



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: March 03, 2023

TIME: 8:29 AM

WSR 23-07-014

**Agency:** Department of Ecology AO # 21-08

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) July 1, 2023 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:**

Ecology is adopting amendments to Chapter 173-455 WAC, Air Quality Fee Rule, in sections -038, -050, -100, -120, -130, and -140. Ecology is also adopting a new section -031.

This adopted rule:

- Adds:
  - Section -031 – to establish a new process to update fees more frequently
- Updates the hourly fee rate to reflect the new Ecology rate:
  - Section -050 – Carbon dioxide mitigation fee
  - Section -100 – Fee related to reasonably available control technology (RACT)
  - Section -120 – New source review (NSR) fees
  - Section -130 – Air pollution standards variance fee
  - Section -140 – Nonroad engine permit fee
- Updates:
  - Section -038 to specify that greenhouse gas (GHG) reporting fees are found in Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases
- Relocates:
  - Section -100 – Hourly fees pursuant to RCW 70A.15.2220, for replacement or substantial alteration of control technology, to the permit fee section -120 to improve usability
  - Section -130 – Air pollution standards variance fee to the permit fee section -120 to improve usability
  - Section -140 – Nonroad engine permit fee to the permit fee section -120 to improve usability
- Removes fees from the text of the rule language, and places them in a fee table for improved readability and to facilitate regular fee updates
- Updates the rule language to improve the readability and clarity
- Updates outdated references to Chapter 70.94 RCW throughout the rule to Chapter 70A.15 RCW

Updates are needed to recover program costs for permit issuance and to establish a new streamlined process for future fee revisions.

There is a widening gap between Ecology’s Air Quality permit fees and permit program costs. The current fees were established based on program costs in 2012. A workload analysis of Air Quality permitting hours billed between 2017 and 2021 across all job classes was performed to determine a new hourly rate which reflects current program costs. The cost calculated by the workload analysis was then rounded down to the nearest dollar to ensure permit fees do not exceed program costs.

The new section (-031) establishes a consistent and predictable process for streamlined future fee adjustment. Ecology will create a program budget and workload analysis each year after 2023. If fee adjustments are needed, Ecology may set new fees for a two-year period following a public comment period. Industry has communicated with Ecology that they prefer more frequent incremental increases rather than infrequent significant fee increases, and they use frequent (often annual)

incremental increases for their customers as well. The new fee adjustment process will allow Ecology to charge fees that cover program costs and give permittees small cost adjustments that occur predictably.

**Citation of rules affected by this order:**

New: WAC 173-455-031  
Repealed: WAC 173-455-130 and 173-455-140  
Amended: WAC 173-455-038, 173-455-050, 173-455-100, 173-455-120, 173-455-130, and 173-455-140  
Suspended:

**Statutory authority for adoption:** Chapter 70A.15.2210, 70A.15.2230, and 70A.15.6270 RCW, Washington Clean Air Act

**Other authority:** N/A

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 22-18-100 on 09/07/22 (date).

Describe any changes other than editing from proposed to adopted version:

1. A new subsection (3) was added to WAC 173-455-031 to clarify that in years where a fee adjustment is not needed, Ecology will post notice that fee changes are not needed instead of posting a draft fee schedule to the Ecology website.
2. The rule's effective date of July 1, 2023 was inserted into WAC 173-455-120 in place of the words "rule effective date" for the sake of clarity.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Air Quality Program  
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Olympia, WA 98504-7600

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Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.

Email: [Caitlin.Cannon@ECY.WA.GOV](mailto:Caitlin.Cannon@ECY.WA.GOV)

Web site: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-455>

Other: Final Regulatory Analysis, Publication 23-02-013

<https://apps.ecology.wa.gov/publications/SummaryPages/2302013.html>

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	<u>1</u>	Amended	<u>4</u>	Repealed	<u>2</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New 1 Amended      Repealed     

**The number of sections adopted using:**

Negotiated rule making: New      Amended      Repealed       
Pilot rule making: New      Amended      Repealed       
Other alternative rule making: New      Amended      Repealed     

**Date Adopted:** March 3, 2023

**Name:** Laura Watson

**Title:** Director

**Signature:**

