



# 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: October 25, 2018

TIME: 9:50 AM

WSR 18-22-006

**Agency:** Department of Ecology AO #16-09

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_\_\_\_\_ (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: 1. Rule chapters(s) or section(s) and short description:**

Ecology is amending two rules:

- Air Quality Fee Rule – Chapter 173-455 WAC – consolidates most of the air quality related fees into one chapter. This makes it easier for the regulated community to find which fees they may need to pay.
- General Regulations for Air Pollution Sources – Chapter 173-400 WAC – establishes the regulatory framework to ensure healthy air quality in Washington, and that we meet federal air quality standards.

**2. What are we doing to/in the rule?**

Ecology proposes to amend Chapters 173-455 and 173-400 WAC to:

- Revise the registration program structure, including requiring all sources that are subject to WAC 173-400-100 and are not required to obtain an air operating permit under RCW 70.94.161 to register.
- Increase fees to more fully cover the costs of the air quality source registration program program as authorized by RCW 70.94.151.
- Revise the fee process to create an equitable distribution of fees across all registered sources, and establish a process to revise fees without going through rulemaking.
- Align Chapters 173-400 and 173-455 WAC.
- Match hourly rate charge in WAC 173-455-050, -100(2) and -130 with the current Ecology hourly billing rate (currently \$95).
- Identify and, where appropriate, make needed edits in Chapters 173-455 and 173-400 WAC to increase clarity and readability.

The proposed revisions to Chapters 173-455 and 173-400 WAC will:

- Require all sources that are subject to WAC 173-400-100 and are not required to obtain an air operating permit under RCW 70.94.161 to register.
- Revise the existing annual fee structure for the registration program to establish:
  - a. Six registration tiers.
  - b. An annual fee for each source based on its tier assignment.
  - c. Registration Tiers based on total emissions of PM<sub>10</sub>, VOC, CO, NO<sub>x</sub> and SO<sub>2</sub>, that Ecology will assign by August 1 of the year before the new fee schedule goes into effect, with a 60 day period to appeal an assignment.
  - d. Cap on the fees for tier 6 (synthetic minor source).
- Phase in the new fee structure in 2019, 2020, and 2021.
- Remove registration fee amounts from the rule in 2022 and beyond, and establish a process for determining annual fees outside of rulemaking:
  - a. Set fees annually or biennially based on a budget.

- b. Post a draft budget and tier fee schedule on our website by August 1 of the year before the new fee schedule goes into effect.
  - c. Hold a 60-day public comment period on the draft fee schedule.
  - d. Finalize and post the final budget and fee schedule by December 1 of the year before the new fee schedule goes into effect.
- Update the hourly rate charge in WAC 173-455-050, -100(2) and -130 to match current Ecology billing rates.
  - Edit Chapters 173-455 and 173-400 WAC to improve clarity and readability.

**3. Why are we doing this rulemaking?**

- The existing registration program structure exempts small sources of air pollution from the registration program. Under this rulemaking, we are requiring all sources that are subject to WAC 173-400-100 and are not required to obtain an air operating permit under RCW 70.94.161 to register. Lack of registration hampers and complicates the program because it fails to collect fees from an estimated 148 sources. The remaining 387 sources currently registered in the program are currently covering about half of the administrative costs for Ecology to regulate all 535 sources. Other taxpayer funded sources are currently funding the rest of the administrative costs.
- Existing registration program fees fund approximately 50 percent of the estimated cost of operating the program. The rulemaking will enable Ecology to more fully cover program costs as authorized by RCW 70.94.151.
- The current fee process for the registration program does not equitably distribute fees across all registered sources. The rulemaking will increase fairness.
- Establishing a process to determine fees outside of rulemaking simplifies the process and allows us to recover our costs through more frequent, more predictable, and smaller fee increases.

**4. What are we trying to accomplish:**

Ecology is proposing to amend Chapters 173-455 and 173-400 WAC to:

- Align fees with costs of the air quality source registration program as authorized by RCW 70.94.151.
- Revise the registration program fee process to create an equitable distribution of fees across all registered sources.
- Align Chapters 173-400 and 173-455 WAC.

**5. Other Background Information**

As part of this rulemaking process Ecology evaluated strategies for efficiencies, both current and future, in the registration program, such as:

- Identifying database management needs.
- Better tracking of staff hours.
- Prioritizing staff time.
- Electronic device uses during site visits.
- Combining site visits to reduce travel.
- Reducing reporting requirements for some sources.

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

New: WAC 173- 455-039

Repealed:

Amended: WAC 173- 400-060, 100, 101, 102, 103, 104, 105; WAC 173- 455-036, 040, 050, 100,130

Suspended:

**Statutory authority for adoption:** Chapter 70.94 RCW, RCW 70.94.151, RCW 70.94.153, and RCW 70.94.892

**Other authority:** N/A

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

Adopted under notice filed as WSR 18-13-109 on June 20, 2018 (date).

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

**Chapter 173-400 WAC and Chapter 173-455 WAC** – throughout the rules

We clarified the intent of the requirements throughout the two rules and addressed stakeholder confusion between the terms “must”, “shall” and “may”. We identified, with the help of stakeholders, areas of confusion and replaced “shall” with “must” where appropriate. To see the specific changes, please refer to the Concise Explanatory Statement (CES).

#### **WAC 173-400-101 Registration issuance.**

- (2) Ecology no longer uses the form referenced in this chapter and we revised the language to reflect the current process.

#### **WAC 173-400-102 Scope of registration and reporting requirements**

- 102(2) Clarified who is subject to WAC 173-400-100 and needs to register.
- 102(4) Deleted section to avoid confusion with section 103.

#### **WAC 173-400-103 Emission estimates**

- (2)(d)(iii)(A) Adjusted date to be in line with the web posting.
- (2)(d)(iii)(B) Changed the timeframe to review an emissions inventory from 60 to 90 days to align the process.

#### **WAC 173-400-105 Records, monitoring and reporting**

- (1) Changed the date from April 1st to April 15th. This was an oversight. One hundred five days after the end of the year is April 15th, not April 1st. Added language to clarify that if April 15 falls on a weekend, the deadline to file shall be the next business day.
- (7)(a) Added a note to clarify valid data criteria for continuous emissions monitors.
- (7)(f)(iii) Added a note to clarify valid data criteria for continuous emissions monitors.

#### **WAC 173-455-036 Fee increases.**

- (1) Changed language to include a mechanism to update any of the non-registration fees listed in the section.

#### **WAC 173-455-039 Source registration tiers.**

- (3)(d) Changed the date to better align the process with current practices.

#### **WAC 173-455-040 Source registration fees.**

- (7)(b) Clarified the intent that Ecology can assess late fees after the 90-day payment period. Also clarified that late fees can be assessed ninety-first day after the receipt of ecology's billing statement.

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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TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711)

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Web site: <https://fortress.wa.gov/ecy/publications/SummaryPages/1802034.html>

Other: N/A

**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>12</u>	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>1</u>	Amended	<u>12</u>	Repealed	___
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**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	___

<b>Date Adopted:</b> October 25, 2018	<b>Signature:</b> 
<b>Name:</b> Maia D. Bellon	
<b>Title:</b> Director	