



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-401 WAC
Operating Permit Regulation

Summary of rule making and response to comments

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Concise Explanatory Statement

Chapter 173-401 WAC Operating Permit Regulation

2010 Revisions

Air Quality Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Operating Permit Regulation
WAC Chapter(s): 173-401
Adopted date: December 1, 2010
Effective date: January 1, 2011

To see more information related to this rule making or other Ecology rule makings please visit our web site: www.ecy.wa.gov/lawsandrules.

Reasons for Adopting the Rule

Identify reasons for adopting this rule (RCW 34.05.325(6)(2)(i)).

On December 15, 2009, EPA established that greenhouse gases consist of the mix of six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. (74 FR 66496-66546). Under EPA's Light-Duty Vehicle Rule, greenhouse gases become subject to regulation under the federal Clean Air Act beginning January 2, 2011. (75 FR 25324, May 7, 2010).

Because of the January 2, 2011 deadline, EPA adopted rules in June 2010 (known as the Tailoring Rule) establishing thresholds for greenhouse gas emissions that define when a permit is required under the federal Air Operating Permit program. Chapter 173-401 WAC contains the state rules implementing the federal Air Operating Permit program. In this rulemaking, Ecology updated the state rule to align with the federal greenhouse gas emissions thresholds in 40 CFR 70.2 by revising the definition of "major source" and adding the definition of "subject to regulation." [40 CFR 70.2 as revised by 75 Federal Register 31514 on June 30, 2010.]

What is an air operating permit?

An air operating permit is a permit for major sources and certain other sources that contains all air pollution control requirements that apply to the source. Permit holders must track, report and annually certify their compliance status with respect to their permit requirements. A major source includes sources that emit or have the potential to emit 100 tons per year of any pollutant subject to regulation. In general, “subject to regulation” means that the pollutant is subject to a Clean Air Act requirement establishing actual control of emissions.

What are the greenhouse gas emission thresholds?

Beginning January 2, 2011, an emitter who already has an air operating permit (for other pollutants) will need to provide information about their greenhouse gas emissions if and when they apply for, renew or revise their permits.

Beginning July 1, 2011, each facility that has the potential to emit at least 100,000 tons per year of greenhouse gases will need an air operating permit. These facilities must apply for a permit on or before July 1, 2012, unless their permitting authority sets an earlier deadline.

A business with actual greenhouse gas emissions lower than 100,000 tons per year may request federally enforceable limits on its operations to ensure that potential greenhouse gas emissions remain below the threshold and avoid needing an operating permit. An emitter may also want to request such limits to stay out of the Prevention of Significant Deterioration Program (a different federally established air permitting program aimed at new facilities or significant modifications to facilities). Emitters can contact their permitting agency to find out more about their options.

RCW 70.94.161 and RCW 70.94.510 provide the statutory authority for adopting this rule revision.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(b)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are no differences between the proposed rule filed on October 6, 2010 and the adopted rule filed on December 1, 2010.

Response to Comments

Ecology accepted comments between October 5, 2010 until November 17, 2010. This section provides verbatim comments that we received during the public comment period and our responses.

Two persons submitted a total of 4 written comments on the proposed rule revision. Table 1 lists the commenters and the reference numbers for the comments submitted.

Comment 1

What is the ratio of greenhouse gases that are emitted from larger industrial plants that are targeted by this proposal versus the amount of greenhouse gases emitted from the sources not included as targets by the "tailoring" proposal? The reason for my comment is that this proposal may not provide sufficient reduction in these greenhouse gases and may cause these facilities to stop producing altogether due to the financial burden of the requisite permitting costs, while other regulatory actions could in fact reduce the emissions substantially and share the effort to comply over many other sources.

Response

Ecology does not know what the ratio of greenhouse gases emissions is between large industrial plants and smaller sources. The purpose of this rule revision is to include reporting requirements for greenhouse gases for sources subject to the Air Operating Permit program. EPA does not intend this action to reduce those emissions.

Air quality rules allow a source to take a federally enforceable limit on its operations to ensure that potential emissions remain below the threshold. By using this mechanism, a source that does not already have an operating permit but becomes subject to this permitting program due to the new greenhouse gas emissions threshold would avoid needing an operating permit altogether.

Comment 2

I would also request that for the uninformed of us that definition of greenhouse gases be provided in the proposal.

Response

Definition 35(a) in the proposal includes the federal definition of greenhouse gases. The proposal defines greenhouse gases as the "air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride...."

The full text of 40 CFR 86.1818-12(a) uses the same language:

(a) *Applicability.* This section contains standards and other regulations applicable to the emission of the air pollutant *defined as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride [italics added]....*

EPA provides a general description of greenhouse gases in the preamble to the rule adoption:

"Greenhouse gases trap the Earth's heat that would otherwise escape from the atmosphere into space, and form the greenhouse effect that helps keep the Earth warm enough for life. Greenhouse gases are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment." Thursday, June 3, 2010, 75 FR 31518-31519.

Comment 3

To the extent that WAC 173-401-200(27) (“regulated pollutant for fee purposes”) is not proposed to be changed, the proposed changes to WAC 173-401 leave open the possibility for operating permit fees to be charged on the basis of GHG emissions. This is not necessarily in itself egregious, but the proposed Ecology rule regarding GHG reporting (WAC 173-441) indicates that fees shall be charged to facilities subject to GHG reporting requirements. The combined construct of these two proposed rules appears to set up the possibility that certain sources could be charged twice for the same workload conducted by an agency. This potential overlap should be explicitly eliminated.

Response

Sources will not pay twice for the same workload. The fees sources would pay under the Greenhouse Gas Reporting Rule cover Ecology’s costs for administering that program (see WAC 173-441-110). The fees permit program sources pay under the Operating Permit Regulation cover Ecology’s permit administrative costs (if the source is under Ecology’s jurisdiction) and a share of Ecology’s development and oversight costs for the statewide Air Operating Permit Program (see WAC 173-401-900).

Comment 4

While the text of the proposed section WAC 173-401-200(35)(a) is similar to the corresponding change to 40 CFR part 70, and it has most certainly been thoroughly reviewed, a strict reading of the text is puzzling. The present wording seems to mean that the emission criteria is basis to a single date in time. The following change should be considered:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, ~~as of~~ on or after July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

Response

Ecology declines to change this phrase because it is a verbatim copy from the federal rule. Substituting different language introduces the possibility that Ecology meant something different and could therefore lead to confusion on the part of the reader. Recent EPA guidance indicates that the language refers to the starting date for application of the 100,000 ton per year emission threshold. See EPA, Office of Air and Radiation, PSD and Title V Permitting Guidance For Greenhouse Gases, November 2010, available at <http://www.4cleanair.org/Documents/EPAHQOAR2010084100011.pdf>.

Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology’s response to the comment(s).

Table 1. Commenters

Comment #	Last name	First Name	Organization name
1,2	Young	Bob	
3,4	Keel	Lester	Kimberly Clark Everett

Appendix A: Copies of all written comments

A1. Comment from Bob Young

From: Bob Young
To: Guilfoil, Elena (ECY)
Subject: Comments on proposed revisions to Operating Permit Regulation, Chapter 173-401 WAC
Date: Friday, October 08, 2010 11:56:21 AM

In reading the text of the proposed permit revisions in the subject line, I do not see the quantifiable amounts that support the "tailoring" of this regulation. What is the ratio of greenhouse gases that are emitted from larger industrial plants that are targeted by this proposal versus the amount of greenhouse gases emitted from the sources not included as targets by the "tailoring" proposal? The reason for my comment is that this proposal may not provide sufficient reduction in these greenhouse gases and may cause these facilities to stop producing altogether due to the financial burden of the requisite permitting costs, while other regulatory actions could in fact reduce the emissions substantially and share the effort to comply over many other sources. I would also request that for the uninformed of us that definition of greenhouse gases be provided in the proposal.

Bob Young
Washougal WA 98671
bobyoun@wildblue.net

A2. Comment from Lester Keel

From: Keel, Lester W [mailto:Lester.W.Keel@kcc.com]
Sent: Wednesday, October 13, 2010 8:24 AM
To: guilfoil.elena@ecy.wa.gov
Cc: Waddle, Robert; Majure, Dell; Alford, Crystal (ECY)
Subject: FW: Ecology proposes to amend the Operating Permit Regulation

Hi Elena-

Please accept the following comments regarding the proposed changes to WAC 173-401 to incorporate EPA's Tailoring Rule:

1. To the extent that WAC 173-401-200(27) ("regulated pollutant for fee purposes") is not proposed to be changed, the proposed changes to WAC 173-401 leave open the possibility for operating permit fees to be charged on the basis of GHG emissions. This is not necessarily in itself egregious, but the proposed Ecology rule regarding GHG reporting (WAC 173-441) indicates that fees shall be charged to facilities subject to GHG reporting requirements. The combined construct of these two proposed rules appears to set up the possibility that certain sources could be charged twice for the same workload conducted by an agency. This potential overlap should be explicitly eliminated.

2. While the text of the proposed section WAC 173-401-200(35)(a) is similar to the corresponding change to 40 CFR part 70, and it has most certainly been thoroughly reviewed, a strict reading of the text is puzzling. The present wording seems to mean that the emission criteria is basis to a single date in time. The following change should be considered:
(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, ~~as of~~ on or after July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

Sincerely,

Lester Keel, P.E.
Environmental Engineer
Kimberly Clark- Everett
desk- 425-259-5770
cell- 425-754-9610
nextel- 252

Appendix B: Transcripts from public hearings.

Ecology held one hearing in Lacey on November 10, 2010. No one attended this hearing.