

WAC 173-446-510 Requirements for offset projects using ecology compliance offset protocols. (1) General requirements for offset projects. In order to ensure that offset credits generated by an offset project can be used as compliance instruments under this chapter, an offset project operator or authorized project designee must ensure that the offset project:

(a) Meets all of the requirements set forth in the applicable compliance offset protocol;

(b) Any offset credits used must have been issued for reporting periods wholly after July 25, 2021, or within two years prior to July 25, 2021;

(c) Provides direct environmental benefits in the state of Washington, pursuant to WAC 173-446-595; and

(d) Meets the following additionality requirements, regardless of whether such requirements are set forth in the applicable compliance offset protocol, as of the date of offset project commencement:

(i) The activities that result in GHG emission reductions and GHG removal enhancements are not required by law, regulation, or any other legally binding mandate applicable in jurisdiction in which the offset project is located, and would not otherwise occur in a conservative business-as-usual scenario; and

(ii) The GHG emission reductions and GHG removal enhancements resulting from the offset project must exceed the project baseline calculated pursuant to the applicable version of the compliance offset protocol under which the offset project has been listed, or under which the offset project has been transitioned for that offset project type, as set forth in WAC 173-446-505(3).

(iii) The offset project operator or authorized project designee may transition an offset project to the most recently adopted version of the compliance offset protocol by updating the listing information in an offset project data report.

(A) An offset project may only be transitioned to the most recently adopted version of the compliance offset protocol through an offset project data report submitted to ecology or the offset project registry prior to the site visit.

(B) To properly transition to the most recently adopted version of the compliance offset protocol, the offset project data report for the transitioning offset project must specify the most recently adopted compliance offset protocol as the version under which the offset project is reporting. Offset projects may only transition to the most recently adopted version of the compliance offset protocol during a reporting period that is subject to a full offset verification.

(C) For projects using a U.S. Forest Projects protocol issued by the California Air Resources Board, the first offset verification after transitioning to the most recently adopted version of the compliance offset protocol must meet all the requirements of WAC 173-446-535.

(D) An offset project will be considered to have completed the transition to being listed under the most recently adopted version of the compliance offset protocol upon ecology's approval of a positive or qualified positive offset verification statement for the applicable reporting period.

(E) An offset project that transitions to being listed under a newly adopted version of the compliance offset protocol during a crediting period will continue in the same crediting period and not start a new crediting period.

(e) For purposes of subsection (1)(a) of this section, "the applicable compliance offset protocol" is the version of a compliance offset protocol under which the offset project has been listed or transitioned as described in (d)(iii) of this subsection, except as follows.

If, during an offset project's crediting period, any new law, regulation, or other legally binding mandate requiring GHG emission reductions or GHG removal enhancements goes into effect in Washington, in a linked jurisdiction, or in another jurisdiction in which the offset project is located, during an offset project's crediting period, then the offset project is eligible to continue to receive offset credits for those GHG emission reductions and GHG removal enhancements for the remainder of the offset project's crediting period, but the offset project may not renew that crediting period. If an offset project has not been listed under a compliance offset protocol prior to the effective date of the new law, regulation, or other legally binding mandate, or if the new law, regulation, or other legally binding mandate goes into effect before the offset project's crediting period renews, then only those GHG emission reductions or GHG removal enhancements that are in excess of what is required to comply with the new law, regulation, and/or other legally binding mandate are eligible for offset credits.

(2) Local, regional, state, and national regulatory compliance and environmental impact assessment requirements. In order to ensure that offset credits generated by an offset project can be used as compliance instruments under this chapter, an offset project operator or authorized project designee must comply with all local, regional, state, and national requirements for environmental impact assessments that apply in the jurisdiction where the offset project is located. In addition, an offset project must comply with all local, regional, state, and national requirements related to environmental and health and safety that apply in the jurisdiction where the offset project is located as well as those that directly apply to the offset project, including those specified in the applicable compliance offset protocol.

(a) An offset project may be considered out of regulatory compliance for purposes of this subsection if the project activities have been subject to formal enforcement action by a regulatory oversight body during the reporting period. Whether the project activities have been subject to such enforcement action is not the only consideration ecology may use in determining whether an offset project is out of regulatory compliance.

(b) An offset project listed under a compliance offset protocol other than urban forest projects and that is out of regulatory compliance is not eligible to receive ecology offset credits or registry offset credits for GHG emission reductions or GHG removal enhancements that occurred during the period of time during which the offset project is out of regulatory compliance. The offset project operator or authorized project designee must provide documentation indicating the beginning and end of the time period that the offset project was out of regulatory compliance as well as documentation confirming to the satisfaction of ecology that the offset project has returned to regulator compliance.

(i) The time period that the offset project was out of regulatory compliance begins on the date that the activity(ies) which led to the enforcement action actually began, regardless of the date that the regulatory oversight body first became aware of the noncompliance. To

determine the initial date of the offset project being out of regulatory compliance, the offset project operator or authorized project designee must provide one or more of the following to ecology:

(A) Documentation from the local, regional, state, or national regulatory oversight body that initiated the enforcement action, which expressly identifies the precise initial date of the offset project being out of regulatory compliance. Such documentation must include corroborating evidence of the initial date such as CEMS or other monitoring data, engineering estimates, satellite imagery, witness statements, or other reasonable methods to aid in the identification of the precise initial date; or

(B) Documentation of the most recent inspection by the local, regional, state, or national regulatory oversight body that initiated the enforcement action, which did not indicate the offset project was out of regulatory compliance for the activity(ies) in question. The offset project will be considered out of regulatory compliance beginning the day after such inspection.

(C) If the most recent inspection described in (b)(i)(B) of this subsection was prior to the beginning of the reporting period or if documentation regarding the initial date the project was out of regulatory compliance is not provided as set forth above to the satisfaction of ecology, then the time period that the offset project is out of regulatory compliance, for purposes of the reporting period, commences at the beginning of the reporting period.

(ii) The date when the offset project is deemed to have returned to regulatory compliance is the date that the local, regional, state, or national regulatory oversight body determines that the project activity(ies) returned to regulatory compliance. This date is not necessarily the date that the noncompliant activity(ies) ended or the device was repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the applicable regulatory oversight body, as determined by the regulatory oversight body. To determine the end date when the offset project returned to regulatory compliance, the offset project operator or authorized project designee must provide documentation from the local, regional, state, or national regulatory oversight body attesting that the offset project is currently in regulatory compliance and identifying the date on which the offset project activity(ies) returned to compliance.

(A) If the regulatory oversight body does not provide written documentation regarding the date on which the project returned to regulatory compliance to the satisfaction of ecology, the offset project operator or authorized project designee may provide documentation to ecology from the regulatory oversight body clearly identifying the date the offset project returned to regulatory compliance. Such documentation must be official dated correspondence from the applicable regulatory oversight body such as an inspection report, an enforcement legal document such as a consent decree, or other such documentation identifying that the project has adequately remedied the condition(s) that rendered it out of regulatory compliance.

(B) If the regulatory oversight body does not provide written documentation regarding the date on which the project returned to regulatory compliance to the satisfaction of ecology, and the offset project operator or authorized project designee is unable to provide documentation clearly identifying the date the offset project returned to regulatory compliance to the satisfaction of ecology, then for purposes of the applicable reporting period, the offset project operator

or authorized project designee must use the end of the reporting period for the date when the offset project returned to regulatory compliance.

(C) For purposes of this subsection, ecology may also take into consideration information pertaining to the date(s) the offset project activity(ies) subject to enforcement action occurred; whether the offset project operator, authorized project designee, or forest owner has acknowledged responsibility for the noncompliant activity(ies); and the status of any ongoing enforcement proceedings with the local, regional, state, or national regulatory oversight body.

(D) Nothing in this section precludes the invalidation of ecology offset credits issued for previous or subsequent reporting periods if ecology determines that the offset project was out of regulatory compliance in previous or subsequent reporting periods. The offset project will continue to be deemed out of regulatory compliance in subsequent reporting periods until the offset project operator or authorized project designee provides adequate documentation demonstrating regulatory compliance to ecology.

(E) Ecology's written determination and any supporting documents from the regulatory oversight body relating to the offset project being out of regulatory compliance and the time frame identified for removal from the reporting period will be made public.

(c) To determine the GHG emission reductions or GHG removal enhancements for the reporting period as modified to reflect any period the offset project was out of regulatory compliance, the offset project operator or authorized project designee must remove the days on which the offset project was out of regulatory compliance from the reporting period using the following methods:

(i) For projects using the livestock projects protocol, each calendar day during which any portion of the offset project was not in regulatory compliance must be removed from the modeled or measured project baseline;

(ii) For projects using an ozone depleting substances projects protocol, the entire destruction(s) under a certificate of destruction that contains any day the offset project is out of regulatory compliance must be removed. For projects that consist of a single destruction under a certificate of destruction that contains any day the offset project is out of regulatory compliance, the entire offset project will be ineligible for ecology offset credits or registry offset credits;

(iii) For projects using a U.S. Forest Projects protocol, each calendar day during which any portion of the offset project was not in regulatory compliance must be removed by dividing the total calculated emissions reductions for the 12 month period from the end of the previous reporting period, by the total number of days in the previous 12 months, either 365 days or 366 days, to calculate daily emissions reductions. The daily emissions reductions will be multiplied by the number of days on which the project was not in regulatory compliance and this number will be added to the project baseline for the end of the reporting period and the emissions reductions for the reporting period, excluding the days on which the project was out of regulatory compliance, will be calculated.

(d) An offset project using an urban forest projects protocol is not eligible to receive ecology offset credits or registry offset credits for GHG emission reductions or GHG removal enhancements for the entire reporting period if the offset project is not in compliance

with regulatory requirements directly applicable to the offset project during the reporting period.

(3) Only a primary account representative or alternate account representative on the offset project operator's tracking system account may sign any documents or attestations submitted to ecology or an offset project registry on behalf of the offset project operator for an offset project.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-510, filed 9/29/22, effective 10/30/22.]