



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-455 WAC, Air Quality Fee Rule

03/27/2007
Publication: 07-02-004

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CHAPTER 173-455 WAC, Air Quality Fee Rule

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CONCISE EXPLANATORY STATEMENT

I. Introduction

- ◆ Identify the reasons for adopting this rule (RCW 34.05.325(6)(a)(i)):
This new chapter of the Washington Administrative Code will consolidate most air quality fees from existing chapters, as well as two new fees. The purpose of the change is to provide the regulated community easier access to fee information.
- ◆ Identify the adoption date of rule and effective date of rule.
The intended adoption date of this rule is May 3, 2007 with an effective date of June 4, 2007.

II. Describe Differences Between Proposed and Final Rule

- ◆ Ecology has made 4 changes in the final rule that differ from the proposed rule, and has provided explanation for each below:

1. Ecology has corrected the references in the following table to reflect the current rule:

WAC 173-455-120 New source review fees.

(3) **Additional charges.** (b) Other actions.

Activity	Fee
Tier II toxic air pollutant impact review	\$10,000
Tier III toxic air pollutant impact review	\$10,000
Case-by-case MACT determinations	\$12,500
Fossil fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW Fees listed in rule implementing RCW 70.94.892 and chapter 80.70 RCW

Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.

Activity	Fee
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Modification to order of approval	50% of the fee charged in WAC 173-455-120 (2)(a)
Modification of Tier II approval	50% of the fee charged in WAC 173-455-120 (2)(b)

2. Ecology has corrected the reference in the following paragraph to reflect the current rule. As well, In WAC 173-407-040(2), letter c.iii. of the table references footnote 7, but there is no number 7 in the list of footnotes. This is a typographical error and should refer to footnote number 6. This will be corrected in the table in WAC 173-455-050, shown below.

WAC 173-455-050 Carbon dioxide mitigation program fees.

(2) **Fees.** The fees for the carbon dioxide mitigation program are described in this section and listed in the table below. The fees listed are added to the fees established in WAC 173-455-120, when the carbon dioxide mitigation plan requirements are triggered.

Activity	Fee
a. Application Review	\$65.00/hr ¹ not to exceed \$500.00
b. Mitigation Plan approval	
i. Payment to third party	\$100 ²
ii. Purchase of CO ₂ credits	\$65.00/hr ³
iii. Direct investment	\$65.00/hr ⁴
c. Routine Compliance Monitoring	
i. Payment to third party	\$100 ⁵ annually until full amount paid
ii. Purchase of CO ₂ credits	\$65.00/hr ⁶
iii. Applicant Controlled Project	\$65.00/hr ⁶

3. To remain consistent and transfer language to the new chapter without change, Ecology has added the following footnotes to the table in WAC173-455-050(2):

¹Estimated using an EE3 per hour rate with a cap.

²Small fee primarily to check math and that the source is using an EFSEC approved qualified organization.

³Estimated EE3 per hour rate to check that the credits purchased will be verifiable and from a reputable trading or marketing organization.

⁴Estimated using an EE3 per hour rate.

⁵Same as rationale for ² above.

⁶Verify and confirm credits with the trading or marketing organization.

4. Ecology incorrectly quoted the fees from Chapters 173-491 and 495 WAC, and has corrected the fees in the following sections so that they transfer over to this rule without change.

WAC 173-455-070 Weather modification fees. (1) Procedures for issuing license. In accordance with WAC 173-495-060, an applicant shall pay a fee of one hundred dollars to the state of Washington to obtain a license.

2) Period of license. In accordance with WAC 173-495-065, an applicant shall pay a fee of one hundred dollars made payable to the state of Washington for a license renewal.

(3) Permit requirements. In accordance with WAC 173-495-070, the applicant shall pay a permit fee of one and one-half percent of the estimated cost of the operation. The estimated cost will be computed by ecology from available data.

WAC 173-455-110 Registration fees for sources emitting gas vapors. Registration fees shall accompany the registration form outlined in WAC 173-491-030 and are as follows: Gasoline loading terminals: five hundred dollars; bulk gasoline plants: two hundred dollars; gasoline dispensing facilities: one hundred dollars, or a greater amount duly adopted by a local air pollution authority. The amount of the fees collected shall only be used to administer the registration program for facilities subject to this chapter.

III. Summarize Comments

Mr. Thomas Beam provided comment to Ecology on a multitude of issues. Those issues, and Ecology's responses to them, are addressed below:

1. What was Ecology's rationale for proposing to maintain three fee sections (Air Operating Permits, Agricultural Burning, and Vehicle Emission Inspections) separate from the new consolidated section?
 - a. Unlike other fees structures that are outlined in rule, Air Operating Permit, Agricultural Burning, and Vehicle Emission Inspection fee structures have specific requirements outlined in statute. Therefore, Ecology decided to keep these within their respective rules as any changes in statute would directly affect the fees.
2. Proposed section 173-455-038 is incomplete and should be revised to also include open burning permit fees (173-425-060) and NOC's for new sources of toxic air pollutants (173-460-130) as fees which are not contained in the proposed new 173-455.
 - a. With respect to the fee found in WAC 173-425-060 (open burning fees), Ecology is not currently charging a fee, so will not move the language unless/until we decide to do so. With the wording in WAC 173-460-130, the language does not specify a fee. It merely says that Ecology or other permitting authorities may charge a fee and that the fee should not exceed the cost involved. We do charge a fee for review of proposals to increase the emissions of toxic air pollutants. Those are part of the "Basic Review Fees", found in the new WAC 173-455-120.
3. The table in proposed section 173-455-120(3)(b) should be revised so that the methods for determining fees of modifications to an order of approval or Tier II approval do not incorrectly reference WAC 173-400-116(2)(a) and (b), which this rule making proposed to replace with 173-455-120(2)(a) and (b).
 - a. The references in the table have been corrected as shown above in Section II of this Concise Explanatory Statement.
4. Proposed section 173-455-050(2) should be revised to remove references to additional fees established in 173-400, which have been relocated to the new 173-455. References to new applicable sections of 173-455 should be added, as appropriate.
 - a. The references have been corrected as shown above in Section II.

5. Ecology should clarify portions of the proposed rule description indicating that existing fee sections are being moved to the proposed new chapter **without change** (emphasis added to highlight key concern).
 - a. The rule description will not be changed as the existing fee sections were inadvertently increased and will be corrected (see next two comments).
6. The existing 173-407-040(2) table contains footnotes explaining the basis for fee charges that are not included in the relocated text in 173-455-050(2).
 - a. The footnotes have been included as they were in 173-407-040(2), as shown in section II above.
7. The existing fees identified in 173-495-060 (\$100), 173-495-065 (\$100), 173-495-070 (1.5% of estimated operational costs) and 173-491-030 (\$200 for bulk gasoline plants; \$100 for gasoline dispensing facilities) have all been respectively increased in their corresponding new sections 173-455-070 (\$125), 173-455-080 (\$125), 173-455-090 (1.6%), and 173-455-110 (\$225, \$110).
 - a. The existing fees were inadvertently increased when moved to the new chapter and have been corrected to their original amounts as shown in section II above.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

List or describe:

- ◆ A public hearing was held on March 13, 2007 in Spokane, WA at 2:00pm
 - ◆ There were zero attendees from the public

- ◆ Notice of the above hearing was published in the February 21, 2007 State Register. Legal notice of the hearing was published in the Spokesman Review and Daily Journal of Commerce newspapers on January 29, 2007. In addition, information about the hearing was placed on the Department of Ecology's online public calendar.

V. Appendices

- ◆ Copy of emailed comment from Thomas Beam (only one comment received).
- ◆ Copy of Air Quality Fee Rule FOCUS sheet
- ◆ Copy of news releases
- ◆ Copy of legal notices
- ◆ Copy of the final rule text