



DEPARTMENT OF
ECOLOGY
State of Washington

Small Business Economic Impact Statement

Chapter 173-455 WAC – Air Quality Fee Rule

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Chapter 173-455 WAC Air Quality Fee Rule

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Executive Summary

In this rulemaking, Ecology is updating Chapter 173-455 WAC (Air Quality Fee Rule). This rule covers fees associated with permit actions in Ecology's new source review program in Air Quality.

New source review is a program Ecology uses to issue pre-construction permits for new sources of air pollution. Washington air quality law and rules require new sources of air pollution to have pre-construction review and approval before beginning construction on a proposed project.

The changes to the fee schedule include:

- Increase many permit fees to cover more of the costs of administering and enforcing the permit programs.
- Allocate amounts of time and support offered for different permit actions, with hourly fees for additional time.
- Make housekeeping changes to facilitate clarity and compliance.

Probable benefits include:

- Reduction in permit fees for some applicants.
- Avoided increased in the time it takes to process permit applications and administer the program.
- Clarification and improved compliance.

Probable net quantified costs include:

- \$96 thousand per year in total increased permit fees.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses. Ecology also considered the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor's Executive Order 10-06.¹ Other measures of businesses ability to cope with compliance costs (sales, hours of labor) were not sufficiently available for the representative set of permittees.

At the median per-employee impact across various permit actions, Ecology expects small businesses to pay at least 360 times the compliance costs of the largest ten percent of businesses. Looking at the ranges of possible per-employee compliance cost impacts, based on permit type, the ranges of small and large business impacts overlap, but this is largely due to some businesses experiencing possible fee reductions under the proposed rule. **It is clear from these ratios at the median that the proposed rule creates a**

¹ http://www.governor.wa.gov/news/Executive_Order_10-06.pdf

disproportionate impact on small business, as based on employment rolls. This means Ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology made decisions in the course of rulemaking intended to reduce disproportionate impacts on small businesses, including changing proposed fees that were likely to affect more small businesses. The proposed rule also includes existing text reducing compliance costs and providing hardship and economic considerations for small businesses in altering their compliance costs.

Based on the Washington State Office of Financial Management's Input-Output model of the state economy, Ecology calculated that the proposed rule may result in up to two jobs being lost in the economy permanently over the next 20 years.

Section 1: Introduction and Background

Based on research and analysis required by the Regulatory Fairness Act – RCW 19.85.070 – Ecology has determined the proposed rule amendments (Chapter 173-455 WAC) likely have a disproportionate impact on small business. Therefore, Ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by Ecology.

It is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #11-02-008), which contains more in-depth discussion of the analyses.

A small business is defined as having 50 or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment—the way air quality fees would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the “baseline” in this document. It includes only existing regulation through laws and rules at federal, state, and local levels. It does not include elements such as guidance or unofficial standard practices in industry or business.

History

Air pollution control in Washington is based on federal, state and local laws and regulations. The federal Environmental Protection Agency, the Department of Ecology (Ecology), and local clean air agencies, all regulate air quality. Ecology implements and enforces air quality regulations in counties without a local clean air agency. Ecology also has statewide jurisdiction over primary aluminum plants, pulp mills, large commercial and industrial facilities subject to the federal Prevention of Significant Deterioration (PSD) Program, and emissions of specific toxic air pollutants that exceed specified levels.

New source review is a program Ecology uses to issue pre-construction permits for new sources of air pollution. Washington air quality law and rules require new sources of air pollution to have pre-construction review and approval before beginning construction on a proposed project.

New source review is a program Ecology uses to issue and manage pre-construction permits for new sources of air pollution. This program also applies to existing sources that replace or modify their equipment, if that action results in increased emissions. Washington air quality law and rules require new or modified sources of air pollution to undergo pre-construction review and get approval before beginning construction on a proposed project.

Ecology’s new source review program has four parts:

- **Minor new source review** applies to smaller sources that are located in counties under Ecology’s jurisdiction.

- **Prevention of Significant Deterioration (PSD)** is a federal program for permitting large commercial and industrial sources.
- **Nonattainment new source review** applies to large commercial and industrial sources located in nonattainment areas under Ecology’s jurisdiction.
- **Second and third tier review** is a process used to review toxic air emissions that are higher than a specified level.

Ecology issues multiple air-quality-related permits related to new or modified sources of air pollution, including but not limited to:

- Air Operating Permits
- Notice of Construction Permits
- General Orders of Approval for particular industries or types of operation

Chapter 173-455 WAC (Air Quality Fee Regulation) identifies the fees for different permits and permit actions. WAC 173-455-120 contains the new source review related fees.

Regulatory baseline

The regulatory baseline is the way air quality permit fees would be assigned if the proposed rule is not adopted – that is, based on existing laws and rules. The baseline does not include guidance and practices commonly used in existing permit fee determination and behavior if they are not required by a law, rule, permit, et cetera. For a full summary of baseline fees, see the associated Cost-Benefit Analysis, Table 1.

Changes under the proposed rule

In this rulemaking, Ecology is proposing amendments to Chapter 173-455 WAC that would:

- Increase many permit fees to cover more of the costs of processing an application.
- Allocate amounts of time and support offered for different permit actions, with hourly fees for additional time.
- Make housekeeping changes to facilitate clarity and compliance.

RCW 43.135.055 (Initiative 960) requires an agency to receive specific legislative approval to increase fees. Section 301(10) of the 2009 budget bill directs Ecology to “increase [air emissions new source review] ... fees in the 2009-2011 biennium as necessary to meet the actual costs of conducting business...”to cover the cost of conducting business...” See ESHB 1244(2009). RCW 70.94.152 provides authority for Ecology to establish notice of construction and other review fees. The statute limits the scope of these fees to direct and indirect costs associated with processing the request.

New fees and changes to time allotted

According to an internal review of budget records, past fees covered only about half of the costs to administer and enforce the new source review and PSD components of air quality regulation. Increasing fees will bring the program closer to cost recovery. Since the State's General Fund deficit could limit the amount of money available to subsidize the program and permitting actions that pay for themselves may prevent cuts to the program. This would, in turn, limit resulting cuts to services provided to individuals, businesses, and the public in enforcing air quality law. For a full summary of proposed fees, see the associated Cost-Benefit Analysis, Table 2.

Clarification and reorganization

Ecology clarified the rule language and reorganized the structure of the proposed rule to improve understanding of the requirements, and in turn, improve compliance with the rule.

Section 2: Compliance Costs for Business and Local Government

The proposed rule likely generates costs through direct fee increases to some permittees. This cost is discussed further below, with additional discussion of how it was considered in this analysis – qualitatively, or whether it could be evaluated quantitatively as well.

Increased permit costs for some permittees

The set of fees included in the proposed rule likely result in increased fees for some permittees. For others, Ecology does not expect total permit fees to change, and for others they may decrease.

Ecology included this cost quantitatively in its analysis. See Chapter 3 for complete discussion of how this cost was quantified.

Reduction of permit fees for some applicants

Because permit fees and the time allocated for reviewing and approving permit applications are based on typical permit cases, some permittees and permit applicants may experience a reduction in individual fees for particular permit applications or permit actions.

Ecology quantified the most likely costs and benefits of the proposed rule, where possible with reasonable certainty, given available data. To quantitatively estimate the costs and benefits likely resulting from the proposed rule, Ecology analyzed the likely impact of increased fees for some permittees, and reduced fees for others, and where there was no change.

Model inputs

Existing permit data

Ecology collected existing permit data for current new source review permit actions and historic data on the types of businesses that incur fees for permit actions. This data included the type of permit action, as well as permittee information.

Baseline fees

Baseline fees assigned to each type of permittee were based on the set of fees delineated by the existing rule. For consistency in comparison, Ecology used permittees for whom tracking information was available to also estimate proposed fees. This generated a range of fees from \$500 to \$10 thousand across all permittees with traceable actions.

Proposed fees

Ecology based the likely fees for each type of permittee based on the new set of fees in the proposed rule. This generated a range of fees from \$200 to over \$21 thousand across all permittees with traceable actions.

Industry and employment numbers

Ecology categorized businesses by industry and size, using the North American Industry Classification System (NAICS) and employment numbers associated with those industries from the Washington State Employment Security Department.

Section 3: Quantification of Costs and Ratios

For each existing type of permittee (representing likely future permittees), Ecology calculated the difference between the fee paid under the existing baseline rule, and the estimated fee based on the proposed rule. For those types of permit actions that did not have data on time consumed, Ecology:

- Conservatively assumed existing “moderate” complexity new source review actions would fall under the “high” complexity category under the proposed rule. While this will not be the case (they will fall in the hourly “low” complexity category, and be charged hourly rates), Ecology could not confidently estimate the number of hours such actions would take overall, and so took the most conservative approach of assuming overestimated costs.
- Averaged fee changes, by permit action type, across available existing actions, and applied average values to the average number of each permit action per year over the previous four fiscal years.

This generated a range of impacts between a nearly \$2 thousand cost savings, and an \$11 thousand increase for highly complex permit action and analysis, at the individual permit level. Ecology then multiplied these fee cost impacts by the number of expected permittees and permit

applicants requiring action, by type, each year. This accounted for fee increases, decreases, and fees not changing for different permittees.

TABLE 1: Compliance cost per employee under various scenarios

PERMIT ACTION	AT MIN COST		AT MAX COST		CORRELATING COSTS TO SIZE	
	Small Businesses	Largest 10 Percent	Small Businesses	Largest 10 Percent	Small Businesses	Largest 10 Percent
New Minor	\$25.00	\$0.01	\$584.55	\$0.31	\$25.00	\$0.31
New Major	\$200.00	\$0.11	\$200.00	\$0.11	\$200.00	\$0.11
Revised Minor	-\$42.50	-\$0.02	\$72.50	\$0.04	-\$42.50	\$0.04
Revised Major	\$200.00	\$0.11	\$200.00	\$0.11	\$200.00	\$0.11
Tier II Review	\$1,108.65	\$0.59	\$1,108.65	\$0.59	\$1,108.65	\$0.59
PSD: Admin Revision	\$40.00	\$0.02	\$82.75	\$0.04	\$40.00	\$0.04
PSD: Other	-\$199.65	-\$0.11	-\$199.65	-\$0.11	-\$199.65	-\$0.11

The ranges of costs per employee for small versus the largest businesses likely impacted overlap under all three scenarios, but not to a degree sufficient to eliminate the possibility of disproportionate impacts on small businesses. This means Ecology must undertake legal and feasible actions in the rulemaking to reduce this disproportionate impact.

Section 4: Action Taken to Reduce Small Business Impacts

Ecology was limited to the goals and objectives of this rulemaking in its ability to reduce costs to small business further than the system of paying for Ecology work needed already does under the proposed rule. Ecology did, however, take actions to reduce compliance costs to small businesses in particular (and for all businesses in general; see Least Burdensome Alternative analysis in Cost-Benefit Analysis). In addition, Ecology provides compliance assistance and rules provide for hardship considerations in small businesses' ability to meet compliance costs.

While Ecology strove to make costs meet permit application processing and assistance expenditures, and to reduce compliance costs for all businesses, Particular note was made during the rulemaking about simple minor permitting actions. These actions are likely to be for small businesses. Ecology originally suggested a fee of \$1750 for a new permit application falling in the simple fee category. Based on stakeholders comments that our data shows that this fee has the potential to unfairly affect some small business, we reduced our initial fee by \$250.

WAC 173-455-040(6) in the rule makes special considerations for small businesses complying with the proposed rule. It also accounts for economic conditions affecting the ability to afford compliance costs. In particular, it states: "Fee reductions for economic hardships. If a small business owner believes the registration fee results in an extreme economic hardship, the small

business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits; and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars.”

WAC 173-455-100(6) makes similar considerations: “Small business fee reduction. The RACT analysis and determination fee identified in subsections (2) through (5) of this section may be reduced for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW [43.31.025](#).

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the RACT analysis and determination fee shall be reduced to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and average annual profits. In no case will a RACT analysis and determination fee be reduced below one hundred dollars.”

WAC 173-455-120 states: “Small business fee reduction. The new source review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW [19.85.020](#). In RCW [19.85.020](#), "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If, due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.”

Section 5: Small Business and Government Involvement

Ecology worked with stakeholders, who had the opportunity to comment on the draft fee schedule. Ecology sent a mailing to those potentially impacted by the rule change, including all parties who have previously obtained a permit, and registration sources that might need a permit

in the future.. To explain the elements of the proposed fee schedule, Ecology distributed information via a press release, mailing and email.

Small businesses particularly participating to a greater degree in the stakeholder process included a cement company and two construction material and service businesses.² The Independent Business Association was also represented, with focus on the dry cleaning sector.

Section 6: NAICS Codes of Impacted Industries

This section lists NAICS codes for industries Ecology expects to be impacted by the proposed rule.³ These include:

111339	311119	324121	423310	486110	622110
212319	311225	325311	423320	511210	812210
212399	311412	327320	423810	541310	812320
221122	311611	327390	424480	541330	812910
236115	311999	333414	424490	541711	922140
236220	321912	333923	424610	541890	926130
237310	322110	336411	424690	541940	
238110	322121	336612	424720	541990	
238210	322221	337110	424910	561110	
238910	324110	339112	444190	562212	

Section 7: Impact on Jobs

Ecology used the Washington State Office of Financial Management’s 2002 Washington Input-Output Model.⁴ The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output. Based on the net fee increase, apportioned across industry groups based on prevalence in the previous three years’ permits, the model estimates between one and two jobs permanently lost in the state, over the next 20 years. This result does not account for where fee payments are re-spent by government, as it would on inter-industry transfer payments.

² Ellensburg Cement, Hooker Creek Companies, Granite Northwest

³ North American Industry Classification System (NAICS) codes have largely taken the place of Standard Industry Classification (SIC) codes in the categorization of industries.

⁴ See the Washington State Office of Financial Management’s site for more information on the Input-Output model. <http://www.ofm.wa.gov/economy/io/2002/default.asp>