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**SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

MATT ERICKSON, an individual;  
STERLING A. HILL, an individual; CINDY  
MARSHALL, an individual; PAT and  
SANDY TARZWELL, husband and wife;  
and JAMES WOLFE, an individual;  
individually and on behalf of the taxpayers of  
the State of Washington,

Plaintiffs,

v.

CHRISTINE O. GREGOIRE, Governor of  
the State of Washington; DEPARTMENT  
OF ECOLOGY, an agency of the State of  
Washington; DEPARTMENT OF  
TRANSPORTATION, an agency of the State  
of Washington; DEPARTMENT OF  
COMMERCE, an agency of the State of  
Washington; DEPARTMENT OF HEALTH,  
an agency of the State of Washington;  
DEPARTMENT OF NATURAL  
RESOURCES, an agency of the State of  
Washington; and STATE OF  
WASHINGTON,

Defendants.

No. **10-2-01613-6**

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

This is a taxpayer action against the State of Washington seeking to invalidate an executive order issued by Governor Christine Gregoire and to halt implementation of the executive order. Plaintiffs allege that the governor exceeded her constitutional authority and invaded the province of the legislature by issuing her executive order related to climate change, and that state agency actions pursuant to the order are an unconstitutional expenditure of funds.

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**JURISDICTION AND VENUE**

1. Pursuant to RCW 2.08.010, this Court possesses jurisdiction over this action.
2. Venue is proper in Thurston County pursuant to RCW 4.92.010(2) and (5).

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**PARTIES**

3. Plaintiff Matt Erickson is a resident and taxpayer of Chelan County, Washington.
4. Plaintiff Sterling A. Hill is a resident and taxpayer of King County, Washington.
5. Plaintiff Cindy Marshall is a resident and taxpayer of Spokane County, Washington.
6. Plaintiff Pat Tarzwell is a resident and taxpayer of Mason County, Washington.
7. Plaintiff Sandy Tarzwell is a resident and taxpayer of Mason County, Washington.
8. Plaintiff James Wolfe is a resident and taxpayer of Franklin County, Washington.
9. Defendant Christine O. Gregoire is the governor of the State of Washington.
10. Defendant Department of Ecology is an agency of the State of Washington.
11. Defendant Department of Transportation is an agency of the State of Washington.
12. Defendant Department of Commerce is an agency of the State of Washington.
13. Defendant Department of Health is an agency of the State of Washington.

1 14. Defendant Department of Natural Resources is an agency of the State of  
2 Washington.

3 15. Defendant State of Washington is a sovereign state of the United States of  
4 America.

5 **FACTS**

6 16. During the 2009 legislative session, the Washington Legislature considered  
7 legislation introduced at the request of Gov. Gregoire regarding the reduction of greenhouse gas  
8 emissions. Engrossed Second Substitute Senate Bill 5735, 61st Leg., Reg. Sess. (Wash. 2009). A  
9 true and correct copy of this bill is attached as Appendix A.

10  
11 17. Senate Bill 5735 received consideration in both houses of the Legislature but  
12 ultimately was not enacted.

13 18. Upon information and belief, after the failure of Senate Bill 5735 in the 2009  
14 legislative session, Gov. Gregoire directed that an executive order be prepared that would  
15 address the subject matter of the failed legislation.

16 19. During the drafting of the executive order, then-Director of Ecology Jay Manning  
17 and Keith Phillips addressed a confidential briefing document to the governor and wrote: "With  
18 the legislature's failure to pass your climate change bill, you directed us to prepare an executive  
19 order (EO) that accomplishes what the bill would have authorized and more." Jay Manning,  
20 Governor's Decision Document, Climate Change EO (May 5, 2009). The decision document  
21 later stated: "The majority of the EO provisions track your climate bill . . . ." *Id.* A true and  
22 correct copy of this document is attached as Appendix B.  
23

24 20. On May 21, 2009, Gov. Gregoire signed Executive Order 09-05, titled  
25 "Washington's Leadership on Climate Change," ordering the directors of the Departments of  
26

1 Ecology and Transportation to take numerous actions for the express purposes of reducing  
2 climate-changing greenhouse gas emissions, increasing transportation and fuel-conservation  
3 options, and protecting the state's water supplies and coastal areas. A true and correct copy of  
4 Executive Order 09-05 is attached as Appendix C.

5 21. In remarks to news media after signing the Order on May 21, 2009, Gov.  
6 Gregoire said: "What we've done in the executive order is everything that was in that final bill—  
7 plus. Plus. There's more in the executive order than what was in the final bill that did not pass  
8 the legislature."<sup>1</sup>

9 22. In a written press release, Gov. Gregoire stressed the need for immediate action  
10 and the advantages of her Order. "We can't further delay action on climate change. This  
11 executive order benefits our economy as much as our environment. It will protect our natural  
12 resources, while creating thousands of green-collar jobs and strengthening our state's  
13 competitiveness in the global race for a clean energy economy." Press Release, Office of the  
14 Governor, "Gov. Gregoire orders state actions to reduce greenhouse gases and battle climate  
15 change," May 21, 2009. A true and correct copy of the press release is attached as Appendix D.  
16

17 23. Executive Order 09-05 contains numerous directives, including the following:  
18 ordering the Department of Ecology to continue participating in the Western Climate Initiative to  
19 develop a regional greenhouse gas emission reduction program (Sec. 1(a)); ordering Ecology to  
20 contact facilities that emit a certain level of carbon dioxide and provide the facilities with the  
21 Department's estimate of the facility's baseline greenhouse gas emissions, each facility's  
22 proportionate share of reduction necessary to achieve state benchmarks, and a request for  
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26 <sup>1</sup> Comments at 23 min., 43 sec., video recording by TVW, Washington State's Public Affairs Network,  
available at: <http://tinyurl.com/eopressconf>.

1 recommendations or actions that would achieve desired reductions (Sec. 1(b)); ordering Ecology  
2 to work with business representatives and other interested stakeholders to develop emission  
3 benchmarks by industry sector, and to use these benchmarks as a means to recognize and reward  
4 businesses that have invested in achieving emission reductions (Sec. 1(c)); ordering Ecology to  
5 work with the Department of Natural Resources to develop recommendations for forestry offset  
6 protocols as well as other financial incentives for forestry and forest products (Sec. 1(e));  
7 ordering the Department of Transportation to work with local governments, business, and  
8 environmental representatives to estimate current and future state-wide levels of vehicle miles  
9 traveled and to develop strategies to reduce emissions from the transportation sector (Sec. 2(a));  
10 and ordering Transportation to develop and adopt regional transportation plans that will provide  
11 people with additional transportation alternatives and reduce greenhouse gases (Sec. 2(b)).

12  
13 24. Executive Order 09-05 cites two statutes as purportedly authorizing the actions  
14 ordered: RCW 70.235.020 (establishing greenhouse gas emission reduction limits) and RCW  
15 47.01.440 (establishing vehicle miles traveled benchmarks).

16  
17 25. Upon information and belief, state agencies are currently pursuing actions and  
18 expending public funds to implement Executive Order 09-05.

19  
20 26. On April 19, 2010, the Plaintiffs through counsel petitioned the Office of the  
21 Attorney General to initiate an action seeking to invalidate Executive Order 09-05.

22  
23 27. On June 4, 2010, Solicitor General Maureen Hart, on behalf of the Office of the  
24 Attorney General, declined to take action to seek invalidation of Executive Order 09-05.

#### 25 **CAUSE OF ACTION – SEPARATION OF POWERS**

26  
27 28. By this reference, Plaintiffs incorporate by reference each and every allegation  
28 and averment set forth above as though set forth in full here.

1           29. Article II of the Washington Constitution states that legislative authority for the  
2 state is vested in the Washington Legislature, with the exception of initiatives and referenda.

3           30. Article III of the Washington Constitution grants the governor certain express  
4 powers. Governors may issue executive orders for a variety of reasons, but without express  
5 constitutional or statutory authorization, a governor may not create obligations, responsibilities,  
6 conditions or processes having the force and effect of law by the issuance of an executive order.

7           31. The separation of powers doctrine ensures that the fundamental functions of each  
8 branch of government remain inviolate, and that the activity of one branch does not threaten the  
9 integrity or invade the prerogatives of another.

10           32. By issuing Executive Order 09-05, Gov. Gregoire has created new obligations,  
11 responsibilities, conditions and processes having the force and effect of law. The Order directs  
12 state agencies, local governments, planning councils, business representatives, and other entities  
13 to take specific actions and to implement new responsibilities and processes.

14           33. Neither statute cited in Executive Order 09-05 (RCW 70.235.020 and RCW  
15 47.01.440) authorizes the governor to issue orders having the force and effect of law.

16           34. Gov. Gregoire's promulgation of Executive Order 09-05 constitutes a violation of  
17 the doctrine of separation of powers as it invades the prerogatives and fundamental functions of  
18 the Washington Legislature.

19           35. Executive Order 09-05 is an unconstitutional and invalid order as it violates the  
20 separation of powers doctrine.

21           36. Any expenditure of public funds pursuant to Executive Order 09-05 is without  
22 proper authorization.

1 37. As taxpayers and citizens of the State of Washington, Plaintiffs are injured when  
2 an elected official commits an illegal act, such as the issuance of an unconstitutional order.

3 38. For reasons included but not limited to this complaint, an actual dispute exists  
4 between Plaintiffs and Defendants, which parties have genuine and opposing interests, which  
5 interests are direct and substantial, and of which a judicial determination will be final and  
6 conclusive.

7 **REQUEST FOR RELIEF**

8 Based on the foregoing, Plaintiffs pray for the following relief:


9 A. A declaration by the Court that Executive Order 09-05 is unconstitutional and  
10 void.

11 B. A permanent injunction enjoining implementation of Executive Order 09-05 by  
12 the State of Washington and its agencies.

13 C. An award of reasonable attorneys' fees and costs as allowed by law.

14 D. Such other relief as the Court deems proper.

15 DATED this 21<sup>ST</sup> day of July, 2010.

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19 By:   
20 Michael J. Reitz, WSBA No. 36159  
21 Evergreen Freedom Foundation  
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23 Olympia, WA 98501  
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25 Facsimile: (360) 352-1874  
26 Email: mreitz@effwa.org

*Attorney for Plaintiffs*

# Appendix A



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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5735

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State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rockefeller, Hargrove, Jacobsen, Ranker, Fraser, Keiser, Jarrett, Franklin, Shin, Kohl-Welles, Regala, McAuliffe, and Kline; by request of Governor Gregoire)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to reducing greenhouse gas emissions; adding a new  
2 section to chapter 47.38 RCW; adding new sections to chapter 70.235  
3 RCW; and creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS. (1) The legislature reaffirms the  
6 state limits on greenhouse gas emissions adopted in RCW 70.235.020.  
7 Despite the recent economic downturn, the output of greenhouse gas  
8 emissions continues. It remains essential to fashion a long-term  
9 strategy for reduction of greenhouse gas emissions, consistent with  
10 previously enacted reduction goals of the state. The legislature  
11 further finds that full implementation of current policies regarding  
12 energy efficiency, new clean energy technologies, efficient building  
13 practices, new energy efficient transportation technologies, and other  
14 policies and programs may achieve nearly one-half of the estimated  
15 statewide emissions reductions needed to meet the state's 2020  
16 emissions limits, but that additional reduction strategies will be  
17 needed.

18 (2) Therefore, it is the intent of the legislature by this act to  
19 provide a thorough review and set of recommendations to the 2011

1 legislature regarding the merits of implementing a multisector  
2 emissions reduction program in the state, as well as recommended  
3 additional complementary policies to achieve the state's emission  
4 reduction requirements.

5 NEW SECTION. **Sec. 2.** POLICY DECLARATION. When presenting the  
6 state's position on any regional or national emissions reduction  
7 program that relies on a multisector, market-based approach to  
8 regulating greenhouse gas emissions, the state shall adhere to the  
9 following policies:

10 (1) Assuring that biomass combustion for electricity or process  
11 steam production is considered carbon neutral;

12 (2) Assuring equitable economic benefits and opportunities for  
13 electric utilities operating in Washington that use hydroelectric  
14 generation;

15 (3) Recognition must be provided to those emissions sources that  
16 have taken early action to reduce their emissions;

17 (4) That the state's forest and agricultural lands that are managed  
18 in ways that increase carbon sequestration be recognized for the use of  
19 offsets to regulatory limits on emissions; and

20 (5) Assuring the protection of low and moderate income households.

21 NEW SECTION. **Sec. 3.** EMISSIONS CAPS. (1) In order to assist  
22 Washington in meeting the requirements in RCW 70.235.020, the  
23 department of ecology shall recommend a greenhouse gas emissions  
24 reduction program that sets statewide and sector emission caps for  
25 persons that annually emit at or above twenty-five thousand metric tons  
26 of carbon dioxide equivalents. The emissions reduction program must  
27 recognize early actions, complementary policies, and offsets as  
28 specified in section 5 of this act. The emissions reduction program  
29 must include protocols for directing technical and financial incentives  
30 to those persons who monitor and demonstrate their emissions  
31 reductions. No element of the program recommendations in this section  
32 may be implemented unless specifically authorized by a future act of  
33 the legislature.

34 (2) The department of ecology's recommendations must include the  
35 following program design elements:

1 (a) Phase one of the emissions reduction program should be designed  
2 to begin in 2012 and covers the following sectors: (i) Electricity  
3 generated in the state or generated out-of-state and delivered to the  
4 state by long-term financial commitments under chapter 80.80 RCW; (ii)  
5 industrial and commercial fuel combustion; and (iii) industrial process  
6 emissions;

7 (b) Phase two of the emissions reduction program should be designed  
8 to begin in 2015 and covers the following sectors: (i) Transportation  
9 fuel combustion; (ii) residential fuel combustion; and (iii) fuel  
10 delivered or sold for industrial and commercial combustion where the  
11 fuel is used by persons not otherwise covered by the program in 2012.  
12 Phase two of the program may include complementary measures, except  
13 that measures for transportation fuels must focus on emissions  
14 reductions, not raising revenues, and consideration must be given to  
15 differing rural and urban circumstances;

16 (c) For each compliance period, emissions caps must decline evenly  
17 in each sector until the state greenhouse gas emissions are reduced as  
18 required by RCW 70.235.020;

19 (d) Except for purposes of reporting, the following carbon dioxide  
20 emissions are not covered by the program:

21 (i) Emissions from industrial combustion of biomass in the form of  
22 fuel wood, wood waste, wood by-products, and wood residuals as long as  
23 the region's silvicultural sequestration capacity is maintained or  
24 increased; and

25 (ii) Emissions from the combustion of biofuels or the biofuel  
26 component of blended fuels as the term "biofuel" is defined in RCW  
27 43.325.010; and

28 (e) No more than forty-nine percent of a sector's total emissions  
29 reductions from 2012 to 2020 may be satisfied with offsets.

30 (3) The recommendations in this section must be submitted to the  
31 appropriate committees of the legislature by December 1, 2010.

32 NEW SECTION. **Sec. 4.** ALTERNATIVE STRATEGIES FOR ACHIEVING  
33 EMISSIONS REDUCTIONS. (1) The department of ecology shall report to  
34 the legislature on alternative strategies the state may implement to  
35 meet the requirements in RCW 70.235.020. The report must include the  
36 following: A comprehensive examination of all measures, not market-

1 based, that the state could employ to reduce the emissions of  
2 greenhouse gases, such as:

3 (a) Regulatory emissions caps and other performance oriented  
4 regulations;

5 (b) Economic and fiscal measures that would supplement a regulatory  
6 approach;

7 (c) Measures for substantially reducing greenhouse gas emissions  
8 from the electricity sector, including measures to facilitate the  
9 transition from electricity generation derived from any coal-fired  
10 facility to generation with significantly reduced emissions;

11 (d) Measures for reducing transportation emissions in urban areas  
12 of the state, including programs providing incentives and assistance  
13 for the deployment of electric vehicles and the necessary  
14 infrastructure for such vehicles and policies directing the increased  
15 use of these vehicles within state agency fleets; and

16 (e) Measures for reducing emissions by increasing energy efficiency  
17 in buildings and commercial and industrial applications.

18 (2) The report must include an analysis of the alignment of  
19 policies and standards among the participating jurisdictions in the  
20 western climate initiative.

21 (3) The report must include recommendations for establishing a  
22 performance auditing mechanism to monitor the effectiveness of  
23 emissions reduction strategies.

24 (4) The report must include recommendations on complementary  
25 measures the state may undertake to supplement a national emissions  
26 reduction program.

27 (5) The report must incorporate an economic analysis by the  
28 forecasting office of the office of financial management, in  
29 consultation with members of the governor's council of economic  
30 advisors, of the impact to Washington consumers, businesses, and  
31 citizens if Washington entered into a regional or federal emissions  
32 reduction program. The economic analysis must include:

33 (a) Various economic scenarios, such as when Washington has a  
34 robust economy and when Washington is in an economic downturn;

35 (b) The economic impact sector by sector, including the impact to  
36 the forest products manufacturing sector and Washington's port  
37 districts;

1 (c) How to address trade competition from countries and states that  
2 are not participating in an emissions reduction program;

3 (d) How to ensure that economic benefits are available to both  
4 urban and rural communities; and

5 (e) The impact on the cost and affordability of food, housing,  
6 energy, transportation, and other routine expenses on low and moderate-  
7 income households.

8 (6) The report must be submitted to the appropriate committees of  
9 the legislature by December 1, 2010.

10 NEW SECTION. **Sec. 5. OFFSETS.** (1) The department of ecology  
11 shall recommend criteria for issuing and accepting offset credits for  
12 offset projects that may be used to meet a person's compliance  
13 obligation in a state, regional, or national emissions reduction  
14 program. The department must give priority to investigating and  
15 developing criteria for offset projects within the forestry,  
16 agriculture, and waste management sectors, but must also develop  
17 criteria for recognizing offsets from all sources of emissions  
18 reductions that are additional to existing regulatory requirements and  
19 that are reductions beyond business as usual emission levels. The  
20 department shall present the state's policy on forestry offset projects  
21 established under section 6 of this act as the state's position when  
22 developing the criteria for forestry offset projects within any other  
23 regional or national cap and trade emissions reduction program.

24 (2) With regard to forestry offsets, the department of ecology must  
25 give first priority for issuing offset credits for forestry offset  
26 projects located in Washington. Second priority must be given to  
27 offset projects within Washington, Oregon, Idaho, and Montana. Third  
28 priority must be given to offset projects that are located in any other  
29 jurisdiction in the United States. One offset credit must be issued  
30 for up to each metric ton of emissions as measured in carbon dioxide  
31 equivalent associated with an offset project.

32 (3) Except as provided in this section, the department of ecology  
33 may accept offset credits for compliance purposes from other  
34 jurisdictions as well as annex 1 countries from the United Nations  
35 framework convention on climate change, but only if an offset project  
36 is not available in Washington.

1 (4) The department of ecology may also accept for compliance  
2 purposes offset credits from developing countries, but only if an  
3 offset project is not available in Washington. Offset credits from  
4 developing countries must be in accordance with the clean development  
5 mechanism of the Kyoto protocol or if the clean development mechanism  
6 is replaced, a protocol developed by the department. The department  
7 may develop criteria for these offset projects to ensure similar rigor  
8 to offset projects within the state.

9 (5) Any offset credit that is used to meet a compliance obligation  
10 must conform to the rules adopted by the department of ecology.

11 (6) Upon receipt by the department of ecology of an offset credit  
12 to meet a compliance obligation, the department shall retire the offset  
13 credit.

14 (7) The department of ecology shall ensure that all offset credits  
15 that it issues are tracked to ensure that the department knows who  
16 holds a given offset credit and when it is retired.

17 (8) The department of ecology shall consult with tribal governments  
18 upon request on any offset criteria that may affect tribal governments,  
19 such as the voluntary development of offset projects by tribes.

20 (9) The recommendations in this section must be submitted to the  
21 appropriate committees of the legislature by December 1, 2010.

22 NEW SECTION. **Sec. 6.** FORESTRY OFFSET POLICY. The department of  
23 ecology, in consultation with the forest practices board, the  
24 department of natural resources, and the forest carbon working group,  
25 shall develop the state's policy for forestry offset projects within  
26 Washington. The agencies and the working group shall use the 2008  
27 report of the forest carbon working group as the starting point in  
28 developing the policy. The final policy must be completed by December  
29 31, 2009, unless the department of ecology notifies the agencies and  
30 working group that the policy is needed sooner. The public must be  
31 provided with the opportunity to review and comment on the policy as it  
32 is developed. The policy must include:

33 (1) Specific standards and guidelines that will support carbon  
34 accounting in managed forests participating in an offset program;

35 (2) How to ensure that any carbon that is reduced or sequestered by  
36 a forestry offset project will be eligible for an offset credit within  
37 a regional or national cap and trade emissions reduction program;

1 (3) Recognition of management activities that increase carbon  
2 stocks including, but not limited to, thinning, lengthening rotations,  
3 increased retention of trees after harvest, fertilization, genetics,  
4 timber stand improvement, fire management, and specific site class and  
5 productivity of a managed forest;

6 (4) Specific standards and guidelines to support wood products  
7 accounting, recognizing that carbon is stored in products after trees  
8 are harvested including the use of the one hundred year method which  
9 estimates the amount of carbon stored in the wood products that are  
10 projected to remain in use after one hundred years;

11 (5) Guidelines on how forestry offset projects and forestry  
12 financial incentive programs can work together so that Washington's  
13 forest landowners will not be disadvantaged in comparison to other  
14 jurisdictions participating in a regional or national cap and trade  
15 emissions reduction program; and

16 (6) Recommendations for how to verify or certify carbon stocks that  
17 will not be administratively burdensome.

18 NEW SECTION. **Sec. 7.** FINANCIAL INCENTIVES FOR FORESTRY. The  
19 department of ecology, in consultation with the forest practices board,  
20 the department of natural resources, and the forest carbon working  
21 group, shall develop and deliver to the legislature by December 1,  
22 2010, legislation to implement a financial incentives program for  
23 forestry and forest products that will recognize activities such as:

24 (1) Forest landowners maintaining and actively managing their  
25 forest land using management activities such as thinning, lengthening  
26 of rotations, increased retention of trees at harvest, fertilization,  
27 genetics, timber stand improvement, and fire management;

28 (2) Forest landowners continuing the production of wood products  
29 while maintaining or increasing their carbon stocks on the ground;

30 (3) Retention by forest landowners of high carbon stocks where  
31 there is no obligation to retain such stocks; and

32 (4) The use by developers and builders of wood building materials  
33 instead of more intensive fossil fuel products such as concrete and  
34 steel.

35 NEW SECTION. **Sec. 8.** WESTERN CLIMATE INITIATIVE. The director of

1 the department of ecology is authorized to continue discussions with  
2 other jurisdictions in the western climate initiative.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.38 RCW  
4 to read as follows:

5 (1) As a necessary and desirable step to expedite the transition to  
6 transportation technologies and infrastructure with reduced emissions,  
7 the department shall implement an electric vehicle and alternative fuel  
8 vehicle infrastructure program that accelerates planning and allocation  
9 of funding for pilot projects to demonstrate the feasibility of large  
10 scale deployment of charging and alternative fuels distribution  
11 infrastructure. The program must include the provisions in this  
12 section and other electric vehicle programs being implemented by the  
13 department.

14 (2) The governor shall direct the department, in collaboration with  
15 the states of Oregon and California, to develop a multistate electric  
16 vehicle infrastructure initiative. The objective of the initiative is  
17 to implement large scale demonstration projects that support the  
18 charging and other necessary infrastructure for electric vehicles along  
19 shared interstate highways and in major urban areas in the three  
20 states. The governor shall work in a multistate collaboration to seek  
21 major federal funding for planning and projects in the initiative.

22 (3) As an element of the program authorized under this section, the  
23 legislature authorizes an alternative fuels corridor pilot project  
24 capable of supporting electric vehicle charging and battery exchange  
25 technologies. To the extent permitted under federal programs,  
26 regulations, or laws, the department may enter into partnership  
27 agreements with other public and private entities for the use of land  
28 and facilities along state routes and within interstate highway rights-  
29 of-way for an alternative fuels corridor pilot project. The pilot  
30 project may allow for commercial activities only as necessary to attain  
31 basic economic sufficiency. The department is not responsible for  
32 providing capital equipment nor operating refueling or recharging  
33 services. At a minimum, the pilot project must:

34 (a) Limit renewable fuel and vehicle technology offerings to those  
35 with a forecasted demand over the next fifteen years and approved by  
36 the department;



1 (b) Ensure that a pilot project site does not compete with existing  
2 retail businesses for the provision of the same refueling services or  
3 recharging technologies in the same geographic area;

4 (c) Provide existing truck stop operators and retail truck  
5 refueling businesses with an absolute right of first refusal over the  
6 offering of refueling services to class six trucks with a maximum gross  
7 vehicle weight of twenty-six thousand pounds within the same geographic  
8 area identified for a possible pilot project site;

9 (d) Reach agreement with the department of services for the blind  
10 ensuring that any commercial activities at host sites do not materially  
11 affect the revenues forecasted from their vending operations at each  
12 site;

13 (e) Regulate the internal rate of return from the partnership,  
14 including provisions to reduce or eliminate the level of state support  
15 once the partnership attains economic self-sufficiency;

16 (f) Be limited to not more than five locations on state-owned land  
17 within federal interstate rights-of-way or state highway rights-of-way  
18 in Washington; and

19 (g) Be limited in duration to a term of years reasonably necessary  
20 for the partnership to recover the cost of capital investments, plus  
21 the regulated internal rate of return.

22 (4) The department of transportation's obligations under this  
23 section are subject to availability of amounts appropriated for the  
24 specific purpose identified in this section.

25 NEW SECTION. **Sec. 10.** A regional transportation planning  
26 organization containing any county with a population in excess of one  
27 million in collaboration with representatives from the department of  
28 ecology, the department of transportation, the department of community,  
29 trade, and economic development, local governments, and the office of  
30 regulatory affairs must seek federal or private funding for the  
31 planning for, deployment of, or regulations concerning electric vehicle  
32 infrastructure.

33 NEW SECTION. **Sec. 11.** ACCOUNT CREATED. The emissions reduction  
34 assistance account is created in the state treasury. All  
35 appropriations to the account and twenty-five percent of all federal  
36 funds received pursuant to H.R. 1, P.L. 111-5 for the purpose of

1 assisting with energy efficiency and renewable energy, including  
2 federal funds received for the state energy program, must be deposited  
3 in the account. Other funds, gifts, grants, and endowments from public  
4 or private sources, in trust or otherwise, may be directed into the  
5 account. Any moneys received from sponsor match payments must be  
6 deposited in the account. Moneys in the account may be spent only  
7 after appropriation. Expenditures from the account may be used for the  
8 following purposes, however at least ten percent of the revenues in the  
9 account must be used for the purposes identified in subsection (5) of  
10 this section:

11 (1) Assisting persons in achieving emissions reductions under  
12 section 3 of this act;

13 (2) Assisting the transition of coal-fired facilities to cleaner-  
14 burning technologies;

15 (3) Reducing price impacts for consumers with incomes within two  
16 hundred fifty percent of the federal poverty level;

17 (4) Strategies to create jobs and provide for worker transition,  
18 especially in and for those communities and workers that have been  
19 disproportionately affected by economic downturns, through efforts to  
20 reduce emissions, reduce energy use, and develop clean energy supplies;

21 (5) Supporting transit and transportation projects, including  
22 telework projects, that will reduce greenhouse gas emissions;

23 (6) Energy efficiency and renewable energy incentives including  
24 matching electric utility sponsored programs that support customer  
25 energy efficiency investment, new renewable energy resource  
26 development, including related transmission, energy storage, and  
27 integration technologies;

28 (7) Promoting emissions reductions and carbon sequestration in  
29 agriculture, forestry, waste management, and other uncapped sectors;

30 (8) Efforts funded by local governments to reduce community  
31 greenhouse gas emissions;

32 (9) Adaptation to climate change impacts, including impacts on  
33 affected species, habitats, and communities; and

34 (10) Research, development, demonstrations, and deployment of  
35 technology to reduce greenhouse gas emissions.

36 NEW SECTION. **Sec. 12.** Captions used in this act are not any part  
37 of the law.

1        NEW SECTION.   **Sec. 13.**   Sections 2 and 11 of this act are each  
2 added to chapter 70.235 RCW.

3        NEW SECTION.   **Sec. 14.**   This act shall be in effect only to the  
4 extent that funds are specifically appropriated for the purposes of  
5 this act.

--- END ---

# Appendix B

**GOVERNOR'S DECISION DOCUMENT**

**CONFIDENTIAL**

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*Reviewed by Chief of Staff*

**DATE:** 5/5/09

**FROM:** Jay Manning  
Keith Phillips

**PHONE:** 407-7001  
902-0630

**ISSUE:** Climate Change EO

**PURPOSE:** **DECISION NEEDED**

**ALSO REVIEWED BY:**

**BACKGROUND:**

**Executive Summary:** Attached is a recommended Executive Order directing several agencies to take specific actions designed to address climate change. The directives largely track the terms of SB 5735, your climate change bill, but we have simplified a number of the provisions to reduce costs. We have also proposed four new provisions that go beyond the bill's requirements. Two of these direct Ecology to take action to prepare for two of the most significant impacts of climate change -- diminished snow-pack and rising sea level. Two other new provisions direct Ecology to take administrative actions paving the way for a regulatory approach to reducing greenhouse gas (GHG) emissions. The first directs Ecology to develop GHG emission performance standards for large stationary sources using existing Clean Air Act authority. The second directs Ecology to develop a proposed "low carbon fuel standard," which would apply to transportation fuels. The proposed executive order would not require that either the emission performance standard or the low carbon fuel standard be implemented, rather it would require Ecology to do necessary technical and administrative precursor work, putting the agency in a position to impose either or both standards.

**DECISION (LIST OPTIONS):**

**GOVERNOR'S DECISION DOCUMENT****CONFIDENTIAL****RECOMMENDATION:**

With the legislature's failure to pass your climate change bill, you directed us to prepare an executive order (EO) that accomplishes what the bill would have authorized and more. Attached is the proposed EO. Generally, we have crafted an EO that tracks your climate change bill, but we propose adding several significant directives that make the EO more significant, more attractive to those interested in making progress on climate change and more controversial for those not so inclined.

The majority of the EO provisions track your climate bill, including provisions that:

1. direct Ecology to continue to participate in the Western Climate Initiative to develop a regional cap and trade program (Section 1(a));
2. direct Ecology to participate in the development of a national climate program (Section 1(a));
3. direct Ecology to develop a compliance order with Trans Alta by which their Centralia Coal plant would, by 2025, meet the emissions performance standard applicable to new coal plants (Section 1(c));
4. direct your office to work with other west coast states and the private sector to develop a west coast highway electrification project (Section 3);
5. direct Ecology to work with DNR and other forestry interests to develop forestry offset protocols and other financial incentives for the forest products industry to promote carbon sequestration (Section 1(d));
6. direct DOT to work with regional transportation planning organizations to develop transportation plans that will reduce emissions of greenhouse gases and per capita vehicle miles traveled (Section 2(a));
7. direct DOT to work with Ecology, local governments and interested stakeholders to develop additional transportation related strategies designed to reduce emissions of greenhouse gases and to report back to you by the end of 2010 regarding progress in the transportation sector in meeting reduction goals for emissions and VMT (Section 2(a & b));

The recommended EO contains four additional directives. Two deal with adapting to environmental changes caused by higher global temperatures – sea level rise and loss of snow pack. Section 4 of the EO directs Ecology to develop amendments to its shoreline management guidelines to require that local shoreline master programs be amended to address the risk of shoreline flooding and habitat loss posed by a rising sea level. Section 5 of the EO would direct Ecology and DOH to develop the capacity and tools to predict and manage changes in water supply caused by climate change.

The other two new requirements increase our ability to require reductions in greenhouse gas emissions from two significant sources – large industrial facilities and the transportation sector. Section 1(b) of the EO requires Ecology to develop sector-based emission performance standards

**GOVERNOR'S DECISION DOCUMENT**

**CONFIDENTIAL**

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for major stationary sources like aluminium smelters and refineries. Like the emission performance standard that would apply to Trans Alta, this kind of standard would place a limit on the quantity of greenhouse gases that could be emitted per unit of energy consumed or product produced. Section 1(e) of the EO directs Ecology to work with CTED and DOT to develop a "low-carbon fuel standard" or an alternative standard designed to reduce emissions from transportation fuels.

These latter two provisions will put Washington in a position to require significant reductions in the emissions of greenhouse gases using existing Clean Air Act authority. However, the EO does not authorize Ecology to begin implementing either the emission performance standards or the low carbon fuel standard unless and until authorized by you. We would not expect such authorization unless neither a national or regional cap and trade program is put in place. We, of course, expect a national program to be established, but if it isn't, having these administrative mechanisms available will be critical to meeting our state's 2020 reduction requirement. An almost certain increase in the regulated community's interest in getting a national program in place will be an important side benefit.

**GOVERNOR'S COMMENTS:**

# Appendix C



CHRISTINE O. GREGOIRE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • [www.governor.wa.gov](http://www.governor.wa.gov)

**EXECUTIVE ORDER 09-05**

**WASHINGTON'S LEADERSHIP ON CLIMATE CHANGE**

**WHEREAS**, Washington is particularly vulnerable to the impacts of climate change, and without additional action to reduce carbon emissions, the severity of the impacts will negatively affect nearly every part of Washington's economy and environment; and

**WHEREAS**, Washington is already experiencing the effects of a changing climate and needs to address current and future projected impacts; and

**WHEREAS**, greenhouse gases are air contaminants within the meaning of the state's Clean Air Act and pose a serious threat to the health and welfare of Washington's citizens and the quality of the environment; and

**WHEREAS**, energy independence and security are vitally important, and maintaining Washington's leadership position in the development of clean energy and green jobs is critical to our economic and energy future; and

**WHEREAS**, RCW 70.235.020 establishes greenhouse gas emission reduction limits for Washington State, and RCW 47.01.440 establishes vehicle miles traveled benchmarks for Washington State; and

**WHEREAS**, alternative vehicle technologies can provide economic development opportunities and reduce Washington's transportation sector greenhouse gas emissions, criteria pollutants, and toxic air contaminants; and

**WHEREAS**, Washington's extensive forest resources play an important role in capturing and storing carbon dioxide; and

**WHEREAS**, it is critical to Washington's economic future that greenhouse gas reduction strategies be designed and implemented in a manner that minimizes cost impacts to Washington citizens and businesses; and

**WHEREAS**, President Obama and the United States Congress are actively working to establish a strong federal response to climate change, and regional and state level greenhouse gas reduction programs will inform and complement a federal program; and



**WHEREAS**, effective and immediate action to reduce greenhouse gas emissions – preferably at the federal level but at the regional or state level as necessary – is essential to the future well being of all Washingtonians.

**NOW, THEREFORE, I**, Christine O. Gregoire, Governor of the state of Washington by virtue of the power vested in me by the Constitution and statutes of the state of Washington do, effective immediately, hereby order and direct:

1. The Director of the Department of Ecology to:

- (a) Continue to participate in the Western Climate Initiative to develop a regional greenhouse gas emission reduction program and to work with the federal Administration, Washington's congressional delegation and appropriate committees to help design a national greenhouse gas emission reduction program that reflects Washington State priorities. Those priorities include: protecting small businesses and families, particularly those with low incomes, in the transition to a clean energy future; investing in clean energy development, demonstration and deployment; ensuring appropriate credit for early emission reductions; providing a level playing field that allows Washington's businesses to fairly compete; recognizing Washington's unique electricity-generating portfolio, its forest industry and other important resources; and ensuring the program spurs the creation of green jobs.
- (b) By December 1, 2009, provide to each facility that the Department of Ecology believes is responsible for the emission of 25,000 metric tons or more of carbon dioxide equivalent each year in Washington with (1) the Department's best estimate of each facility's baseline greenhouse gas emissions; and (2) each facility's proportionate share greenhouse gas emission reduction necessary to achieve the state's 2020 emission reduction in RCW 70.135.020; and (3) a request to each facility, or groups of facilities representing a sector of Washington's economy, for any recommended strategies or actions they believe would achieve the needed reductions. By October 1, 2010, the Department of Ecology shall develop emission reduction strategies and actions, including complementary policies, to achieve the state's 2020 emissions reduction targets.
- (c) In consultation with business and other interested stakeholders, develop emission benchmarks, by industry sector, for facilities the Department of Ecology believes will be covered by a federal or regional cap and trade program. The Department of Ecology shall support the use of these emission benchmarks in any federal or regional cap and trade program as an appropriate basis for the distribution of emission allowances, and as a means to recognize and reward those businesses that have invested in achieving emission reductions. These benchmarks shall be based on industry best practices, reflecting emission levels from highly efficient, lower emitting facilities in each industry sector. The benchmarks shall be developed to allow their application as state-based emissions standards, should they be needed to complement the federal program, or in the absence of a federal program. Recommendations on industry benchmarks, and the appropriate use of these

benchmarks in achieving the state emission reduction targets, shall be submitted to the Governor by July 1, 2011;

- (d) Work with the existing coal-fired plant within Washington that burns over one million tons of coal per year, TransAlta Centralia Generation LLC, to establish an agreed order that will apply the greenhouse gas emissions performance standards in RCW 80.80.040(1) to the facility by no later than December 31, 2025. The agreed order shall include a schedule of major decision making and resource investment milestones;
- (e) In consultation with the Department of Natural Resources and the forest carbon sector working group, develop by September 1, 2010, recommendations for forestry offset protocols as well as other financial incentives for forestry and forest products. The starting point for this work should be the 2008 forest sector working group report; and
- (f) In consultation with the Departments of Commerce and Transportation, assess whether the California low-carbon fuel standards; standards developed or proposed in other states, provinces or for the nation; or modified standards or alternative requirements to reduce carbon in transportation fuels would best meet Washington's greenhouse gas emissions reduction targets. By July 1, 2010, provide to the Governor a recommendation regarding which standards or requirements should be adopted for Washington, either by rule or legislation.

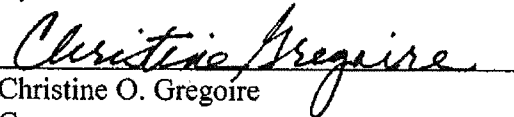
2. The Secretary of the Department of Transportation to:

- (a) In consultation with the Departments of Ecology and Commerce, and in collaboration with local governments, business, and environmental representatives, estimate current and future state-wide levels of vehicle miles traveled, evaluate potential changes to the vehicle miles traveled benchmarks established in RCW 47.01.440 as appropriate to address low- or no-emission vehicles, and develop additional strategies to reduce emissions from the transportation sector. Findings and recommendations from this work shall be reported to the Governor by December 31, 2010; and,
- (b) Work with the Puget Sound Regional Council, Spokane Regional Transportation Council, Southwest Washington Regional Transportation Council and Thurston Regional Planning Council to cooperatively develop and adopt regional transportation plans that will, when implemented, provide people with additional transportation alternatives and choices, reduce greenhouse gases and achieve the statutory benchmarks to reduce annual per capita vehicle miles traveled in those counties with populations greater than 245,000. By December 1, 2011, the Department will report to the Governor on which regional transportation planning organizations have developed, or are developing, plans with greenhouse gas strategies, which strategies appear to have the greatest potential to achieve the benchmarks, and what policy or funding issues need to be resolved to ensure implementation;

3. The Office of the Governor shall work with affected state agencies to develop and seek federal funds to implement a project for the electrification of the West Coast interstate highway and associated metropolitan centers, including request for federal funding to purchase electric vehicles and install public infrastructure for electric and other high-efficiency, zero- or low-carbon vehicles. The Office shall invite the collaboration of the states of Oregon and California and participation by the private sector in developing and implementing this project and in requesting federal support.
4. The Director of the Department of Ecology shall evaluate the potential impacts of sea level rise on the state's shoreline areas, including the potential increases in storm surge and coastal flooding, increased erosion, and loss of habitat and ecosystems, and develop recommendations for addressing these impacts. The Department shall invite the Washington State Association of Counties and the Association of Washington Cities to collaborate in conducting the evaluation and developing recommendations.
5. The Director of the Department of Ecology and the Secretary of the Department of Health, in consultation with other affected state, local and federal agencies, shall develop specific guidelines, tools, and recommendations to assist the state and its water users to meet the anticipated changes in water resources due to climate change impacts.
6. In implementing all aspects of this Executive Order, the state and its agencies shall consult, on a government-to-government basis with Washington's Native American Tribes.
7. The Director of the Department of Ecology, in cooperation with affected agencies shall provide a progress report to the Office of the Governor by December 31, 2010.

Signed and sealed with the official seal of the state of Washington on this 21<sup>st</sup> day of May 2009 at Seattle, Washington.

By:

  
Christine O. Gregoire  
Governor

BY THE GOVERNOR:

  
Secretary of State



# Appendix D

## **Gov. Gregoire orders state actions to reduce greenhouse gases and battle climate change**

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**For Immediate Release: May 21, 2009**

OLYMPIA – Gov. Chris Gregoire today issued an executive order, directing state actions to reduce climate-changing greenhouse gas emissions, increase transportation and fuel-conservation options for Washingtonians, and protect our state’s water supplies and vulnerable coastal areas.

“We can’t further delay action on climate change,” Gregoire said. “This executive order benefits our economy as much as our environment. It will protect our natural resources, while creating thousands of green-collar jobs and strengthening our state’s competitiveness in the global race for a clean energy economy.”

Gregoire issued her executive order, entitled “Washington’s Leadership on Climate Change,” after testifying in front of a U.S. Environmental Protection Agency panel in Seattle. The panel hearing was held to gather comments on an EPA proposal to issue a finding that greenhouse gases pose a threat to public health and welfare.

She urged EPA to take action to limit emissions of climate-changing greenhouse gases.

“We recently learned that climate change will cut the winter snowpack in the Cascades by at least 20 percent,” Gregoire said. “This will have a devastating impact not only on recreation, but also on our water supply, our agriculture industry, and our domestic fish populations. This news is another wake-up call, and one more reason that inaction is not an option. We as a nation and a state must address climate change today. Tomorrow is too late.”

In her executive order, Gregoire directed state agencies to:

- Develop emission reduction strategies and industry emissions benchmarks to make sure 2020 reduction targets are met.
- Work with TransAlta to reduce emissions from the company’s coal-fired power plant near Centralia by more than half.
- Ensure Washington has trees to capture harmful carbon, while creating financial incentives for the forestry industry.
- Work on low-carbon fuel standards or alternative requirements to reduce carbon emissions from the transportation sector.
- Join with neighboring states and the private sector to implement a West Coast highway accessible to electric and alternative-fuel vehicles.
- Address rising sea levels and the risks to water supplies.

- Increase transit options, such as buses, light rail, and ride-share programs, and give Washington residents more choices for reducing the effect of transportation emissions.
- Continue to work with six other Western states and four Canadian provinces in the Western Climate Initiative to develop a regional emissions reduction program design.
- Work with the Obama Administration to help design a national program that is strong, and reflects state priorities.

“We must protect the health of citizens, the health of our environment, and the health of our economy, from the threats of climate change. We must leave a legacy for our children and grandchildren to enjoy,” Gregoire said. “We will do this by inviting leadership and innovation, which will lead to the creation of thousands of green-collar jobs.”

Gregoire thanked Rep. Dave Upthegrove (D-Burien) and Sen. Phil Rockefeller (D-Bainbridge Island) for their tireless efforts to pass legislation this past session. She also thanked the many environmental groups engaged in the fight against climate change.

"I want to commend the governor for her tenacity and leadership in pushing forward on our state response to climate change," said Rockefeller. "Not only is she a leader in our state efforts, she has clearly impacted the creation of the Western Climate Initiative and is in a position to influence national leaders. This executive order is a significant step forward. Where the legislature faltered, the governor didn't give up."

“Today’s action by the governor represents meaningful progress towards reducing emissions, and assures that Washington remains a key player in the national conversation on climate change,” said Upthegrove.