



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-441 WAC

Reporting of Emissions of Greenhouse Gases

Summary of rule making and response to comments

January 2015
Publication no. 14-02-027

Publication and Contact Information

This publication is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1402027.html>

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Concise Explanatory Statement

Chapter 173-441 WAC Reporting of Emissions of Greenhouse Gases

Air Quality Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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1.0 INTRODUCTION

This Concise Explanatory Statement provides information on the Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Reporting of Emissions of Greenhouse Gases
WAC Chapter(s): 173-441
Adopted date: January 29, 2015
Effective date: March 1, 2015

To see more information related to this rule making or other Ecology rule makings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>.

The purpose of a Concise Explanatory Statement is to:

- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.
- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).

1.1 Statutory Authority and Regulatory History

In 2008, the Washington State Legislature passed the Engrossed Second Substitute House Bill 2815 (ESSHB 2815) as part of the Governor's Climate Change Framework; it is primarily codified in Chapters 70.235 RCW and 70.94 RCW.

In 2010, the Legislature passed Substitute Senate Bill No. 6373 (SSB 6373) to amend ESSHB 2815 to emphasize consistency with the United States Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Program and 40 C.F.R. Part 98 – Mandatory Greenhouse Gas Reporting regulation (40 C.F.R. Part 98).

Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases (WAC 173-441) was adopted by Ecology in December of 2010. Starting in 2012, facilities and transportation fuel suppliers that exceeded the reporting threshold were required to report their applicable greenhouse gas emissions to Ecology.

On July 31, 2014, Ecology filed a Preproposal Statement of Inquiry with the Office of the Code Reviser announcing Ecology's intention to amend Chapter 173-441 WAC. Ecology held one stakeholder meeting at Ecology headquarters on August 28, 2014 that was also made available via a webinar, for those unable to attend in person. During the stakeholder meeting, staff gave a brief overview of the program and then went line-by-line through the rule language to review each proposed revision. The rule language and proposed revisions were formally released on October 20, 2014. One public hearing was held at Ecology headquarters on December 3, 2014 and was, once again, made available via a webinar. Approximately two dozen individuals participated in

the hearing whether in person or through the webinar. No official comments were made during the hearing. The comment period ended on December 10, 2014.

On July 31, 2014, coincidentally on the same day Ecology announced rulemaking, EPA proposed revising the federal Mandatory Greenhouse Gas Reporting regulation by establishing chemical-specific and default global warming potentials for fluorinated greenhouse gases. Ecology incorporated EPA's proposed changes into the draft rule language for Chapter 173-441 WAC and shared them with stakeholders at the August stakeholder meeting. The proposed amendments were finalized by EPA on November 25, 2014. In addition, on October 24, 2014, EPA finalized amendments to reporting and recordkeeping requirements and an alternative electronic verification tool that had been proposed in 2013. All applicable amendments to the federal regulation have been incorporated in WAC 173-441.

2.0 DETAILS ABOUT THIS RULE MAKING

2.1 Scope and Purpose

Ecology adopted amendments to Chapter 173-441 WAC – Reporting of Emissions of Greenhouse Gases to maintain consistency with EPA’s Greenhouse Gas Reporting Program, as required by RCW 70.94.151. The following are examples of the adopted rule revisions:

- Revised the Global Warming Potentials (GWPs) in WAC 173-441-040
- Updated calculation and monitoring methods
- Made minor streamlining revisions to reporting requirements
- Corrected minor errors and improved readability

Ecology did not change requirements established in WAC 173-441 for transportation fuel suppliers or the following elements pertaining to facilities:

- Reporting threshold
- Confidential business information
- Fees

2.2 Reasons for Adopting

The purpose of the Washington Greenhouse Gas Reporting Program is to collect accurate and timely data essential for informing future policy decisions. The data helps Ecology better understand emissions from industry and facilities, factors that affect emission rates, and actions that could reduce emissions. This rule only requires emissions reporting and does not include emissions control or emissions reduction requirements.

Since Ecology adopted the WAC 173-441 in 2010, EPA made multiple revisions to the federal Greenhouse Gas Reporting Program. Ecology is required by statute (RCW 70.94.151) to periodically update WAC 173-441 to maintain a GHG reporting program that is consistent with EPA’s Greenhouse Gas Reporting Program (40 C.F.R. Part 98).

Maintaining consistency with the federal program minimizes double reporting for facilities that report to both Ecology and EPA. It also allows all Washington facilities to continue to benefit from EPA’s updated protocols, reference materials, and electronic reporting tool.

2.3 Public Involvement during Rule Development

Ecology consulted with stakeholders throughout the rule-making process and provided opportunities for interested persons to get involved.

Public Notice of Rule Making

At the start of rule making, Ecology:

- Sent letters to Tribal chairs inviting Government-to-Government consultations. No consultations were requested.
- Sent emails to the following persons inviting them to participate in the rule-making process:

- Facilities and fuel suppliers that currently report their Greenhouse Gas emissions to Ecology
- Persons who had joined the Greenhouse Gas listserv
- Persons who had joined the Rules and State Implementation Plan listserv
- Persons who had joined the agency WAC Track listserv
- Posted information on the agency’s rule-making website:
<http://www.ecy.wa.gov/programs/air/rules/wac173441/1313ov.htm>

Public Outreach during Rule Development

During the development of the rule proposal, Ecology held one stakeholder meeting and one public hearing.

1. Stakeholder Meeting

- Date August 28, 2014
- Location Ecology Headquarters in Lacey, WA
- Webinar Yes
- Agenda Provided a brief overview of the program, went line by line through the rule language and reviewed all proposed changes, and answered questions

2. Public Hearing

- Date December 3, 2014
- Location Ecology Headquarters in Lacey, WA
- Webinar Yes
- Agenda Provided a brief overview of the program, offered a question and answer session, held the formal hearing

Public Access to Information during Rule Making

Interested persons could access information on the rule making and public involvement opportunities by:

- Accessing the following Ecology website:
<http://www.ecy.wa.gov/programs/air/rules/wac173441/1313ov.htm>
- Signing up to receive email notices at:
<http://listserv.wa.gov/cgi-bin/wa?A0=WA-GHG-REPORTING>
- Contacting the Rule Writer or rule implementation contact.

2.4 Public Comment on the Proposed Rule

On October 20, 2014, Ecology filed the Proposed Rule Making (rule proposal) form with the Office of the Code Reviser. On November 5, 2014, the rule proposal was published in the *Washington State Register* (WSR 14-21-135).

Notice of the rule proposal and opportunity to comment was:

- Published in the Washington State Register (WSR 14-21-135) on November 5, 2014
- Issued in a news release on October 22, 2014. The news release is available at:
<http://www.ecy.wa.gov/news/2014/165.html>
- Sent by letter to Tribal chairs. The notice included an invitation for Government-to-Government consultations. No consultations were requested.
- Sent by email to:
 - Facilities and fuel suppliers that currently report their Greenhouse Gas emissions to Ecology
 - Persons who had joined the Greenhouse Gas listserv
 - Persons who had joined the Rules and State Implementation Plan listserv
 - Persons who had joined the agency WAC Track listserv
- Posted on Ecology's public involvement calendar:
<http://apps.ecy.wa.gov/pubcalendar/calendar.asp>
- Posted on Ecology's rule-making website:
<http://www.ecy.wa.gov/programs/air/rules/wac173441/1313ov.htm>

2.5 Differences between the Proposed and Adopted Rule Language

The Administrative Procedures Act (RCW 34.05.325(6)(a)(ii)) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on October 20, 2014 and the adopted rule filed on January 29, 2015. Ecology made these changes for all or some of the following reasons:

- To ensure clarity and consistency
- To meet the intent of the authorizing statute
- To reflect changes to EPA's regulations made after the October 20, 2014 filing date

The following content describes the changes and Ecology's reasons for making them. Where a change was made solely for editing or clarification purposes, we did not include it in this section. Text changes include:

- Updating incorporation by reference dates throughout the rule
- Modifying Table A-1 based on EPA's finalization of amendments to subpart A of 40 C.F.R. Part 98

Ecology made minor changes to Table A-1, Global Warming Potentials (100-Year Time Horizon), in WAC 173-441-040. The changes and the reasons the changes were made are stated in **Table 2-5, Changes to the Rule Language**.

Table 2-5
Changes to the Rule Language

	Change	Reason for Change
1	The incorporation by reference date was updated.	To reference the version of the federal Mandatory Greenhouse Gas Reporting regulation that was current at the time of rule adoption.
2	Some GHGs listed in Table A-1 were edited in the following ways: <ul style="list-style-type: none"> • Notation errors were corrected. 	To maintain consistency with EPA
3	<ul style="list-style-type: none"> • Five duplicate sets of GHGs were identified; one GHG from each set was deleted. 	To maintain consistency with EPA
4	<ul style="list-style-type: none"> • Three changes were made to the proposed fluorinated GHG groups which resulted in the majority of the table being reorganized. 	To maintain consistency with EPA
5	<ul style="list-style-type: none"> • Changes were made to the default GWPs groups; only EPA changes that would not inadvertently change the Washington definition of GHG were made. 	To maintain consistency with EPA

3.0 COMMENTS FOR THIS RULE MAKING

Ecology accepted comments from October 20, 2014, through December 10, 2014. One public hearing was held at Ecology headquarters on December 3, 2014, and was also made available via a webinar. A website with information about how to comment on this rule making as well as a specific email address (AQComments@ecy.wa.gov) were provided. Ecology received 3 emails or emails with attachments. Copies of the comments are included in **Appendix A, Copy of Written Comments**.

3.1 Commenter Identification

The names of organizations or individuals who submitted comments on the rule proposal are listed in **Table 3-2, Commenter Index**. In total, 3 people submitted comments on the rule proposal. Ecology assigned each commenter a unique identification number (from 1 to 3) in alphabetical order of last name of the commenter. Ecology's responses to comments are included immediately following each comment.

Table 3-2
Commenter Index

#	Name	Affiliation	Date	Format
1	Jeff Altman	Waste Management	2014-12-08	Email with Attachment
2	Frank Holmes	Western States Petroleum Association	2014-12-10	Email with Attachment
3	Lea Wilson	Washington Oil Marketers Association	2014-11-12	Email

3.2 Comments and Responses

This section provides word for word comments that Ecology received during the public comment period. Comments are arranged in alphabetical order by commenter and are followed by Ecology's responses. (RCW 34.05.325(6)(a)(iii)). **Table 3-3, Comment and Rule Section Index**, provides the name and affiliation of the commenter and the section of the rule the comment is referencing.

Table 3-3
Comment and Rule Section Index

#	Commenter's Name	Commenter's Affiliation	WAC Chapter and Section	WAC Section Title
1	Jeff Altman	Waste Management	WAC 173-441-050	General monitoring, reporting, recordkeeping and verification requirements
			WAC 173-441-070	Report submittal
2	Frank Holmes	Western States Petroleum Association	WAC 173-441-050	General monitoring, reporting, recordkeeping and verification requirements
			WAC 173-441-070	Report submittal
3	Lea Wilson	Washington Oil Marketers Association	WAC 173-441-110	Fees

Comment #1

December 8, 2014

Ms. Stacey Callaway
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Callaway:

Waste Management of Washington, Inc. (WMW) is pleased to provide comments on Department of Ecology's proposed "*Reporting of Emissions of Greenhouse Gases Rule (Chapter 173-441 WAC)*".

Our comments are as follows:

WAC 173-441-050 (3)(d)(vii) General monitoring, reporting, recordkeeping and verification requirements – Content of the annual report. *For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.*

As verification software is only required for a few very specific facilities in the federal GHG reporting, WMW proposes to amend this section of the proposed rule to add a statement "as applicable", so that only facilities that need verification software are required to use it.

WAC 173-441-050 (3)(d)(vii) General monitoring, reporting, recordkeeping and verification requirements – Content of the annual report. For reporting year 2014 and thereafter, you must enter into verification software as applicable ~~specified by the director~~ the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

Thank you for the opportunity to provide public comments on this rule. If you have any questions please do not hesitate to contact me at (253) 509-0375.

Sincerely,
Jeff Altman
Environmental Protection Manager

Response to Comment #1

This sentence was based on language from 40 C.F.R. §98.5 (b). The one exception was Ecology changed “Administrator” to “Director”. Reporters are required to report data specified in the recordkeeping sections that apply to them. If a data element is not in the specified recordkeeping section then it is not required to be submitted using the verification software tool. Currently, no data elements in Subpart HH (Municipal Solid Waste Landfills) are required to use the verification software. Ecology believes the existing language meets the intent of the comment.

Thank you for your comment. No changes were made to the rule in response to this comment.

Comment #2

Frank E. Holmes
Director, Northwest Region & Marine Issues

December 10, 2014

Ms. Stacey Callaway
Washington Department of Ecology Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: WSPA Comments on Proposed Revisions to the Greenhouse Gas Reporting Rules

Dear Ms. Callaway:

The Western States Petroleum Association (“WSPA”) is pleased to provide the following comments on Ecology’s proposed revisions to WAC ch. 173-441, Washington’s Greenhouse Gas (“GHG”) Reporting Rules. WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine and market petroleum, petroleum products, natural gas and other energy products in Washington and five other western states. WSPA members own and operate each of Washington’s five petroleum refineries, which are subject to this rule.

Ecology proposes to amend WAC 173-441 to “maintain consistency” with EPA’s GHG Reporting Program “as required by RCW 70.94.151.” See CR-102, WSR 14-21-135 (October 20, 2014). Indeed, Washington’s enabling statute does require that Ecology adopt GHG reporting rules that are “consistent with the regulations adopted by [EPA] in 40 C.F.R. Part 98” and “update its rules whenever [EPA] adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases.” RCW §§ 70.94.151(b)(i), (c).¹

¹ In 2010, the Washington State Legislature added the provision in RCW 70.94.151 requiring Ecology to adopt rules consistent with EPA’s GHG reporting rules in order to streamline the reporting program in Washington.

In this rulemaking, Ecology proposes amendments to the GHG Reporting Rules to reflect various changes made in the federal rules since adoption. One such change, however, is in direct conflict with recent revisions to the federal GHG reporting program. WSPA respectfully requests that

Ecology remove this contradictory language from the proposed rule and maintain the required consistency with EPA's rules.

Ecology's GHG Reporting Rules require facilities that emit at least 10,000 metric tons of GHGs/year in Washington to annually report their GHG emissions. In large part, Ecology's rule references EPA's GHG reporting rules in 40 C.F.R. Part 98, including the data elements and calculations provided therein. See WAC 173-441-050(3)(d)(iv). The calculations necessary to determine GHG emissions require inputs of sensitive process specific data that can reveal proprietary information about industrial reporters. WSPA has expressed concerns to Ecology regarding the reporting and potential disclosure of sensitive "inputs to equation" data elements. In developing the federal GHG reporting program, EPA has received similar concerns from industrial reporters.²

² Based on the comments received, EPA deferred the requirement to report the "inputs to equation" data elements until a reporting verification tool was developed that could ensure protection of this information. See 76 Fed. Reg. 53057 (Aug. 25, 2011) (final rule deferring reporting requirement for inputs to equation data elements until 2015). EPA then proposed to completely remove the reporting requirement for these data elements and develop a verification tool that could verify the GHG emissions calculations. See 78 Fed. Reg. 55994 (Sept. 11, 2013)

On October 24, 2014, in response to concerns expressed from reporters, EPA issued amendments to the federal GHG reporting rules, *deleting* the requirement for sources to report certain "inputs to equation" data elements to protect their sensitive, proprietary nature. 79 Fed. Reg. 63750 (Oct. 24, 2014). Sources are now directed to enter the "inputs to equation" data elements into an input verification tool ("IVT") which will conduct accuracy checks on the data and generate a verification summary report to submit to EPA. The IVT does not retain the sensitive data, nor does EPA gain access to the data during this process. *Id.* at 63752. Sources are required to retain records of the "inputs to equation" data elements in case further verification is necessary. *Id.*

For example, EPA deleted the reporting requirement for 70 "inputs to equation" data elements identified in Subpart Y (applicable to Petroleum Refineries). *Id.* at 63765. Now, EPA requires this data to be entered into the IVT and then retained in the facility's records. See, e.g. 40 C.F.R. 98.257(b) ("Verification software records"). This sensitive data is no longer required to be reported under EPA's program.

Ecology's proposed amendments require sources to use the IVT as provided by EPA, except that sources must also report the data entered into the software, *i.e.* the "inputs to equation" data elements. See WAC 173-441-050(3)(d)(vii); WAC 173-441-070. Specifically, the proposed amendment to WAC 173-441-050(3)(d)(vii) requires:

(vii) For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

There is no counterpart to this reporting requirement in EPA's rules. Ecology's proposed amendments requiring reporting of the "inputs to equation" data elements are clearly in conflict with EPA's GHG reporting program, which has expressly excluded these sensitive elements from the reporting requirements. Ecology's proposed rule is inconsistent with the enabling statute in RCW § 74.94.151 and invalid under Washington's Administrative Procedure Act. See RCW 34.05.570(2)(c) (directing courts to declare a rule invalid if it "exceeds the statutory authority of the agency"); see also *Swinomish Indian Tribal Cmty. v. Washington State Dep't of Ecology*, 178 Wash. 2d 571, 581 (2013) ("Rules that are not consistent with the statutes that they implement are invalid.").

WSPA respectfully requests that Ecology delete the proposed amendments in WAC 173- 441-050(3)(d)(vii) and WAC 173-441-070 requiring sources to report sensitive "inputs to equation" data elements that EPA has deleted the reporting requirements for. WSPA's request is not based on a CBI claim. Rather, it is based on the requirement in RCW § 74.94.151 that Ecology revise its rules to ensure consistency with EPA's GHG reporting program.

Thank you for carefully considering the concerns of WSPA in the development of the amendments to the GHG Reporting Rule. Please call me at (360) 352-4506 if I can provide any additional information in support of these comments.

Very truly yours,
Frank E. Holmes
Director, Northwest Region & Marine Issues

975 Carpenter Road NE, Suite 106, Lacey, Washington 98516
(360) 352-4506 □ Cell (360) 789-1435 □ fholmes@wspa.org □ www.wspa.org

Response to Comment #2

Ecology agrees with WSPA that the Washington State Legislature added the provision in RCW 70.94.151 requiring Ecology to adopt rules consistent with 40 C.F.R. Part 98 in order to streamline the reporting program in Washington. Consistency, as intended by the Legislature and implemented by Ecology, saves reporters time and money by allowing reporters subject to both programs to reuse their EPA report, thus avoiding collecting additional data, calculating emissions differently, or entering the same information twice. Additional benefits for all facility reporters include lower reporting fees due to the use of EPA's existing reporting methods and online reporting tool instead of Ecology creating a new system.

Chapter 70.94.151 RCW has specific confidentiality provisions for transportation fuel suppliers, but is silent on special confidentiality standards for facility reporting. In the absence of unique confidentiality provisions, confidentiality procedures default to those outlined in other statutes such as Chapter 70.94.205 RCW and Chapter 42.56 RCW. In 2010, during the original WAC 173-441 rule making, Ecology worked with stakeholders to incorporate these confidentiality provisions into WAC 173-441. At that time, the framework of EPA's divergent confidentiality procedures existed and WAC 173-441-150(3) explicitly stated that EPA's confidentiality provisions would not

apply in Washington. WSPA commented extensively on that rule making, but did not comment on the rule's confidentiality provisions¹.

WSPA states that their request is not based on a confidentiality claim, which would be outside the scope of this rule making². However, the only impact described in their comment is that continuing to report these data elements could lead to confidential business information being released to the public. All five Washington refineries have already been through the confidential business information petitioning process under WAC 173-441-150 for the greenhouse gas reporting data elements in question. In each case, Ecology classified some data elements as confidential business information, some as public information, and clarified the reporting frequency of others that should have removed as much potential disclosure harm as possible under state law. Nothing in the proposed changes to WAC 173-441 would alter that determination or increase exposure of those data elements.

The recently adopted changes to EPA's regulation referenced in WSPA's comment letter have two outcomes.

- It makes an administrative change that moves some data elements from the reporting section of the regulation to the data retention section and increases the retention schedule for those elements³.
- It also adds a new requirement that any reporter with the specified data elements must use a new EPA software tool (the input verification tool or IVT) to generate their annual report and additional input verification file. Reporters will now be required to retain these reports, whereas previously, EPA provided the option of using EPA spreadsheets to generate their report, but had no requirement to retain the files.

While the new EPA regulation amendments permanently move the requirements from reporting to retention sections, temporary EPA rules have been in place since the beginning of the program that meant those same data elements were never reported to EPA. Ecology did not adopt those temporary rules because they conflicted with the Washington public disclosure law and the absence of the data elements would prevent Ecology from performing an acceptable level of data verification. Agency verification of the accuracy of the reports was a foundational agreement between reporters, Ecology, and the environmental community in the stakeholder process of the original rule making in 2010 and enabled the original rule to not include costly third party verification. The October 2014 EPA rule making in question is administrative in nature and does nothing to alter the intentional difference between the federal and state reporting programs that has existed since the initial rule making. WSPA's proposed edits would fundamentally change Washington's Greenhouse Gas Reporting Program in response to an administrative change by EPA.

¹ Chapter 173-441 WAC Concise Explanatory Statement, December 2010: <https://fortress.wa.gov/ecy/publications/publications/1002038.pdf>

²Chapter 173-441 WAC Preproposal Statement of Inquiry, July 31, 2014: <http://www.ecy.wa.gov/laws-rules/wac173441/d1313.pdf>

³ Federal Register, Volume 79, Number 206, October 2014: <http://www.gpo.gov/fdsys/pkg/FR-2014-10-24/pdf/2014-23780.pdf>

Replacing the existing EPA spreadsheets with the new EPA verification software file reduces the difference between the state and federal greenhouse gas reporting programs. Instead of the current system where Washington facilities are required to use multiple spreadsheets that they may or may not use to complete their EPA report, they will now submit to Ecology a single file already required to be retained for five years by EPA, that is easily generated using EPA's software. Submitting this file will involve a few clicks of a button and take a minute or less, compared to the existing method which involves several files and could take up to a few hours in some cases. Ecology's proposed rule language partially adopting EPA's October 2014 rule making avoids fundamentally changing Washington's Greenhouse Gas Reporting Program while staying consistent with EPA's reporting methodologies, data collection, and reporting tool.

Accepting WSPA's proposed changes would have several unintended detrimental impacts to Washington's Greenhouse Gas Reporting Program. Ecology would no longer have direct access to data elements necessary to verify the accuracy of the reports. EPA relies on an automated system that checks the accuracy of data elements entered into the Inputs Verifier Tool. While a summary of this automated system is available to reporters, that summary is not downloadable and, for various technical and legal reasons, the actual verification assessment EPA receives is not available to either the reporter or Ecology. The only way for Ecology to verify reports to the level of EPA is to obtain the reporter's verification software file. While both Ecology and EPA possess the authority to request the file at any time (WAC 173-441-050(6) and 40 CFR Part 98.3(g)), this method would add costs for reporters and Ecology.

In the October 2014 rule making, EPA extended the record retention schedule from three to five years for data elements in the verification software file. This gives EPA extra time to audit reports and require a reporter to submit the verification software file. Ecology elected to keep the record retention schedule at three years for all data elements because reporters would already be submitting this information to Ecology. If Ecology accepted WSPA's proposed edits, the agency would also need to extend the recordkeeping requirements, which would add costs and risk for reporters.

Ecology believes that the proposed rule language is consistent with EPA's reporting program and meets the Legislature's objective of maintaining the most cost effective and least duplicative program possible. Partially adopting EPA's October 2014 rule making is:

- Consistent with existing differences in the state and federal programs;
- Necessary to maintain a verifiable program; and
- A lower cost to reporters than the program resulting from WSPA's proposed edits.

If there is concern about the protection of confidential business information, it has been addressed in the rule and is outside the scope of this rule making. Ecology has used provisions in the existing rule to determine that several of the data elements in question are confidential business information for Washington's refineries and will continue to work with them to protect their data under Washington law.

Thank you for your comment. No changes were made to the rule in response to this comment.

Comment #3

November 12, 2014

Department of Ecology
Greenhouse Gas Reporting Program
Stacey Callaway/Neil Caudill
P.O. Box 47600
Olympia, WA 98504-7600

Dear Stacey Callaway/Neil Caudill:

Thank you for the opportunity to submit comments on the recent rules proposal under the Greenhouse Gas Reporting Program. While I completely understand the fees of this program are not under the current rule proposal, The Washington Oil Marketers Association (WOMA) would still would like to submit comments regarding the fees of the program. Therefor, WOMA would like to make a formal request that your program reconsider the fees associated with the Greenhouse Gas Reporting Program.

As you are well aware, the discussion of collecting data regarding GHG emissions began in 2009, and WOMA worked in tandem with Ecology to create a program that was streamlined and efficient in its data collection. It was completely agreed that this would NOT be a fee-based system, nor would data-collection program costs be entirely borne by the fuel supplier industry. **In fact, during the legislative session, The Department of Ecology testified that there would be a “nominal fee if any”** passed onto industry. It was agreed by both Ecology and WOMA, in a legislative hearing, that this data was already being reported to the Department of Licensing and could be retrieved from there through an inter-agency agreement. Yet, industry agreed to report to the Department of Ecology as long as there was no fee connected to the reporting requirement.

In the summer of 2010, Ecology held stakeholder meetings to provide an overview of the new reporting requirement. Three of our large members in the WOMA organization attended the meeting specifically intended for fuel suppliers on June 8th, 2010. The meeting focused on the reporting requirement itself and at no time were reporting fees discussed. It was later confirmed that at a subsequent meeting held for Suppliers (not facility owners) there was a discussion regarding fees where the estimated number was stated as \$1500. WOMA never found reference to that information in the Washington State Register (WSR) where rules are published, and WOMA was never made aware of the \$1500 estimate at that time.

Neil Caudill, the program director, confirmed that there were no specific stakeholder meetings addressing the cost of the new program, nor the actual costs that would be borne by GHG reporters. The first time the fee schedule was published was October 2012 in anticipation of reporting requirements that would begin in 2013. WOMA was never a participant in the discussion of setting those fees, and would have NEVER agreed those fees were fair and equitable. In fact, those figures you are gleaming from GHG reporters can be found directly at the Department of Licensing, at minimal cost.

The members of the Washington Oil Marketers Association never agreed to a reporting requirement that would cost marketers/facility owners \$1478 annually – especially when the Department of Ecology testified in 2009 that the fee would be “nominal if any”.

The Washington Oil Marketers Association strongly feels the Department of Ecology has taken advantage of our industry, and did not adequately and appropriately communicate the financial impact to us in discussions regarding the parameters of the reporting program. In addition, we feel strongly that the annual cost in excess of \$300,000 to run a “program” to collect data already reported and collected at the Department of Licensing is egregious. Therefore, WOMA is requesting that the fee be analyzed and significantly reduced or removed completely.

Regrettably, this chain of events has led the members of my organization to distrust your agency and has reduced the years of constructive dialogue and good-will built between our organizations to near zero.

We look forward to your response.

Very kindly,

Lea Wilson, Executive Director
Washington Oil Marketers Association

Cc: Senator Doug Ericksen
Senator Andy Billig
Senator Jim Honeyford
Senator Kevin Ranker

Response to Comment #3

As was stated in WOMA’s comment letter, the scope of this rule making did not include fees. This rule making was intended to focus on procedural amendments to make Washington’s Greenhouse Gas Reporting Program more consistent with the federal program. Ecology appreciates WOMA’s comment letter and values their continued communication. Ecology understands their concern and will work with them to address this concern in the future.

Thank you for your comment. No changes were made to the rule in response to this comment.

Appendix A
Copy of Written Comments

Commenter #1



WASTE MANAGEMENT
1933 63rd Avenue
Clyde Harbor, WA 98535
253-926-0025

December 8, 2014

VIA E-MAIL TO:
AQComments@ecy.wa.gov

Ms. Stacey Callaway
Department of Ecology
P.O. Box 47800
Olympia, WA 98504-7800

Dear Ms. Callaway:

Waste Management of Washington, Inc. (WMW) is pleased to provide comments on Department of Ecology's proposed "Reporting of Emissions of Greenhouse Gases Rule (Chapter 173-441 WAC)".

Our comments are as follows:

WAC 173-441-050 (3) (d) (vii) General monitoring, reporting, recordkeeping and verification requirements - Content of the annual report. For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

As verification software is only required for a few very specific facilities in the federal GHG reporting, WMW proposes to amend this section of the proposed rule to add a statement "as applicable", so that only facilities that need verification software are required to use it.

WAC 173-441-050 (3) (d) (vii) General monitoring, reporting, recordkeeping and verification requirements - Content of the annual report. For reporting year 2014 and thereafter, you must enter into verification software as applicable specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you

elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

Thank you for the opportunity to provide public comments on this rule. If you have any questions please do not hesitate to contact me at (253) 509-0375.

Sincerely,



Jeff Altman
Environmental Protection Manager

Comment # 2



Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Frank E. Holmes
Director, Northwest Region & Marine Issues

VIA ELECTRONIC MAIL

December 10, 2014

AQComments@ecv.wa.gov

Ms. Stacey Callaway
Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: WSPA Comments on Proposed Revisions to the Greenhouse Gas Reporting Rules

Dear Ms. Callaway:

The Western States Petroleum Association ("WSPA") is pleased to provide the following comments on Ecology's proposed revisions to WAC ch. 173-441, Washington's Greenhouse Gas ("GHG") Reporting Rules. WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine and market petroleum, petroleum products, natural gas and other energy products in Washington and five other western states. WSPA members own and operate each of Washington's five petroleum refineries, which are subject to this rule.

Ecology proposes to amend WAC 173-441 to "maintain consistency" with EPA's GHG Reporting Program "as required by RCW 70.94.151." *See* CR-102, WSR 14-21-135 (October 20, 2014). Indeed, Washington's enabling statute does require that Ecology adopt GHG reporting rules that are "consistent with the regulations adopted by [EPA] in 40 C.F.R. Part 98" and "update its rules whenever [EPA] adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases." RCW §§ 70.94.151(b)(i), (c).¹

¹ In 2010, the Washington State Legislature added the provision in RCW 70.94.151 requiring Ecology to adopt rules consistent with EPA's GHG reporting rules in order to streamline the reporting program in Washington.

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In this rulemaking, Ecology proposes amendments to the GHG Reporting Rules to reflect various changes made in the federal rules since adoption. One such change, however, is in direct conflict with recent revisions to the federal GHG reporting program. WSPA respectfully requests that Ecology remove this contradictory language from the proposed rule and maintain the required consistency with EPA's rules.

Ecology's GHG Reporting Rules require facilities that emit at least 10,000 metric tons of GHGs/year in Washington to annually report their GHG emissions. In large part, Ecology's rule references EPA's GHG reporting rules in 40 C.F.R. Part 98, including the data elements and calculations provided therein. *See* WAC 173-441-050(3)(d)(iv). The calculations necessary to determine GHG emissions require inputs of sensitive process specific data that can reveal proprietary information about industrial reporters. WSPA has expressed concerns to Ecology regarding the reporting and potential disclosure of sensitive "inputs to equation" data elements. In developing the federal GHG reporting program, EPA has received similar concerns from industrial reporters.²

On October 24, 2014, in response to concerns expressed from reporters, EPA issued amendments to the federal GHG reporting rules, *deleting* the requirement for sources to report certain "inputs to equation" data elements to protect their sensitive, proprietary nature. 79 Fed. Reg. 63750 (Oct. 24, 2014). Sources are now directed to enter the "inputs to equation" data elements into an input verification tool ("IVT") which will conduct accuracy checks on the data and generate a verification summary report to submit to EPA. The IVT does not retain the sensitive data, nor does EPA gain access to the data during this process. *Id.* at 63752. Sources are required to retain records of the "inputs to equation" data elements in case further verification is necessary. *Id.*

For example, EPA deleted the reporting requirement for 70 "inputs to equation" data elements identified in Subpart Y (applicable to Petroleum Refineries). *Id.* at 63765. Now, EPA requires this data to be entered into the IVT and then retained in the facility's records. *See, e.g.* 40 C.F.R. 98.257(b) ("Verification software records"). This sensitive data is no longer required to be reported under EPA's program.

Ecology's proposed amendments require sources to use the IVT as provided by EPA, except that sources must also report the data entered into the software, *i.e.* the "inputs to equation" data elements. *See* WAC 173-441-050(3)(d)(vii); WAC 173-441-070. Specifically, the proposed amendment to WAC 173-441-050(3)(d)(vii) requires:

² Based on the comments received, EPA deferred the requirement to report the "inputs to equation" data elements until a reporting verification tool was developed that could ensure protection of this information. *See* 76 Fed. Reg. 53057 (Aug. 25, 2011) (final rule deferring reporting requirement for inputs to equation data elements until 2015). EPA then proposed to completely remove the reporting requirement for these data elements and develop a verification tool that could verify the GHG emissions calculations. *See* 78 Fed. Reg. 55994 (Sept. 11, 2013).

Ms. Callaway
December 10, 2014
Page 3

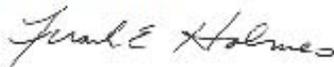
(vii) For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

There is no counterpart to this reporting requirement in EPA's rules. Ecology's proposed amendments requiring reporting of the "inputs to equation" data elements are clearly in conflict with EPA's GHG reporting program, which has expressly excluded these sensitive elements from the reporting requirements. Ecology's proposed rule is inconsistent with the enabling statute in RCW § 74.94.151 and invalid under Washington's Administrative Procedure Act. *See* RCW 34.05.570(2)(c) (directing courts to declare a rule invalid if it "exceeds the statutory authority of the agency"); *see also Swinomish Indian Tribal Cmty. v. Washington State Dep't of Ecology*, 178 Wash. 2d 571, 581 (2013) ("Rules that are not consistent with the statutes that they implement are invalid").

WSPA respectfully requests that Ecology delete the proposed amendments in WAC 173-441-050(3)(d)(vii) and WAC 173-441-070 requiring sources to report sensitive "inputs to equation" data elements that EPA has deleted the reporting requirements for. WSPA's request is not based on a CBI claim. Rather, it is based on the requirement in RCW § 74.94.151 that Ecology revise its rules to ensure consistency with EPA's GHG reporting program.

Thank you for carefully considering the concerns of WSPA in the development of the amendments to the GHG Reporting Rule. Please call me at (360) 352-4506 if I can provide any additional information in support of these comments.

Very truly yours,



975 Carpenter Road NE, Suite 106, Lacey, Washington 98516
(360) 352-4506 • Cell (360) 789-1435 • fholmes@wspa.org • www.wspa.org

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Comment # 3

Callaway, Stacey (ECY)

From: Lea Wilson [lea@waoil.org]
Sent: Thursday, November 13, 2014 10:44 AM
To: ECY RE AQComments; Caudill, Neil (ECY)
Cc: Ericksen, Doug; Billig, Andy; Honeyford, Jim; kevin.ranker@leg.wa.gov
Subject: Comments on the GHG Reporting Program

November 12, 2014

Department of Ecology
Greenhouse Gas Reporting Program
Stacey Callaway/Neil Caudill
P.O. Box 47600
Olympia, WA 98504-7600

Dear Stacey Callaway/Neil Caudill:

Thank you for the opportunity to submit comments on the recent rules proposal under the Greenhouse Gas Reporting Program. While I completely understand the fees of this program are not under the current rule proposal, The Washington Oil Marketers Association (WOMA) would still would like to submit comments regarding the fees of the program. Therefor, WOMA would like to make a formal request that your program reconsider the fees associated with the Greenhouse Gas Reporting Program.

As you are well aware, the discussion of collecting data regarding GHG emissions began in 2009, and WOMA worked in tandem with Ecology to create a program that was streamlined and efficient in its data collection. It was completely agreed that this would NOT be a fee-based system, nor would data-collection program costs be entirely borne by the fuel supplier industry. In fact, during the legislative session, The Department of Ecology testified that there would be a "nominal fee if any" passed onto industry. It was agreed by both Ecology and WOMA, in a legislative hearing, that this data was already being reported to the Department of Licensing and could be retrieved from there through an inter-agency agreement. Yet, industry agreed to report to the Department of Ecology as long as there was no fee connected to the reporting requirement.

In the summer of 2010, Ecology held stakeholder meetings to provide an overview of the new reporting requirement. Three of our large members in the WOMA organization attended the meeting specifically intended for fuel suppliers on June 8th, 2010. The meeting focused on the reporting requirement itself and at no time were reporting fees discussed. It was later confirmed that at a subsequent meeting held for Suppliers (not facility owners) there was a discussion regarding fees where the estimated number was stated as \$1500. WOMA never found reference to that information in the Washington State Register (WSR) where rules are published, and WOMA was never made aware of the \$1500 estimate at that time.

Neil Caudill, the program director, confirmed that there were no specific stakeholder meetings addressing the cost of the new program, nor the actual costs that would be borne by GHG reporters. The first time the fee schedule was published was October 2012 in anticipation of reporting requirements that would begin in 2013. WOMA was never a participant in the discussion of setting those fees, and would have NEVER agreed those fees were fair and equitable. In fact, those figures you are gleaning from GHG reporters can be found directly at the Department of Licensing, at minimal cost.

Appendix B
Transcript of the Public Hearing

Chapter 173-441 WAC Hearing Transcript

Details

Date December 3, 2014
Time 10:00 a.m.
Location Department of Ecology Headquarters
300 Desmond Drive
Lacey, WA 98504
Contact Stacey Callaway

Recording of Formal Hearing

Jocelyn Jones

“I’m Jocelyn Jones, hearing's officer for this hearing. This morning we are here to conduct a hearing on the proposed amendments to Chapter 173-441 WAC – Reporting of Emissions of Greenhouse Gases.

Let the record show that it is 10:18 a.m. on December 3, 2014 and this hearing is being held at the Department of Ecology Headquarters, 300 Desmond Drive, Lacey, WA 98504.

Legal notices of this hearing were published in the Washington State Register November 5, 2014. The Washington State Register Number is 14-21-135.

In addition, notices of this hearing were sent via email to 400+ interested parties and a news release was issued on October 22, 2014.

The next part I was going to read was about how to testify, but let the record show we have zero people on either the webinar or in person interested in testifying today. I will go ahead and give one more opportunity for folks to testify just to make sure we are not skipping somebody.”

Amber Littlejohn

“I repeated the inquiry on the chat for the folks on the webinar and I still have nobody interested in testifying.”

Jocelyn Jones

“Ok, let the record show that approximately 2 people in person and 14 people on the webinar attended the public hearing and no one wishes to provide oral testimony.

If you would like to submit comments to Ecology on this rule proposal please remember they must be received by December 10, 2014.

Send them to Stacey Callaway in any of the following ways. They are on the screen here. You can email them to AQComments@ecy.wa.gov , you can mail them to Washington State Department of Ecology, Greenhouse Gas Reporting Program, Air Quality Program, P.O. Box 47600, Olympia, WA 98504. Or you may fax them to 360-407-7534.

All testimony received at this hearing along with all written comments received no later than December 10, 2014 will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement or CES publication to everyone that provided written comments or oral testimony on this rule proposal and submitted contact information, everyone that signed in for today's hearing that provided an email address, and other interested parties on the agencies mailing lists for this rule.

The CES will, among other things, contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you do wish to receive a copy of this but did not give us your contact information, please let us know after the hearing know, or contact Stacey Callaway at the contact information provided.

Next steps on our end will be to review the comments and make a determination whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal.

If we can be of further don't hesitate to ask or you can contact Stacey Callaway, she is always available for you if you have questions.

On behalf of the Department of Ecology, thank you for coming and for joining the webinar. We appreciate your cooperation, courtesy, and patience as we worked with the technology.

Let the record show that this hearing is adjourned at 10:20 on December 3, 2014. Thanks again for coming."