



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: February 05, 2018

TIME: 3:01 PM

WSR 18-04-085

Agency: Department of Ecology AO # 15-07

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-01-097 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) General Regulations for Air Pollution Sources – Chapter 173-400 WAC – establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting the federal air quality standards

Operating Permit Regulation – Chapter 173-401 WAC – establishes a program that consolidates all air quality requirements for a large industrial facility or commercial business in a single permit

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 13, 2018	10:00 am	Webinar and in-person at Department of Ecology, 300 Desmond Drive SE, Lacey WA 98503	<p>Presentation, question and answer session followed by the formal public hearing.</p> <p>We are also holding this hearing via webinar. A webinar is an online meeting forum that you can attend from any computer using internet access.</p> <p>To join the webinar, click on the following link for more information and instructions: https://watech.webex.com/watech/onstage/g.php?MTID=e1e0f999e528176789e5c94a4585de486</p> <p>We recommend you provide your phone number when you join the event to receive a free call back from the system. OR for audio only, call toll free 1-855-929-3239 and enter access code 283 512 545.</p>

Date of intended adoption: May 15, 2018 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Elena Guilfoil

Address: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600

Email: Use online comment form or by mail.

Fax: N/A

Other: Online <http://ac.ecology.commentinput.com/?id=bfe7G>

By (date) March 20, 2018

Assistance for persons with disabilities:

Contact Hanna Waterstrat

Phone: (360) 407-7668 (voice)

Fax: N/A

TTY: (877) 833-6341

Email: hanna.waterstrat@ecy.wa.gov

Other: 711 relay service

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The changes focus on the General Regulations for Air Pollution Sources, the Operating Permit Regulation, and revising the State Implementation Plan (SIP). Because of federal court rulings, EPA has officially notified Washington (and 35 other states) to change their current rules and update their SIPs to correct the identified deficiencies (a SIP call).

The primary purpose of this revision is to align Chapter 173-400 WAC with federal court decisions¹ that emission standards apply at all times, even during periods of startup, shutdown and malfunction (SSM), and without automatic or discretionary exemptions. These decisions and EPA's SIP call require us to correct overly broad enforcement discretion and other provisions that would bar enforcement by EPA or other parties in federal court. Existing Ecology rules exempt exceedances of an emission standard during SSM, or allow avoidance of enforcement actions against a company for these emissions.

Under Ecology's rule, facilities are not required to meet emission limits during periods of SSM. EPA interprets WAC 173-400-107 to bar enforcement of excess emissions during periods of SSM under the federal Clean Air Act. Additionally, the state rule includes affirmative defense and director's discretion provisions, and automatic exemptions that violate the federal Clean Air Act. We must update our rules to comply with the federal court decisions and the SIP call. This rulemaking removes impermissible provisions, establishes new alternative standards for opacity during startup or shutdown, and proposes a process to establish facility specific permit limits for existing sources that exceed an emissions standard in the SIP.

We are also changing our public notification procedures based on a recent EPA rule that allows web posting of public notice of the start of a public comment period and draft permits in the Prevention of Significant Deterioration (PSD) and Air Operating Permit programs. We are extending web posting to these programs and our small source pre-construction permitting program. We also propose to exclude Washington holidays from the day count in a 30-day public comment period. We propose to continue requiring publishing notice in a newspaper until June 30, 2019, to address concerns that some communities still rely on the one-day newspaper notice.

We are addressing stakeholder concerns about impacts from small nonroad engines (hand-held gasoline equipment such as lawnmowers, small generators, and outdoor power tools) while providing ongoing environmental protection by evaluating impacts from nonroad engines on a project-by-project basis rather than on a site basis. We believe the project basis is more representative of operations performed by non-road engines and our original intent for how the section would operate.

Other rulemaking actions include:

- Outlaw wigwam and silo burners. This will eliminate more emission of toxic and criteria air pollutants from the one permitted wigwam burner that is not operating.
- Update the definition of volatile organic compounds (VOC) to reflect the current federal definition.
- Correct typos and clarify rule language without changing its effect so our rules are easier to understand. This includes deleting redundant requirements for catalytic cracking units and sulfuric acid plants. Mandatory federal requirements are either more stringent than or equal to the state standards.
- Update adoption by reference of federal rules from January 1, 2016 to January 24, 2018. We need to ensure our rules are as current as possible as we can only enforce a federal rule, including rule changes, after we have adopted the rule by reference.

Below is a summary of the proposed rule amendments:

SSM related provisions:

- Remove exemptions for emissions and replace with opacity standards.
- Create a process to establish facility specific permit limits for existing sources that exceed an emissions standard in the SIP.
- Simplify the notification process related to excess emission events.
- Align unavoidable excess emission provisions with federal limitations, EPA policy, and the state law.

Other provisions:

- Require an agency to post notice of a public comment period and draft permits on its website instead of requiring publication in a newspaper and a physical location for permit materials. This change applies to both rules.
- Outlaw existing and new wigwam and silo burners.
- Simplify application of nonroad engine requirements.
- Update the definition of volatile organic compounds (VOC) to reflect the current federal definition.
- Correct typos and clarify rule language without changing its effect.
- Update adoption by reference of federal rules from January 1, 2016 to January 24, 2018.

¹ See court decisions listed below.

Reasons supporting proposal: See answer to **Purpose of the proposal and its anticipated effects, including any changes in existing rules.** Please see the SEPA documents and the Preliminary Regulatory Analysis for more information.

Statutory authority for adoption: Chapter 70.94 RCW, RCW 70.94.011, RCW 70.94.161, RCW 70.94.331, RCW 70.94.431

Statute being implemented: Chapter 70.94 RCW

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION: Clean Air Act, 42 U.S.C. Section 7401 et.seq. (1970); Natural Resources Defense Council v. EPA, 749 F.3d 1055 (D.C. Cir. 2014), Sierra Club v. Johnson, 551 F.3d 1019 (D.C. Cir. 2008), and settlement agreement for Sierra Club et al. v. Jackson, No. 3:10-cv-04060-CRB (N.D. Cal.).

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Please see the SEPA documents and the Preliminary Regulatory Analysis for more information.

Name of proponent: (person or organization) Department of Ecology

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Elena Guilfoil	Lacey	360-407-6855

Implementation:

Benton Clean Air Agency	Kennewick	(509) 783-1304
Northwest Clean Air Agency	Mount Vernon	(360) 428-1617
Olympic Region Clean Air Agency	Olympia	(360) 539-7610
Puget Sound Clean Air Agency	Seattle	(206) 343-8800
Southwest Clean Air Agency	Vancouver	(360) 574-3058
Spokane Regional Clean Air Agency	Spokane	(509) 477-4727
Yakima Regional Clean Air Agency	Yakima	(509) 834-2050
Ecology Central Regional Office Air Quality Program	Union Gap	(509) 575-2490
Ecology Eastern Regional Office Air Quality Program	Spokane	(509) 329-3400
Ecology Headquarters Air Quality Program	Lacey	(360) 407-6800
Ecology Headquarters Industrial Section	Lacey	(360) 407-6900
Ecology Richland Nuclear Waste Office	Richland	(509) 372-7950

Enforcement: Same as implementation

Is a school district fiscal impact statement required under RCW 28A.305.135?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Elena Guilfoil

Address: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600

Phone: (360) 407-6855

Fax: N/A
TTY: (877) 833-6341
Email: elena.guilfoil@ecy.wa.gov
Other: N/A

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4).

Explanation of exemptions, if necessary:

Ecology analyzed the compliance costs of the proposed rule amendments in Chapter 3 of the Preliminary Regulatory Analyses. We determined that no Small Business Economic Impact Statement is required under the Regulatory Fairness Act (RFA; Chapter 19.85 RCW) for the proposed rule amendments.

Based on our analysis, facilities performing soot blowing, boiler, or refractory curing activities may incur compliance costs as a result of the proposed rule amendments. We estimated potential additional employee costs of \$12 to \$193 per startup, shutdown, or soot blowing event, but could not confidently identify or assume how many of these events a facility would experience in a year. We also identified costs of \$325 to \$350 the first year, and \$200 to \$225 in subsequent years, for facilities not currently required to have a certified opacity reader on staff.

None of the identified covered businesses performing these activities is a small business. Consequently, Ecology is not required to prepare a Small Business Economic Impact Statement under the RFA (RCW 19.85.025(4)).

The small business that owns the only standing wigwam burner in the state is not expected to incur additional compliance costs as a result of the proposed rule amendments because the burner is not currently operational. Consequently, Ecology is not required to prepare a small business economic impact statement under the RFA (RCW 19.85.030(1)(a)).

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:

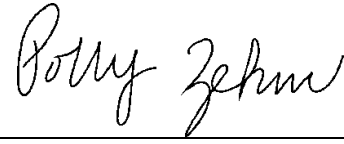
Phone:
Fax:
TTY:
Email:
Other:

Date: 2/5/2018

Name: Polly Zehm

Title: Deputy Director

Signature:

A handwritten signature in cursive script that reads "Polly Zehm".