



DEPARTMENT OF
ECOLOGY
State of Washington

Preliminary Cost-Benefit and Least Burdensome Alternative Analysis

Chapter 173-455 WAC – Air Quality Fee Rule

February 2011
Publication no. 11-02-008

Publication and Contact Information

This report is available on the Department of Ecology's website at www.ecy.wa.gov/pubs/1102008.pdf.

For more information contact:

Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-6800

Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Yakima 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

If you need this document in a format for the visually impaired, call the Air Quality Program at 360-407-6800. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Preliminary Cost-Benefit and Least Burdensome Alternative Analysis

Chapter 173-455 WAC Air Quality Fee Rule

Prepared by

Kasia Patora

for

Air Quality Program
Washington State Department of Ecology
Olympia, Washington

Table of Contents

EXECUTIVE SUMMARY	1
CHAPTER 1: INTRODUCTION.....	3
HISTORY	3
<i>Regulatory baseline</i>	<i>4</i>
CHANGES UNDER THE PROPOSED RULE	7
<i>New fees and changes to time allotted.....</i>	<i>7</i>
<i>Clarification and reorganization</i>	<i>9</i>
PRELIMINARY ANALYSIS	9
ANALYTICAL FORMAT.....	9
CHAPTER 2: BENEFITS AND COSTS OF THE FINAL RULE	11
DESCRIPTION OF BENEFITS	11
<i>Reduction of permit fees for some applicants</i>	<i>11</i>
<i>Avoided increase in the time needed to process and approve permit applications and administer the program.....</i>	<i>11</i>
<i>Clarification and improved compliance</i>	<i>12</i>
DESCRIPTION OF COSTS	12
<i>Increased permit costs for some permittees.....</i>	<i>12</i>
CHAPTER 3: QUANTIFIED COSTS AND BENEFITS	13
MODEL INPUTS.....	13
<i>Existing permit data.....</i>	<i>13</i>
<i>Baseline fees.....</i>	<i>13</i>
<i>Proposed fees.....</i>	<i>13</i>
<i>Industry and employment numbers</i>	<i>13</i>
<i>Fee collection history.....</i>	<i>13</i>
<i>Program cost history.....</i>	<i>13</i>
CALCULATIONS.....	13
OVERALL QUANTIFIABLE RESULTS	14
CHAPTER 4: OBSERVATIONS AND CONCLUSIONS.....	15
CHAPTER 5: LEAST BURDENSOME ALTERNATIVE ANALYSIS	17
ALTERNATIVE CONTENT AND RESPONSES	17
<i>No action.....</i>	<i>17</i>
<i>Alternate distribution of fees.....</i>	<i>17</i>
<i>No set hours or hourly fee.....</i>	<i>17</i>
<i>Fee categories for minor new source review.....</i>	<i>18</i>
<i>Multiple fee categories for minor permitting actions</i>	<i>18</i>
<i>Emission based fees</i>	<i>18</i>
<i>Hourly fee.....</i>	<i>19</i>
<i>Fixed fees</i>	<i>19</i>
<i>State Environmental Policy Act (SEPA) review.....</i>	<i>19</i>

<i>Unfunded review</i>	19
<i>Source category filing fees</i>	19
<i>Existing general orders</i>	20
<i>New general orders</i>	20
<i>Establishing the baseline rate for a simple minor permitting action</i>	20
<i>Adjusting baseline hours</i>	20
<i>PSD</i>	20
<i>Air toxics review</i>	21
CONCLUSION.....	21

Executive Summary

In this rulemaking, Ecology is updating Chapter 173-455 WAC (Air Quality Fee Regulation). This rule action 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 and manage pre-construction permits for new sources of air pollution. The program also applies to existing sources that replace or modify their equipment. 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.

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 permits related to new or modified sources of air contaminants, including but not limited to:

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

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." See Engrossed Second Substitute Bill 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.

The proposed 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.
- Improvements in permit processing timeliness and program administration.
- Rule clarification and improved compliance.

Probable net quantified costs include:

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

Chapter 1: Introduction

The Administrative Procedure Act (Chapter 34.05 RCW) requires that, before adopting a significant legislative rule, Ecology must, “Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.” [RCW 34.05.328(1)(c)]

For the proposed amendments to the Air Quality Fee Rule, this means Ecology must estimate the impacts of the rule changes on individuals, businesses, and the public. This includes changes in costs and changes in the value of the services provided for the fees paid. 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.

This document provides the public with an overview of the methods Ecology used to perform its analysis, and the most likely impacts found.

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.

If you are located in one of the following counties, you have a local clean air agency: Benton, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Whatcom, or Yakima. Local clean air agencies may implement and enforce most state regulations. All local clean air agencies have their own regulations that may be more restrictive than those of Ecology.

Ecology regulates businesses with air emissions that are located in certain areas:

- **San Juan County**
- **Hanford Nuclear Reservation**
- **Central Region:** Chelan, Douglas, Kittitas, Klickitat, and Okanogan Counties
- **Eastern Region:** Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Stevens, Walla Walla, Whitman Counties

Ecology also regulates specific types of businesses, such as:

- Kraft pulp and paper mills
- Primary aluminum mills
- Large industrial or commercial sources subject to the federal PSD program
- Emitters of specific toxic air emissions at rates higher than levels specified by statute or rule statewide.

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.

Table 1 outlines the existing fee structure.

Table 1: Existing fees

TABLE 1: FEES UNDER THE EXISTING RULE			
Basic new source review fees			
Fee	\$1,250	\$8,000	\$18,000
Emissions increase of at least one pollutant is:	Low complexity source	Moderate complexity source	High complexity source
carbon monoxide	< 2.5 tpy	> 2.5 & < 5 tpy	> 5 tpy
nitrogen oxides	< 1 tpy	> 1 & < 2 tpy	> 2 tpy
sulfur oxides	< 1 tpy	>1 & < 2 tpy	> 2 tpy
volatile organic compounds	< 1 tpy	> 1 & < 2 tpy	> 2 tpy
PM ₁₀	< .375 tpy	> .375 & < 0.75 tpy	> 0.75 tpy
lead	< 0.0025 tpy	> 0.0025 & < 0.005tpy	> 0.005 tpy
sulfuric acid mist	< 0.175 tpy	> 0.175 & < 0.35 tpy	> 0.35 tpy
hydrogen sulfide	< 0.25 tpy	> 0.25 & < 0.5 tpy	> 0.5 tpy
total reduced sulfur (including hydrogen sulfide)	< 0.25 tpy	> 0.25 & < 0.5 tpy	> 0.5 tpy
municipal waste combustor organics	< 0.0000000875 tpy	> 0.0000000875 & < 0.000000175 tpy	> 0.000000175 tpy
municipal waste combustor metals (measured as PM)	< 0.375 tpy	> 0.375 & < 0.75 tpy	> 0.75 tpy
municipal waste combustor acid gases (measured as SO ₂ and hydrogen chloride)	< 1 tpy	> 1 & < 2 tpy	> 2 tpy
ozone depleting substances in aggregate	<1 tpy	> 1 & < 2 tpy	> 2 tpy
Individual toxic air pollutant listed in Ch. 173-460 WAC	< 2 tpy	> 2 tpy & < 10 tpy	> 10 tpy

Specific source categories		
	Clarifying criteria	Fee
Dry cleaners		\$250
Gasoline stations		\$250
Storage tanks	< 20,000 gallons	\$250
	20,000 – 100,000 gallons	\$650
	> 100,000 gallons	\$900
Chromic acid plating and anodizing identified in WAC 173-460-060		\$250
Solvent metal cleaners identified in WAC 173-460-060		\$250
Abrasive blasting identified in WAC 173-460-060		\$250
New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 173-401 WAC source or a non-chapter 173-401 WAC source		\$250
Application for coverage under a general order of approval	WAC 173-400-560 and criteria included in a specific general order of approval	\$500
Nonroad engines	< total 500 installed horsepower	\$250
	> 500 horsepower & < total of 2000 installed horsepower	\$900
	> 2000 horsepower & < total of 5000 installed horsepower	\$2000
	> 5000 horsepower & < total of 10,000 installed horsepower	\$4000
	> total of 10,000 installed horsepower	\$7500
Additional units		
One or more identical units	Fee for additional units is equal to 1/3 basic review fee of the first unit	
Major New Source Review actions under WAC 173-400-720 and 173-400-112		
Activity	Clarifying criteria	Fee
Prevention of Significant Deterioration (PSD) review	WAC 173-400-720	\$15,000
PSD permit revision		
• All except administrative	WAC 173-400-750	\$10,000
• Administrative revisions	WAC 173-400-750	\$1500
Establishing LAER and offset requirements	WAC 173-400-112	\$10,000
Establishing or renewal of clean unit status	Per 40 CFR 52.21(y)	\$1500
Pollution control project approval	Per 40 CFR 52.21(z)	\$1500
Plantwide Applicability Limit (PAL)		
• Increasing a PAL limitation	WAC 173-400-720	\$15,000
• Establishing a PAL	Per 40 CFR 52.21(aa)	\$4000
• Renewing of a PAL	Per 40 CFR 52.21(aa)	\$4000
• Processing an expired PAL	Per 40 CFR 52.21(aa)	\$12,000
Other actions		
Activity	Clarifying criteria	Fee
Tier II toxic air pollutant impact review		\$10,000

Tier III toxic air pollutant impact review		\$10,000
Case-by-case MACT determination		\$12,500
Fossil-fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW	Fees listed in WAC 173-455-050
Changes to existing order of approval, Tier I review, Tier II review, or other action identified above		
• Modification to order of approval	50% of the fee charged in basic review fee	
• Modification of Tier II approval	50% of the fee charged in basic review fee	

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.

Table 2 outlines the proposed air quality permit fees under the proposed rule.

Table 2: Fees under the proposed rule			
PROPOSED FEES: MINOR NEW SOURCE REVIEW			
Action	Type		New hours (\$ loss)
Notice of construction application	Basic project		\$1,500 for 16 hrs* (\$20)
	Complex project		\$10,000 for 106 hrs* (\$70)
Change existing permit (approval order)	Correct Ecology mistake		No fee
	Change: no emissions increase	Simple change	\$200 for 3 hrs* (\$85)
		All other changes	\$875 for 10 hrs* (\$75)
	Modification: emissions increase	Basic project	\$1,500 for 16 hrs* (\$20)
Complex project		\$10,000 for 106 hrs* (\$70)	
WAC 173-400-114 change			\$300 for 4 hrs* (\$80)
Establish voluntary emissions limit			\$500 for 6 hrs* (\$70)
General Order (application for coverage)	Category A	SEPA review complete	\$500 flat fee
		SEPA review required	\$785 flat fee
	Category B	SEPA review complete	\$879 flat fee
		SEPA review required	\$1,160 flat fee
Extend an approval order			\$100 flat fee
Construction without a permit			\$500 flat fee
Relocation notice (non ecology source)	SEPA review complete		\$150 flat fee
	SEPA review required		\$435 flat fee
Relocation notice (ecology source)			No fee
PROPOSED FEES: MAJOR NEW SOURCE REVIEW			
Action	Type		New hours (\$ loss)
Written PSD applicability determination			\$500 for 6 hrs* (\$70)
New PSD permit application	New application		\$15,000 for 158 hrs* (\$10)
	New application: limited to GHG emissions		\$7,500 for 79 hrs* (\$5)
Revise an existing PSD permit	Administrative revision		\$1,900 for 20 hrs* (\$0)
	All other revisions		\$7,500 for 79 hrs* (\$5)
Nonattainment area major NSR requiring LAER			\$15,000 for 158 hrs* (\$10)
(PAL) Plant-wide Applicability Limit	Establish limit		\$15,000 for 158 hrs* (\$10)
	Increase or renew limit; process expired limit		\$7,500 for 79 hrs* (\$5)
Extend a PSD permit to construct			\$500 flat fee

PROPOSED FEES: OTHER FEES		
Action	Type	New hours (\$ loss)
Second Tier Review		\$10,000 for 106 hrs* (\$70)
Third Tier Review		\$10,000 for 106 hrs* (\$70)
Cost-reimbursement agreement	Contract for pre-application assistance	\$95 per hour
* Ecology hourly rate	Fee for time spent on action in excess of the allowable hours in a fee category	\$95 per hour

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.

Preliminary analysis

This document presents Ecology’s preliminary analysis of the proposed rule. It is based on the best information and data available at the time of its publication. Ecology welcomes comments and data that would improve the accuracy or precision of the results of this analysis, as reflected in the final analysis published at the adoption of a final rule.

Analytical format

The remainder of this analysis is organized into the following chapters:

- Benefits and Costs of the Proposed Rule ([Chapter 2](#)): Qualitative discussion of the likely benefits and costs arising from the proposed rule, as compared to the baseline of the existing rule.
- Quantified Costs and Benefits ([Chapter 3](#)): Methodology and results of quantitative analysis, where possible.
- Observations and Conclusions ([Chapter 4](#))
- Least Burdensome Alternative Analysis ([Chapter 5](#))

Chapter 2: Benefits and Costs of the Final Rule

Raising permit fees to support program activities and clarifying the language and organization of the rule result in a set of likely benefit and cost impacts. This chapter discusses the path of those impacts, and lists how each benefit or cost is evaluated in this analysis – qualitatively, or quantitatively as well. For those benefits or costs that were able to be evaluated quantitatively, see Chapter 3 for methodology and results.

Description of benefits

The proposed rule likely generates a set of possible benefits, largely by avoiding otherwise necessary program cuts under the baseline. These include:

- Reduction in permit fees for some applicants.
- Improvement in permit processing timeliness and program administration.
- Rule clarification and improved compliance.

Each of these benefits is discussed further below, with additional discussion of how each was considered in this analysis – qualitatively, or whether it could be evaluated quantitatively as well.

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.

This benefit is part of the overall fee change quantification discussed in Chapter 3.

Avoided increase in the time needed to process and approve permit applications and administer the program

The proposed rule raises permitting fees to maintain funding for the new source review program. In light of the current budget situation for the State's General Fund, and the Legislature's choice to authorize fee changes and increases, the baseline scenario would likely result in cuts to staff, program services, or both.

With current coverage of about 52 percent of program costs coming from fees¹, and the remainder subsidized by the General Fund, these cuts could be significant. In addition, the degree of the cuts is unclear, (as the General Fund funds numerous agencies and programs). Uncertainty exists in future levels of available state funds as well, both nominally and relative to expenditures.

Reducing the number of staff in the new source review program would likely result in a reduced ability to maintain current levels of permit processing, assistance, and enforcement. This reduced ability would likely limit permit applicants' ability to begin construction on new projects that require Ecology air quality permits. Project delays could be costly in terms of delayed output in production industries.

¹ Internal analysis of historic ratio of collected fees to program costs.

Ecology could not confidently quantify the degree of project delays and other costs resulting from a reduced and over-capacity new source review program. The benefit of avoiding these costs, under the proposed rule, was considered qualitatively in this analysis.

Clarification and improved compliance

The proposed rule clarifies language and organization to facilitate understanding of its requirements. These changes do not alter the meaning or requirements of the rule, but are intended to allow reductions in time and effort in understanding of, and compliance with, the rule.

Ecology included this benefit qualitatively in this analysis.

Description of costs

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.

Chapter 3: Quantified Costs and Benefits

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, with yet others not changing.

Model inputs

Existing permit data

Ecology collected existing permit data for current new source review permit actions, as well as 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. This information was used to calculate impacts by employer size reported in the associated Small Business Economic Impact Statement (Ecology publication number 11-02-007).

Fee collection history

Past collection of permit fees used to fund program expenditures.

Program cost history

Past expenditures on the new source review program.

Calculations

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 that existing “moderate” complexity new source review actions would fall under the “high” complexity category under the proposed rule.

- 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.

Overall Quantifiable Results

Ecology estimated that the final rule could result in total net quantified increase in permit fees of \$96 thousand per year, across all permittees.

Chapter 4: Observations and Conclusions

Ecology separately calculated the qualitative and quantified net benefits of the proposed rule amendments, accounting for likely costs and benefits of the proposed changes. Based on the combined qualitative and quantitative net benefits that Ecology finds to be likely under the proposed rule (as compared to the existing rule), Ecology concluded that the benefits of the proposed rule will most likely exceed the probable costs.

Probable benefits include:

- Reduction in permit fees for some applicants.
- Avoided increases 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.

Chapter 5: Least Burdensome Alternative Analysis

RCW 34.05.328(1)(e) requires Ecology to “determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

Alternative content and responses

Ecology considered alternatives to the requirements of the proposed rule during the rule development process. These alternatives, and reasons for not including them in the proposed rule, are listed below.

No action

To the extent possible outside of legislative requirements, Ecology could have taken no further action, or action that would have adjusted fees to likely have zero change.

Taking no action would have likely been less burdensome in direct permit costs than the increased fees under the final rule, but would have likely also impacted those required to comply with the rule negatively through:

- Reduced services.
- Reduced administrative capability.
- Reduced assistance in permit application, amendment, and compliance.

Ecology believes the fee structure determined during this rulemaking, and proposed in the proposed rule, accurately reflects likely program costs of continuing adequate levels of service to business and the public. Therefore, Ecology believes the no-action alternative would create at least as much burden for those required to comply as the final rule, and would not meet the objective of the authorizing law that Ecology programs should be self-sustaining.

Alternate distribution of fees

Simply increasing the fees for the low, medium and complex fee categories already in the rule was considered. However, the amount of air pollution resulting from the project is not a good indicator of how long it may take the agency to review and issue a permit. Therefore, some projects that produce very little air pollution could involve complicated permit work that takes more staff work than the fee covers. Other projects which may have greater levels of air pollution may only take minimal time to review, resulting in fees paid which exceed the amount needed to pay for the review.

We also considered a straight dollar per hour cost. But no money is collected up front to start paying for permit work. An applicant also does not have any idea what they may end up paying for their permit.

No set hours or hourly fee

The amount of time spent on each permit action can vary based on a number of factors, including staff familiarity with the source, process, emission source, common control techniques,

availability of emission factors, modeling, impacts due to proximity of neighbors, completeness of application, sophistication of source, etc.

Fee categories for minor new source review

Simply increasing the existing fees for the low, medium and complex fee categories for minor new source review was considered. However, the amount of air pollution resulting from a project is not a good indicator of how long it may take the agency to review and issue a permit. Some projects that produce very little air pollution could involve complicated permit work that takes more staff work than the fee covers. Other projects which may have greater levels of air pollution may take minimal time to review, resulting in fees paid which exceed the amount need to pay for the review.

Multiple fee categories for minor permitting actions

We established two fee categories, simple and complex after evaluating options for establishing fee categories. We considered a number of factors that contribute to project complexity, such as source type, the number of emission units, or state or federal requirements so we could establish fee categories that lie in between simple and complex. Unfortunately, we were unable to determine with certainty source types that would fall between a simple and a complex fee category. Based on our permitting experience, it is likely that most projects will fall in the simple fee category and those projects will take more hours to review than 16 hours covered under this fee. This means that this fee system results in a phased payment method as an applicant submits the required initial payment at the beginning of the process and then pays the billed invoice covering additional staff work beyond 16 hours to issue the permit at the back end of the process.

For a complex project, we retained the existing emissions thresholds in the rule because our experience suggests that these thresholds are a reasonable indicator of a complex project. We did not include the threshold for emissions of toxics air pollutants in the existing rule because defining complexity by this metric for toxic air pollutants does not reflect the complexity of the source. The proposal also allows Ecology to determine that a project is complex based on consideration of a number of factors. These factors include number and complexity of emission units, volume of emissions, amount and complexity of modeling, and number and kind of applicable state and federal requirements. As a practical matter, we expect to determine infrequently that a project is complex based on these considerations.

Emission based fees

We also evaluated establishing emission based fees. This fee structure may provide an incentive for a source to reduce emissions to qualify for a lower permit fee. However, if a lower fee does not cover the cost of issuing the permit, Ecology must shift this cost to other fund source. If we increase the fee for others, this does not align with the principal that the user pay for service received. Shifting any unfunded portions to the general fund does not align with the goal of this rule making, which is to establish a funding method that more fully supports the cost of issuing the permit and away from reliance on general fund monies.

Hourly fee

We also considered a straight dollar per hour cost. The permit fee is unpredictable so an applicant has no idea what they may end up paying for their permit. Additionally, the agency collects no money up front to begin paying for reviewing the application.

Fixed fees

We considered establishing a number of fixed fees. A number of local air agencies charge a filing fee that covers processing costs, and fees for specific types of review, such as public hearing and SEPA, as well for specific sources and equipment types. We preferred to establish one fee that covers a single request, to the extent possible, rather than establish a series of fees that an applicant would need to add together.

State Environmental Policy Act (SEPA) review

However, we noted that State Environmental Policy Act (SEPA) review increases the processing time. Review of actions that include a set number of hours covers the cost of the additional work if the time exceeds that covered by the fee. We considered averaging the cost of SEPA review over a flat fee category, that is, a general order, relocation notice, and a notification form. Rather than over or under charge a source, we differentiate the fees depending on whether these actions require SEPA review.

Unfunded review

Through the course of identifying steps involved in processing a request, we found areas where Ecology was providing unfunded review. These include making a written PSD applicability determination, issuing a relocation notice, processing a notification form, extending a permit that is due to expire, establishing a voluntary emissions limit in its own regulatory order, and providing technical review in advance of receiving a request. We added a fee to cover each of these with the exception of technical review. While carefully reviewing our pre-application assistance, we noted a few cases where staff spent large amounts of time providing significant technical assistance. We addressed this challenge first by deliberating on what the Air Quality Program would consider a reasonable amount of time to provide customer service. We determined that under most circumstances, staff could review our complex regulations and determine whether an applicant needed a permit in about two hours. This review could occur through one meeting that involved several Ecology staff or through one (or several telephone) conversations with one permit writer. Using this information, the Program established 2 hours as a best practice for providing assistance. This time allows staff to determine whether a project is subject to permitting rules and to explain the next steps.

As a complement to best practices, we also propose rule language that allows an applicant to contract with us for additional pre-construction assistance. An applicant who wants more pre-application time with Ecology staff could use this option.

Source category filing fees

We removed all existing fees for source categories except for the general order. Some were removed because the underlying rule no longer existed (chromic acid plants, anodizing and solvent metal cleaners, nonroad engine less than 500 horsepower). Two fees (dry cleaners and gasoline station) were removed because we believe that the \$250 fee does not cover the cost of

processing the request. Dry cleaners could still be covered under the general order at \$500. Storage tanks and nonroad engines were removed because they are so infrequently used that we could not determine if the fee were appropriate. With this change, gasoline stations and storage tanks would be classified as simple fee action. Nonroad engine fees were relocated to another section with an hourly rate fee. One source category (new emissions units with insignificant emissions units as defined in WAC 173-401-530) was removed because revised rule language in WAC 173-400-110(5) (March 2011) removed the requirement for agency review or notification of a project with emissions at these levels.

Existing general orders

Ecology established the streamlined approach of general orders for the most common source categories permitted in our regional offices. We determined through our six-month time tracking exercise that the fee for this category covers the work to issue these order so we left the flat fee alone. We also determined that the workload accompanying revising one of these existing general orders, such as conducting a technology review and aligning the order with the recently revised state air quality rule, is insufficient to increase the fee from \$500 to the fee for a new general order at \$875.

New general orders

We considered establishing the fee for a new general order in the \$2,000 to \$3,000 range to recover the agency's cost to develop the order. A fee in this range would approach what a new fee is likely to be for processing a notice of construction application. The Air Quality Program chose instead to offset some of our development costs by increasing the cost for all new general orders by \$385.

Establishing the baseline rate for a simple minor permitting action

We 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.

Adjusting baseline hours

Our draft fees included ten percent more hours than would be indicated by an hourly rate. This meant that a basic project at \$1750 covered the first 20 hours of staff time and a Prevention of Significant Deterioration program application fee at \$15,000 covered the first 175 hours. We realized that this structure would hamper our ability to recoup our cost to process the action because the unfunded portion ranged from \$150 for a simple fee request to \$1,625 for a PSD action. By adjusting the number of hours by dividing the fee by 95 and taking the whole number, the unfunded time is less than one hour per action.

PSD

We determined that \$15,000 is a reasonable baseline fee for processing a PSD permit application, when combined with the limitation of 158 hours of work. We halved the fee for processing an application for a PSD permit limited to greenhouse gases. We believe the work involved will be similar to that of a permit modification so we charged the same fee for either action.

We set the fees for nonattainment area major new source review and plant-wide applicability limits based on the PSD fee model. We assumed that making these determinations are likely to be as complicated as reviewing a PSD permit.

Regarding a non-administrative revision to a PSD permit, we reduced this fee from \$10,000 to \$7,500. Some PSD stakeholders requested that we establish a lower fee for a streamlined permit revision that included an application, draft technical support document and a draft permit. To support this concept, we reduced the modification fee to provide an incentive for an applicant to submit quality materials. It is likely that the fee for submitting an application without these additional documents will be closer to the existing fee of \$10,000.

Air toxics review

We decided to leave this fee at the same amount and include the number of hours. In the ten years that this rule has existed, there has never been a review of a toxics evaluation so we deleted that fee option. Additionally, the 2011 revisions to WAC 173-400-930 provide for a permit by rule for emergency engines that includes air toxics review of diesel emissions, which saves the owner the \$10,000 fee for the air toxics review.

Conclusion

Based on research and analysis required by RCW 34.05.328(d)(e) the Department of Ecology determines:

There is sufficient evidence that the final rule is the least burdensome version of the rule for those who are required to comply, given the goals and objectives of the law for Ecology to propose the rule.