



# 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: July 18, 2023

TIME: 7:58 AM

WSR 23-15-084

**Agency:** Department of Ecology AO # 22-17

**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:** The purpose of the rule is to repeal Chapter 173-442, Clean Air Rule. The rule is no longer necessary because its functions have been preempted and replaced by Chapter 173-446 WAC, Climate Commitment Act (RCW 70A.65.200(9)(c)).

The Clean Air Rule was a previous effort to address climate change. On August 13, 2015, Governor Inslee directed the Department of Ecology to “develop and adopt a rule to place a binding cap on carbon pollution emissions” in Washington State. As a result, Chapter 173-442 WAC, the Clean Air Rule (CAR) was adopted in September 2016.

The rule was challenged in Thurston County Superior Court by a coalition of utility and industry groups, and the court invalidated the CAR. Ecology appealed the decision to the Washington Supreme Court.

In January 2020, the Washington Supreme Court ruled that the CAR was partially invalid because Ecology lacked authority under the state Clean Air Act to adopt emission standards for transportation fuels and natural gas. The Supreme Court sent the case back to the lower court to consider other issues in the case.

In spring 2021, the Washington legislature passed the Climate Commitment Act, which explicitly provides Ecology the authority to regulate transportation fuel providers. The Climate Commitment Act preempts the provisions of the CAR and directs Ecology to repeal the CAR (RCW 70A.65.200(9)(c)).

Given all these developments, the rule is no longer in effect and for these reasons, Ecology has repealed the CAR.

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

- New:
- Repealed: Chapter 173-442 WAC
- Amended:
- Suspended:

**Statutory authority for adoption:** WA Clean Air Act, RCW 70A.15, Greenhouse Gas Emissions – Cap and Invest Program, RCW 70A.65

**Other authority:** N/A

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

Adopted under notice filed as WSR 23-07-131 on 03/22/2023 (date).  
Describe any changes other than editing from proposed to adopted version: None

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

- Name: N/A
- Address:
- Phone:
- Fax: N/A

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

Email:

Web site:

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	<u>27</u>

**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	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	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	___

**Date Adopted:** July 18, 2023

**Name:** Laura Watson

**Title:** Director

**Signature:**

