

WAC 173-446-545 Conflict of interest requirements for verification bodies and offset verifiers for verification of offset project data reports.

(1) The conflict of interest provisions of this section shall apply to verification bodies, lead verifiers, and offset verifiers accredited by ecology to perform offset verification services for offset project operators, and authorized project designees, if applicable, as well as any other member(s) of the offset verification team and any technical expert(s) used by the offset project operator or authorized project designee, if applicable.

(a) "Member," for the purposes of this section, means any officer, employee, contractor, or subcontractor of the verification body or related parties of the verification body. "Member" also includes any individual who has a majority equity share in the verification body or its related parties.

(b) "Related party," for the purposes of this section, means any direct parent company, direct subsidiary, or sister company.

(c) "Nonoffset verification services," for purposes of this section, do not include independent, third-party certification or verification services which have been provided for ecology or any other voluntary or mandatory program; such certification and verification services may be counted as offset verification services for the purposes of this section.

(2) The potential for a conflict of interest must be deemed to be high where:

(a) The verification body and the offset project operator, including its authorized project designee, if applicable, and its technical consultant(s), share any senior management staff or board of directors membership; or

(b) Any of the senior management staff of the offset project operator, including its authorized project designee, if applicable, and its technical consultant(s), have been employed by the verification body, or vice versa, within the previous three years; or

(c) Within the previous five years, any member of the verification body or any related party, including any member of the offset verification team, has provided to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) any of the following nonoffset verification services:

(i) Designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions, unless such services were part of providing offset verification services; or

(ii) Developing a forest management plan or timber harvest plan, unless such development was part of providing offset verification services;

(iii) Developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a Washington State Environmental Policy Act (SEPA) GHG analysis that includes offset project specific information;

(iv) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG emission reductions and/or GHG removal enhancements as a benefit;

(v) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and/or GHG removal enhancements;

(vi) Owning, buying, selling, trading, or retiring shares, stocks, or ecology offset credits or registry offset credits from the offset project;

(vii) Dealing in or being a promoter of ecology offset credits or registry offset credits on behalf of an offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(viii) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(ix) Appraisal services of carbon or GHG liabilities or assets;

(x) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;

(xi) Developing any health, environment or safety policies for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(xii) Bookkeeping or other services related to accounting records or financial statements;

(xiii) Any services related to information systems, including International Organization for Standardization 14001 Certification for Environmental Management (ISO 14001 Certification), unless those systems will not be reviewed as part of the offset verification process;

(xiv) Appraisal and valuation services, both tangible and intangible;

(xv) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the information reviewed in formulating the offset verification statement will not be reviewed as part of the offset verification services;

(xvi) Any actuarially oriented advisory services involving the determination of amounts recorded in financial statements and related accounts;

(xvii) Any internal audit service that has been outsourced by the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) that relates to the offset project operator's, authorized project designee's, if applicable, and their technical consultant(s)' internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(xviii) Any services related to internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(xix) Acting as a broker-dealer (registered or unregistered), promoter, or underwriter on behalf of the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(xx) Any legal services; and

(xxi) Expert services provided to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) or a legal representative for the purpose of advocating for the interests of the offset project operator, its authorized project designee's, if applicable, or its technical consultant(s) in litigation or in a regulatory or administrative proceeding or investigation, unless solely providing factual testimony; and

(d) Within the previous three years, any staff member of the verification body or any related entity or any member of the offset verification team has provided to an ozone depleting substances destruction facility a third-party certification to meet the requirements set

forth by the United Nations Environment Programme Ozone Secretariat's Technology and Assessment Panel (TEAP) for ozone depleting substances destruction;

(e) Any member of the verification body provides any type of incentive to an offset project operator, its authorized project designee, if applicable, or its technical consultant(s) to secure an offset verification services contract.

(f) Any member of the verification body has previously provided offset verification services for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), except within the time periods in which the offset project operator, its authorized project designee, if applicable, and its technical consultant(s) are allowed to use the same verification body pursuant to WAC 173-446-535 (1) through (3).

(3) The potential for a conflict of interest must be deemed to be low where:

(a) No potential for a conflict of interest is identified; and

(b) Any nonoffset verification services provided by any member of the verification body to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) within the last five years are valued at less than 20 percent of the fee for the proposed offset verification services, except where a medium conflict of interest based on personal, employment, or familial relationships is identified under subsection (4)(b) of this section.

(4) The potential for a conflict of interest must be deemed to be medium where:

(a) The potential for a conflict of interest is not deemed to be either high or low; or

(b) There are any instances of personal, employment, or familial relationships between a member of the verification body and a member of the offset project operator, its authorized project designee, if applicable, or its technical consultant(s). For purposes of this section only, "employment" means the condition of having been paid for work as documented in a W-2 form.

(5) Conflict of interest submittal requirements for accredited verification bodies.

(a) Mitigation plan. If a verification body identifies a medium potential for conflict of interest pursuant to subsection (4) of this section and intends to provide offset verification services for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), the verification body must submit, in addition to the self-evaluation specified in (b) of this subsection, a plan to avoid, neutralize, or mitigate the potential conflict of interest. At a minimum, the conflict of interest mitigation plan must include:

(i) A demonstration that any members of the verification body with potential conflicts of interest have been removed and insulated from the offset verification team that will be providing verification services for the offset project;

(ii) An explanation of any changes to the organizational structure of the verification body that were made to remove the potential conflict(s) of interest.

(iii) A demonstration that any organizational unit with potential conflicts of interest has been divested or moved into an independent party; and

(iv) Any other circumstance that specifically addresses other sources for potential conflicts of interest.

(b) Self-evaluation. Before providing any offset verification services under this chapter, a verification body must submit to the offset project operator, its authorized project designee, if applicable, ecology, and the offset project registry, a self-evaluation of the potential for any conflicts of interest that the verification body, its members, or any subcontractors performing offset verification services may have with the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) for which it will perform offset verification services. Offset verification services shall not commence prior to approval of the conflict of interest self-evaluation by ecology or the offset project registry, as applicable. The self-evaluation must include the following:

(i) Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in this section;

(ii) Identification of whether any member of the offset verification team has previously provided offset verification services for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), and, if so, the years in which such offset verification services were provided;

(iii) Identification of whether any member of the offset verification team or related party has engaged in any nonoffset verification services of any nature with the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), either within or outside the state of Washington during the previous five years. If such nonoffset verification services have been provided during the previous five years, the following information must also be submitted:

(A) Identification of the nature and location of the work performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) and whether the work is similar to the type of work to be performed during offset verification; and

(B) The nature of past, present, or future relationship(s) with the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), including:

(I) Instances when any member of the offset verification team has performed or intends to perform work for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(II) Identification of whether work is currently being performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), and if so, the nature of the work;

(III) The value of the work performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) in the last five years, in dollars;

(IV) Whether any member of the offset verification team has any contracts or other arrangements to perform work for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) or a related party; and

(V) The value of the work related to GHG emission reductions and GHG removal enhancements the offset verification team or a member thereof has performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) or related parties in the last five years, in dollars;

(iv) Explanation of how the amount and nature of work previously performed is such that the credibility and lack of bias of any member of the offset verification team should not be under question;

(v) A list of names of the staff that would perform offset verification services for the offset project operator and authorized project designee, if applicable, and a description of any instances of personal, employment, or familial relationships identified under subsection (4)(b) of this section that potentially represent a conflict of interest;

(vi) Identification of any other circumstances known to the verification body, or to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) that could result in a conflict of interest; and

(vii) Attestation, in writing, to ecology as follows: "I certify under penalty of perjury of the laws of the state of Washington the information provided in the Conflict of Interest self-evaluation is true, accurate, and complete."

(6) Approval of conflict of interest submittals. Ecology or the offset project registry, as applicable, must review the self-evaluation submitted by the verification body pursuant to subsection (5)(b) of this section and determine whether the verification body is authorized to perform the offset verification services for the offset project operator and authorized project designee, if applicable.

(a) Ecology or the offset project registry, as applicable, has 30 calendar days after submission of the self-evaluation to make a determination on whether to accept or deny the conflict of interest submittal and to notify the verification body as to whether it may proceed with the offset verification services for the offset project operator and authorized project designee, if applicable.

(i) If ecology or an offset project registry requests revisions to the conflict of interest self-evaluation prior to approval, the verification body must resubmit the revised conflict of interest self-evaluation within 10 business days of such request, or if there is a reason the verification body cannot submit the revisions within 10 business days, the verification body must communicate in writing to ecology or the offset project registry, as applicable, the reasons why and get approval from ecology or the offset project registry for an extension.

(ii) If ecology or the offset project registry finds that the verification body or any member of the offset verification team meets any of the criteria set forth in subsection (2) of this section, ecology or the offset project registry, as applicable, shall determine that there is a high potential for conflict of interest, and the proposed offset verification services may not proceed.

(iii) If ecology or the offset project registry determines that there is a low potential for conflict of interest pursuant to subsection (3) of this section, the proposed offset verification services may proceed.

(iv) If ecology or the offset project registry determines that the verification body or any member of the offset verification team have a medium potential for conflict of interest pursuant to subsection (4) of this section, ecology or the offset project registry, as applicable, shall evaluate the conflict of interest mitigation plan submitted by the verification body pursuant to subsection (5)(a) of this section, and may request additional information from the verification body to complete the determination of whether the proposed offset verification services may proceed.

(v) In determining whether the proposed offset verification services may proceed, ecology or the offset project registry, as applicable, may consider factors including, but not limited to, the nature of previous work performed, the current and past relationship(s) between the verification body, related parties, and its subcontractors with the offset project operator and authorized project designee, if applicable, and any technical consultant(s) used by the offset project operator or authorized project designee, and related parties, and the cost of the offset verification services to be performed. If ecology or the offset project registry determines that these factors when considered in combination demonstrate an acceptable level of potential for conflict of interest, ecology or the offset project registry, as applicable, will authorize the verification body to proceed with the proposed offset verification services.

(b) If the offset project was listed with an offset project registry, the conflict of interest self-evaluation acceptance or denial notification will be provided by the offset project registry. Within 15 calendar days of approving a conflict of interest self-evaluation, the offset project registry must notify ecology in writing of the date on which it approved the self-evaluation.

(c) When a conflict of interest self-evaluation is updated before or during offset verification services to add a verification team member, ecology or the offset project registry, as applicable, must approve the updated self-evaluation before any new team member may participate in offset verification services. If the offset project was listed with an offset project registry, within 15 calendar days of approving an updated self-evaluation, the offset project registry must notify ecology in writing of the date on which it approved the updated self-evaluation.

(7) Monitoring conflict of interest situations.

(a) After commencement of offset verification services, the verification body must monitor and immediately make full disclosure, in writing, to ecology or the offset project registry, as applicable, regarding any potential for a conflict of interest that arises for an offset project using a compliance offset protocol. This disclosure must include a description of the actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate the potential for a conflict of interest.

(b) The verification body must continue to monitor arrangements or relationships that may present the potential for a conflict of interest for a period of at least one year after the completion of offset verification services for an offset project using a compliance offset protocol.

(i) During that one-year period, if the verification body or any verification team member enters into any contract with the offset project operator or its authorized project designee, if applicable, related to an offset project for which the verification body has previously provided offset verification services, the verification body must notify ecology or the offset project registry, as applicable, of the contract and the nature of the work to be performed within 30 calendar days of entering into such contract.

(ii) Within 30 business days after receipt of such notification, ecology or the offset project registry, as applicable, will evaluate the level of potential for conflict of interest using the criteria set forth in subsections (2) through (4) of this section, and will determine whether the offset project operator and its authorized project

designee, if applicable, must reverify their offset project data report, and whether accreditation revocation is warranted.

(c) The verification body must notify ecology or the offset project registry, as applicable, within 30 calendar days of any emerging potential for conflicts of interest during the time offset verification services are being provided for an offset project using a compliance offset protocol.

(i) If ecology or the offset project registry determines that an emerging potential for conflict of interest disclosed by the verification body is low, or that it is medium but can be adequately mitigated, then the verification body meets the conflict of interest requirements to continue to provide offset verification services for the offset project operator and its authorized project designee, if applicable, and will not be subject to suspension or revocation of accreditation on the basis of conflict of interest.

(ii) If ecology or the offset project registry determines that an emerging potential for conflict of interest disclosed by the verification body is medium or high, and that this risk cannot be adequately mitigated, then the verification body will not be able to continue to provide offset verification services for the offset project operator or its authorized project designee, if applicable, and may be subject to the suspension or revocation of accreditation by ecology on the basis of conflict of interest.

(d) The verification body must report to ecology or the offset project registry, as applicable, any changes in its organizational structure, including mergers, acquisitions, or divestitures, for one year after completion of offset verification services.

(e) Ecology may void a positive offset or qualified positive offset verification statement if it discovers a potential for conflict of interest has arisen for any member of the offset verification team. In such a case, the offset project operator and its authorized project designee, if applicable, shall be provided 90 calendar days to complete reverification.

(f) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this chapter, ecology may rescind accreditation of the body, its verifier staff, or its subcontractor(s) for any appropriate period of time.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-545, filed 9/29/22, effective 10/30/22.]