health issue, a security issue for our state,  
5 our nation. This affects all kinds of political decisions  
6 that are being made in the legislature. And the public  
7 and the legislature need to know what those targets are.  
8 Ecology has repeatedly chosen to not update the targets  
9 against multiple directives to do so.

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

12           Is this 60 percent, you know, point source; or is it  
13 the whole emissions, 100 percent of our statewide  
14 emissions? And what is the actual number of our entire  
15 statewide emissions? The question about what temperature  
16 trajectory are these corporations on if they were the  
17 whole planet, if everybody was on the same path with  
18 them? What temperature rise would we be seeing starting  
19 in 2020 or 2023 or whenever they actually start making  
20 those trajections? And this question about whether the  
21 1.7 percent is somehow a ceiling that must not be crossed,  
22 must not go beyond, or whether there is something in the  
23 statute that says that because I can't find it?

24           Why not follow the directives of the last two years  
25 updating these targets?

1           I have one more question and this is about if the  
2 statute does limit, somehow, the amount of reductions,  
3 then when were these -- when was this plan supposed to go  
4 into effect? In other words, Ecology was given this  
5 authority back in 2008. This had nothing to do with the  
6 governor's directive or any lawsuit or anything, it was  
7 about the 2008 statute. And that's what you're doing is  
8 based on. If we had begun emissions reductions as ordered  
9 in 2008, where would the state be today? And if there's a  
10 limit in the statute that says you may not do more than  
11 1.7 percent, which I can't find, then shouldn't that be  
12 retroactive for the last eight years worth of emissions?  
13 Clearly it is not in the interest of public health for our  
14 children to delay emissions reductions. The targets are  
15 inadequate. Ecology has said the targets are inadequate  
16 in your own reports. So the idea that you are listening  
17 to the companies and drafting this rule to make it easier  
18 for them, slower for them, and less expensive for them to  
19 keep polluting; that seems counter to the mission of the  
20 Department of Ecology.

21           So please answer these questions for me on the  
22 record.

23           Thank you very much.

24           MS. CONKLIN: Thank you.

25           MODERATOR TIM: Next, we have Rod Whittaker.

1           Go ahead, Rod.

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

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

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

20           First, the landfill is a unique facility from other  
21 cap and trade and similar carbon reduction programs across  
22 the nation and globe to identify themselves. And often do  
23 achieve landfill emission reductions through separate  
24 systems, which can clearly produce conditions and  
25 challenges of landfills.

1           Second, the Clean Air Rule produces a number of  
2 excellent green and innovative energy and fuel projects  
3 which use landfill gas as a feed stop from generation of  
4 emission production units, which often receive credit  
5 under similar existing programs.

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

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

18           Thank you.

19           MS. CONKLIN: Thank you.

20           MODERATOR TIM: Next we have Marty O'Malley.

21           Go ahead, Marty.

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

24           MS. CONKLIN: Thank you.

25           MODERATOR TIM: So I'm going to ask if you've

1 already testified to lower your hands unless you would  
2 like to give additional testimony that way we know how  
3 many more people we have who would like to testify.

4 Miles, did you want to give additional testimony,  
5 Miles Heller?

6 MILES HELLER: No. I clicked on it.

7 MODERATOR TIM: Okay.

8 MILES HELLER: I'll click on it again.

9 MODERATOR TIM: Thank you.

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

15 Okay. We will close the hearing.

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

21 Comments may also be emailed to  
22 [aqcomments@ecy.wa.gov](mailto:aqcomments@ecy.wa.gov); that's A-Q-C-O-M-M-E-N-T-S, at  
23 E-C-Y, dot, W-A, dot, G-O-V; or they may be faxed to  
24 360-407-7534. These addresses are also available on  
25 Ecology's webpage.

1 Today's hearing is the last hearing on the proposed  
2 rules, Chapters 173-441 and 173-442 Washington  
3 Administrative Code.

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

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

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

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

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

25 If we can be of further help to you please don't

1 hesitate to ask.

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

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

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

8 Thank you for joining us this morning.

9

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

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C E R T I F I C A T E

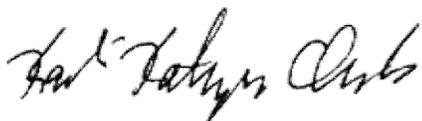
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That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

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

