

DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-455 WAC

Air Quality Fee Regulation

Summary of rule making and response to comments

May 2011, Amended June 8, 2011
Publication no. 11-02-018

Publication and Contact Information

This publication is available on the Department of Ecology's website at www.ecy.wa.gov/biblio/1102018.html

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Concise Explanatory Statement

Chapter 173-455 WAC Air Quality Fee Regulation

Air Quality Program
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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’s) rule adoption for:

Title: Air Quality Fee Regulation
WAC Chapter(s): 173-455
Adopted date: May 31, 2011
Effective date: July 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

The purpose of these amendments is to update permitting fees in Chapter 173-455 WAC to make Washington’s new source review process more financially self-sufficient. The amendments increase fees to cover the costs of processing a new source review permit application and provide incentives to streamline permitting.

The rule amendments also:

- Change the name of a “reseller certificate” to a “reseller permit” in the solid fuel retail sales fee to be consistent with the Department of Revenue.
- Update portable and temporary portable source permit fee provisions for consistency with 2011 revisions to WAC 173-400-035.

The revenue from fees under our pre-construction permitting program does not cover the cost of operating the program. The 2009 legislature authorized fee increases, and the 2011 legislature reauthorized the fee increases and cut our general fund subsidy, effective July 1, 2011, by the amount Ecology estimated the fee increases will generate. This action is revenue neutral; Ecology’s Air Quality Program will not expand its program nor hire additional staff because of the increased fees. We need the new fee structure in place by July 1, 2011 to make up the general fund reduction.

Ecology evaluated our fee structure to determine the most appropriate method for assessing fees. If fees are not increased, there will be considerable delays in permitting approval due to lack of

agency resources. With this fee structure, Ecology attempts to maximize taxpayer dollars by making the permit applicant cover the full costs of issuing the permit. The more complete the information a business provides in its application, the more efficient Ecology's review will be, resulting in a lower total fee for that permit.

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 differences between the proposed rule filed on March 1, 2011 and the adopted rule filed on May 31, 2011.

Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content shows the changes and describes Ecology's reasons for making them. Changes to the proposed rule language are underlined and struck out. WAC 173-455-140 and the following sections and subsections of WAC 173-455-120 contain changes: (1)(d) and (f); (2)(a) and (b); (3)(b) and (c); (7); (9); (10)(a) and (b); (11)(a) and (b); (13)(a) and (b); (15) (a); and (16)(a).

WAC 173-455-120(1)

(d) An applicant must submit initial fees with an application, notice or request. An application, notice or request is incomplete until ~~any permit application~~ initial fees ~~have~~ has been paid.

(f) Ecology cannot finalize an action covered ~~approve an order of approval or make a final determination~~ under this chapter ~~section until all fees are paid.~~

WAC 173-455-120(2) Review of new source or modification of an existing source with an emissions increase.

(b) Complex project ...

(iii) Ecology may determine that a project is complex based on consideration of a number of factors, that include, but are not limited to:

- (A) Number and complexity of emission units;
- (B) Volume of emissions, including toxicity of emissions;
- (C) Amount and complexity of modeling; or
- (D) Number and kind of applicable state and federal requirements.

WAC 173-455-120(3)(c) ~~All other~~ Complex changes: Eight hundred seventy-five dollars plus an hourly rate of ninety-five dollars after ten hours.

- (i) This fee covers up to ten hours of staff time to review the request and make a final ~~determination~~decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above ten hours.
- (ii) This fee excludes an administrative or simple change and changes to an existing permit that result in an emissions increase.
- (iii) Examples of ~~all other complex~~ changes include, but are not limited to:
 - (A) Changes requiring more than ~~minimal~~one hour of engineering review;
 - (B) Consolidation of permits not allowed under simple change;
 - (C) Request for review of a permit action that is exempt under WAC 173-400-110(5) (Table 110(5) emission-based exemption levels); or
 - (D) Changes requiring mandatory public comment under WAC 173-400-171.

Reason for changes

We clarified the intent of the language.

WAC 173-455-120(3) Change to an existing order of approval.

- (a) Ecology will not charge a fee for correcting a mistake by ecology in a permit.
- (b) Administrative or ~~S~~simple change: Two hundred dollars plus an hourly rate of ninety-five dollars after three hours.

WAC 173-455-120(3)(c)(ii) This fee excludes an administrative or simple change and changes to an existing permit that result in an emissions increase.

WAC 173-455-120(3)(b)(ii) Administrative or simple change means:

- (A) An action not subject to a mandatory public comment period in WAC 173-400-171; and
- (B) The reissued approval order requires ~~minimal~~one hour or less of engineering evaluation and no physical modification of equipment; and
- (C) Changes in permit conditions are based on actual operating conditions and the operating conditions require ~~minimal~~one hour or less of engineering evaluation and the change does not cause a change in allowable emissions.

Reason for changes

We clarified the intent of the language. Users of our rule may be more familiar with the term administrative rather than simple. Changing “minimal” engineering evaluation to “one hour or less” was in response to a specific comment located in the comments section under “Comments on specific rule language.”

“Make a final determination” phrase was changed in the following locations in WAC 173-455-120.

WAC 173-455-120 (1) General requirements.

- (f) Ecology cannot ~~approve an order of approval or make a final determination~~finalize an action covered under this ~~chapter~~section until all fees are paid.

WAC 173-455-120 (2) Review of new source or modification of an existing source with an emissions increase.

- (a) Basic project: This fee covers up to sixteen hours of staff time to review the application and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above sixteen hours.
- (b) Complex project: Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.
 - (i) This fee covers up to one hundred six hours of staff time to review the application and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred six hours.

WAC 173-455-120 (3) Change to an existing order of approval.

- (b)(i) This fee covers up to three hours of staff time to review the request and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above three hours.
- (c)(i) This fee covers up to ten hours of staff time to review the request and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above ten hours.

WAC 173-455-120 (7) Request to establish a voluntary emissions limit.

- (a) This fee covers up to six hours of staff time to review the request and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

WAC 173-455-120 (9) Request for a written prevention of significant deterioration applicability determination: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours. This fee covers up to six hours of staff time to review the request and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

WAC 173-455-120 (10) Prevention of significant deterioration (PSD).

- (a) PSD permit application: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours. This fee covers one hundred fifty-eight hours of staff time to review the application and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.
- (b) PSD permit application where greenhouse gases are the sole PSD pollutant being reviewed: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours. This fee covers seventy-nine hours of staff time to review the application and makeissue a final determinationdecision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

WAC 173-455-120 (11) Revision to a prevention of significant deterioration permit.

- (a) Administrative revision as defined in WAC 173-400-750(3): One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours. This fee covers twenty hours of staff time to review the application and makeissue a final determinationdecision.

Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

- (b) All other revisions (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours. This fee covers seventy-nine hours of staff time to review the application and ~~make~~issue a final ~~determination~~decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

WAC 173-455-120(13) Nonattainment area major new source review.

- (a) A notice of construction application subject to ~~major source nonattainment area permitting requirements in~~ WAC 173-400-830: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours. This fee covers one hundred fifty-eight hours of staff time to review the application and ~~make~~issue a final ~~determination~~decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.
- (b) Change to an approval order issued under ~~WAC 173-400-830 major source nonattainment area major permitting requirements (WAC 173-400-111(3)(c) and 173-400-830)~~:
 - (i) Request to change permit conditions under WAC 173-400-111(8) that is not subject to mandatory public comment in WAC 173-400-171: One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours. This fee covers twenty hours of staff time to review the application and ~~make~~issue a final ~~determination~~decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.
 - (ii) All other permit changes (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours. This fee covers seventy-nine hours of staff time to review the application and ~~make~~issue a final ~~determination~~decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

Reason for changes

The changes clarify the intent of the language. Changing to “issue a final decision” was in response to a specific comment located in the comments section under “Comments on specific rule language.”

WAC 173-455-120(15) Second tier review.

(15)(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a ~~final~~ recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

WAC 173-455-120(16) Third tier review.

(16)(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a ~~final~~ recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

Reason for changes

This change ensures clarity and consistency with the language in WAC 173-460-090(10).

WAC 173-455-140 ((Portable and temporary source)) Nonroad engine permit fee. The department shall charge a fee of ((sixty-five)) ninety-five dollars per hour to process a and notification of intent to operate ~~write ((a portable or temporary source permit)) an approval to operate for a nonroad engine~~ under WAC 173-400-035.

Reason for changes

This change ensures clarity and consistency with the language in WAC 173-400-035.

Response to Comments

Ecology received comments between March 1 and April 15, 2011. This section provides verbatim comments and our responses. Ecology reviewed the public comments and grouped them into a series of questions (the “issues”). Each of the questions reflects a particular issue or set of issues raised by one or more individuals or organizations. For a copy of all written comments, refer to Appendix A. Transcripts from public hearings are found in Appendix B.

Ecology received an email from Ken Johnson on June 6, 2011 asking why his comment letter wasn’t included in this document. He believes he emailed the letter on or about March 21, 2011 to egui461@ecy.wa.gov. We have no record of receiving that email. In the spirit of open public review, we amended this document to include his comments and our responses. We are not revising the adopted rule.

General comments on this proposal

Comment: “One initial rule-making principle, stated early in the rule revision discussions, was fees be ‘knowable and predictable’. A flat fee meets that criteria but the proposed fee structure does not. Total fees are not known until an order of approval is issued or denied.” *Holmes*

Ecology’s response

Ecology established three rule-making principles to guide the development of permit fees. The first is fees associated with a permit action correlate with the amount of staff time required to issue the permit. The second is fees are knowable and predictable. The third is pre-application assistance continues to be available. This rule making meets two of these principles. Ecology was unable to establish a flat fee for certain permit actions. Establishing a flat fee requires averaging the fee over a range of permit applications. Under this scenario, some applicants will pay more than it costs to issue their permit, while others will pay less than it costs. Based on our pilot time tracking project, we would almost triple our fees for minor projects if we based our fees on the average costs. In addition, the costs of public notice can vary widely depending on the project. Our internal stakeholder advisory group suggested we consider establishing the fees at the lower rate (minimum level) such that an applicant who has a simple or thorough application does not pay more than it costs Ecology to process their permit.

The permit structure presented in the proposal divides the fee into 2 payments, an initial fee followed by a payment at the end of the process if necessary. We believe this structure provides an incentive for a more thorough and complete application.

Comment: “For such substantial fee increases, the Department should provide the stakeholders with budget and historic cost information.” *Mola*

Ecology’s response

Ecology presented budget information covering the past 3 fiscal years to the rule development stakeholders at the July 7, 2010 meeting, and updated this with 2010 fiscal year information at the October 7, 2010 meeting. For details, refer to New Source Review Program Summary, NSR Program Costs vs. Fee, NSR Permit Counts, September 2010 final. As the Preliminary Cost-Benefit and Least Burdensome Alternative Analysis states on page 7, “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.”

Comment: “Cost recovery is defined differently in various documents. The draft cost benefit analysis refers to 2009 legislative action that directs Ecology to increase fees to meet actual costs. One of initial principles of the rule-making was full cost recovery. The rule proposal notice mentions applicants paying the full cost of their permits, but another paragraph just says to make the process more financially self-sufficient. *Holmes*

Ecology’s response

In the context of this rule-making, cost recovery means collecting fees that reflect the direct and indirect costs associated with processing a new source review request.

RCW 43.135.055 requires the legislature authorize a fee increase before we can take action. The legislature provided this authority in a budget bill instead of a regular bill. Consequently, this means that the legislature is directing the Air Quality Program to increase fees to meet actual costs to the extent allowed in our underlying statute. Our statute allows us to adopt fees “covering the direct and indirect costs of processing a notice of construction application....” RCW 70.94.152(2). The Air Quality Program is unable to recover costs associated with operating the program, such as program development, so other funds support those elements.

Accountability

Comment: “The proposed fees are 20 to 30% higher than other regional agency costs. What is the basis?” *Hodgson*

Comment: “Before the Department implements something like a 46% hourly rate increase, the stakeholders should have some documentation that the Department is managing its costs, and making adjustments that reflect the decrease in business activity in the State.” *Mola*

Ecology’s response

In preparing the fee rule language, Ecology reviewed fees of the seven local air agencies. Overall, we believe our fees reflect a balanced comparison with the fees charged by other agencies. Some specific fees charged by other agencies are higher, while others are lower. Our hourly rates reflect the salary and benefits for engineering review, plus overhead costs for the agency and the program.

Comment: “NWPPA’s primary concern is that the proposal lacks an adequate strategy and methodologies for complying with the requirements for a workload driven process and tracking expenses as required by the basic authority statute cited above.” *Matthews*

Ecology’s response

Our permit tracking project provided the workload analysis for this fee rule. Given the current economic climate, we chose to establish an initial fee based on the lower limit of the fee range, rather than choose a fee in the middle, and then charge applicants if their project needs more time to complete. Key to the new fee system is staff tracking their time (expenses), which will allow us to recover the permit processing costs specific to each project.

Efficient use of resources

Comment: “Ecology can adequately document revenue and can document that the fees do not cover program costs to the extent that Ecology would like. What Ecology has failed to include are provisions for cost containment and assurances that resources will be utilized efficiently. It is not enough to simply ask for increased revenue without demonstrating cost cutting and cost containment efforts. The proposal includes nothing that addresses efficient use of resources in reaching decisions on permitting.” *Matthews*

Comment: “We recommend that there be some sort of accountability system within Ecology to ensure that permits are processed efficiently and timely. Perhaps a formal audit system should be outlined in WAC 173-455.” *Hodgson*

Comment: “Ecology has not defined any accounting mechanism. The proposal should be more specific defining the tasks included in each fee category. Alternately, Ecology should define the categories of activities against which time can be charged. Most criticism of fees charged by Ecology stem from the perception that it takes the staff too long to perform particular tasks. The most specific Ecology can be the better. In other fee programs there are examples of Ecology activities that take far longer than would be the case for a private entity performing a similar task. Ecology estimates of costs appear to be derived from averaging overall costs. In undertaking such a large expansion of fee collecting authority, Ecology should set forth clearly the categories of activities which fees could be charged so that an applicant can follow the reasonableness of the fees.” *Matthews*

Comment: “In sum, NWPPA certainly understands the budget issue caused the current economic conditions, and supports the concept that Ecology should have the resources necessary to process permit applications. Nevertheless, NWPPA believes that portions of the proposal are too nebulous and open-ended. Ecology would do well to place these fee programs on a more specific footing so that over time, the appropriateness of the fees can be examined. The current proposal does not do enough to provide the accountability and efficiency all of us, public and private, expect in these times of limited resources.” *Matthews*

Comment: “What measures has Ecology taken to streamline its permitting process? The Rule Proposal Notice and the preamble provide no evidence that Ecology has made efforts to consolidate the permit processing time and control the permitting costs. This fee structure change is harmful to the business community if Ecology takes this as an opportunity to saddle industry with an inefficient and costly process, especially during a period when businesses are struggling

with lay-offs, shutdowns, increased raw material fees, and higher taxes.” *Hodgson, written and included in testimony in Spokane*

Ecology’s response

This fee rule brings with it the responsibility to deliver permitting services efficiently and effectively. The Air Quality Program continues to develop procedures that provide the most value in our permit review and maintain the highest level of customer service.

Comment: “We recommend that Ecology review means to streamline the permitting process. The Idaho Department of Environmental Quality provides a model with their program which is summarized at

http://www.deq.idaho.gov/air/permits_forms/permitting/applicant_deq_responsibilities.pdf. IDEQ has developed an electronic system to track the permits through the steps to ensure timely processing.” *Hodgson*

Ecology’s response

Thank you for your suggestion.

Appealing permit charges

A number of commenters requested an appeal process so they could dispute Ecology’s charges or the length of the permitting processing time.

Comment: “The major concern is to avoid any further delays in processing applications.” *Holmes*

Comment: “What mechanism is available for recourse in the event of unreasonable permit processing fees? This is not addressed in the proposed fee structure regulations. If one of my clients is unhappy with the cost of our services, they contact me directly to discuss or can simply not pay our invoice.” *Hodgson, written and similar concern included in testimony at Spokane hearing.*

Comment: “Spring Environmental recommends that a mechanism be available for unbiased review if any complaints are made relative to unreasonable processing time.” *Hodgson*

Comment: The other concern I have is in this process, it looks like that we are the employers of the people that are going to be working on these permits. And, again, it doesn’t seem like we have any recourse if, well, we don’t think that the time has been too long or hasn’t been processed quickly. With an estimated amount of time and money that it would take a specific job, then, at least, we would have a way to gauge where we’re at in that certain process.” *Zyskowski, testimony at Spokane hearing*

Comment: “The rules should include an appeal procedure. The rules should include a mechanism to question and if appropriate, to appeal the particular fee. Ecology should not have the option to cease processing an application if a task is under appeal. Currently the rules provide that Ecology will cease processing an application if a fee, or portion of a fee, is not paid. If a party disputes a fee (or fee component) there should be a mechanism to stay the fee until the matter is resolved. Currently the rules provide that Ecology will cease processing an application if a fee, or

portion of a fee is not paid. If a party disputes a fee, (or fee component) there should be a mechanism to stay the fee until the matter is resolved.” *Matthews*

Comment: “There is no process for questioning the fee charges. An administrative review should be available.” *Holmes*

Ecology’s response

We encourage our customers to establish and maintain close contact with your Ecology permit writer and their manager to track the status of your permit application. This will help ensure that there are no surprises regarding the application process or review fees. Should you feel that the review is not progressing in a timely and efficient manner, you can raise this concern directly with your permit writer or with Ecology management.

Concern with uncertain cost of permit

Comment: “One of the things that I’d like to see is that we would have some type of estimate, so that in our budgeting process that that would be – we could look at that and determine – and then have some kind of flag at a point where it’s gonna be over that, so that we could be talked to and then redo the budget to make it work.” *Zyskowski, testimony at Spokane hearing*

Comment: “There is no mechanism for controlling costs/hours spent on a given project once the hourly rate is triggered.

How does Ecology account for differences in capability of staff?

How does Ecology account for review by Ecology managers?

What type of stop-loss provision can Ecology provide so that the hourly rate does not trigger endless fees?

NWPPA recommends that hourly fees be limited to hours expended by the permitting engineer. NWPPA is concerned that Ecology is venturing in a new direction by authorizing hourly fees after the hours included in the “initial” fees are expended. Ecology does not have experience with hourly fees and should take interim steps towards implementing this concept. Specifically, Ecology should develop some type of “stop-loss” or limit that will not be exceeded without agreement from the applicant.

NWPPA is concerned that Ecology does not have procedures in place to limit common types of cost overages that could occur, as listed in the above questions. A new staffer may be less efficient and either spend too much time on a given task or incur additional hours for management supervision. By the same token, one manager may send work back multiple times for revisions while another may not. Such variables as these could easily push hours outside the number of hour [sic] anticipated for a task, and if present, should not be the basis for triggering hourly fees. In addition, this dynamic is potentially compounded for sources regulated by the Industrial Section. For example, an applicant may have a project that triggers review by both Ecology Air Programs and the Industrial Section, as well as the managers in both.” *Matthews*

Ecology’s response

These comments have a central focus on the challenge of controlling time and cost. Ecology management is keenly aware of the need for balance in providing high quality technical review and analysis, while also providing efficient and timely permit service delivery.

Clear communication between the applicant and Ecology staff is a significant piece of controlling costs. Ecology will contact the applicant when specific review milestones are reached. Applicants are encouraged to maintain close communications with the permit writer who will be able to give you an overview of the permit review progress and time expenditures.

Should an applicant feel that the review is not progressing in a timely and efficient manner, they can raise this concern with their permit writer or with Ecology management. Those permits that are complete when submitted are easier to review and take less time than those that are incomplete and require several phone calls or letters before substantial review can begin. You can reduce the review time by submitting complete information. Applications with adequate air pollution controls and modeling supporting the lack of significant impact to the airshed from the project can streamline Ecology's review.

Billing concerns

A number of commenters raised concerns over how Ecology would bill customers.

Comment: “A couple of comments as far as methods to help improve the communication, one would be for the permit writer to provide some type of estimate within the 30-day completeness determination period on how much time they anticipate the project would take to complete. That would provide a means for the applicant to know that instead of being a \$1,500 invoice, it’s going to be somewhere between, ... \$2,000 and \$2,500, something they can reasonably work with for budgeting purposes, rather than getting a bill for \$10,000 for something that would have been \$1,500.” *Hodgson, testimony in Spokane.*

Comment: “The proposed rule provides no cost structure to ensure timely and reasonable permit processing. There is the potential for changes in the process for the permit by the regulator (as has happened in several cases). As a consult, my firm provides time and materials or fixed price proposals to our clients and we are accountable for any overruns although changes in scope are grounds for changing the maximum amount. Since Ecology is proposing to bill on an hourly rate, Spring Environmental recommends that there be a clear notification process at specific cost points, perhaps when the completeness determination is made, such that a reasonable maximum projected amount is quoted to the applicant. *Hodgson*

Comment: “When will Ecology send the final bill? This is an important issue, due to the requirement that the agency be paid in full prior to permit issuance. This could cause additional delay if, after the completion of the 30 day public comment period, only then is the bill sent to the company. The payment processing could be an extra 45-60 days. This is harmful to the business community, as it delays projects and business. Spring Environmental recommends that Ecology provide an estimate of the final bill to the company as soon as the permit is out for public comment. *Hodgson*

Comment: “Detailed statements should be provided to the applicant when an invoice is submitted. The hours charged to each review activity should be provided with the invoice.” *Holmes*

Comment: “WAC 173-400 allows Ecology up to a year to make a preliminary determination on a PSD permit after an application is complete. For lengthy applications reviews, interim status or statements on fees accrued would be useful.” *Holmes*

Comment: “A fee for service system is more complex than the flat fees currently in use. Time accounting and invoice preparation are two of the additional activities required. What are the added costs involved and are they included in the fee structure?” **Matthews**

Comment: “Ecology should define categories of tasks that are typically required for reviewing these applications. This list of activities should be used for Ecology staff to track time spent on various activities. It is not enough to simply say the program costs more than it receives in fee revenue and therefore fees must increase. The regulated community expects that Ecology will document how staff is spending time processing these applications and this record will be readily available.” **Matthews**

Ecology’s response

It is not our intent to make the billing system cumbersome or burdensome. It is our intent to ensure that the time accounting system and associated invoicing system is administered appropriately. The Fee Implementation Team is evaluating time accounting systems and one will be in place by the effective date of the rule. The Team is currently assessing the level of detail for staff time accounting to a project and the level of detail in an invoice. Ecology acknowledges that the system will need to include notification to an applicant when the fee reaches a percentage of the hours and the invoicing intervals.

Credits or refunds

Commenters recommend that Ecology credit an account if it takes less time to process a permit.

Comment: “Since Ecology will have to track their hours to know if the defined limit has been exceeded, they will know the hours spent on a permit application. So they should also credit the client if less time than defined is spent on a permit, also at \$95 per hour. Could be done by revising the description in their Fee table as shown in red below. ‘Fee or Credit for difference in time spent on action beyond in Comparison to the allowable hours in a fee category.’” **Ryan and O’Malley**

Comment: “[I]f a project doesn’t use the full amount of staff time, will Ecology provide a refund of the initial fee?” **Hodgson**

Comment: “The department acknowledges there was little data on which to set initial fees for some categories of NSR. There should be a process for refunding any fees that exceed the cost of work required to process an application.” **Holmes**

Ecology’s response

Refunds are not available at this point. We based our fees on the information collected from our new source review time tracking project. We believe the minor new source review initial fees represent the lowest amount of time staff would spend processing an application. Based on our experience with major new source review and air toxics, we believe these fees are appropriate. With the detailed time tracking system that will accompany this fee system, Ecology will have more definitive information in the future to base fees. Ecology is committed to reviewing these fees in the next two years and revising the fees accordingly.

Small business impacts

Comment: “[T]he change from the flat fee based to the higher base fees will serve to put a greater fee burden on small businesses that can least afford this additional regulatory cost. *Mola*

Comment: “The proposed rule recognized the need for reducing fees for small businesses. That also leave a gap in funding the NSR program. WSPA does not oppose the reduction for small business but would not be in favor of an arbitrary increase in fees for other NSR applicants to fund the reduction.” *Holmes*

Comment: The rule provides for reduced fees to small business. Are funds available to make up for the reduction from small business? Will these reductions cause a loss of staff and thereby slow down NSR processing? How do you resolve the conflict between applicants paying full cost for their NSR review and providing a reduction mandated for small business? Is it assured that other applicants will not be charged, directly or indirectly, to make up for the reduced fees? *Holmes*

Ecology’s response

The language providing reduced fees for small business comes from the existing rule. Ecology acknowledges the tension between having a permit applicant pay the full cost of their permit and providing relief for a struggling small business owner. This fee system does not shift reduced fees for small business onto other permit applicants. We rely on money from the state’s general fund to make up the difference if fees do not pay for Ecology permit review. Upon reviewing the historical use of the small business exemption, we are confident that our budget can absorb the impact. Should this pattern change, we will revisit this exemption the next time we revise the fee rule.

Fee coverage

Comment: “Workload created by third party appeals should not be a fee-eligible expense charged to the applicant.” *Holmes*

Ecology’s response

This rule making does not include fees for appeals filed by the applicant or by a third party.

Comment: “How are the billable hours determined (e.g. 1-hour increments, or 0.25-hr increments)? This need further clarification.” *Hodgson*

Comment: “It is unclear who is covered by \$95 hourly rate. “Whether it’s going to be permit writers, whether it’s managers, whether it’s clerical, who is that actually going to apply to as far as billings?” *Hodgson, testimony in Spokane.*

Comment: “Ecology does not defined [sic] fee limits for public processes that are controversial. The public process should be defined in terms of certain minimum tasks (notice, one public hearing and a specific number of hours for respond to comments) and additional hourly fees should not be applicable for this activity. It appears from the proposed language and supporting documents that ‘hours spent on the application’ includes that hours [sic] needed to address the public process. This should be revised. The applicant is not in control of the time required to address public concerns. For controversial subjects, the time commitments can be endless and furthermore, some public involvement can become a proxy for issues not relevant to the approval

of the particular permit. Also public confidence in the process can be diminished if the public perceives that Ecology is influenced by fees received from the applicant.” *Matthews*

Comment: “Very simply, such activities as multiple and duplicative management reviews, as well as other scenarios could result in unacceptably open-ended fees. For this reason, NWPPA recommends that when hourly fees are triggered, the fees should only be for work directly performed by the permit engineer.” *Matthews*

Comment: “NOCAs may involve staff from two regional offices: the Industrial Section and possibly several units of the Air Program. This also includes supervisors and management from each unit. How many staff members may be charging time to a PSD applicant? Will there be some management oversight to assure consistency, effectiveness and efficiency, and to minimize processing delays?” *Holmes*

Comment: “How does Ecology account for differences in capability of staff?” *Matthews*

Comment: “There are always differences between employees experience, knowledge, ability and ideas of what is needed for an adequate NSR. The hours needed to process applications may vary by the staff involved. There is no incentive for staff to work expeditiously to process Notice of Construction Applications (NOCA) when every hour is billed to the applicants. Management needs to be involved and that adds another layer of expense.” *Holmes*

Ecology’s response

The Air Quality Program strives to ensure that we provide the most value in our permit review and maintain the highest level of customer service. As we developed the fee schedule, we looked carefully at the hourly wages for clerical, engineering, and management. As is pointed out in several of the comments, wages vary from person to person. The \$95.00 per hour fee is based on an engineer’s wage as it is engineers who have the bulk of responsibility for permit review. Clerical staff time and managerial time is generally incidental and is accounted for in the overhead expenses folded into the \$95.00 per hour rate. Only when there is significant managerial time involved in the review will there be charges for the manager’s time in addition to the engineering time.

Permits with greater complexity, such as those that include PSD review or air toxics review, will likely involve more than one engineer, modeler or toxicologist. Some permits require a hearing that may be controversial and involve outreach staff and managers; other hearings generate little public interest with minimal staff time. An applicant will be billed for the staff time spent to review and process the application whether that staff is located in our regional offices, headquarters, or in the Industrial Section.

Additional considerations

Comment: “NWPPA supports Ecology’s efforts to recoup the costs of PSD applicability determinations. It is our understanding that applicants have been able to avail themselves of significant Ecology resources on complicated matters prior to the time an application is formally submitted and a fee requirement is triggered. NWPPA supports Ecology’s efforts to recoup these costs when they become excessive. However, NWPPA urges Ecology to have some specific mechanism to assist applicants in the preliminary stages of considering a project and identifying applicable requirements that would not trigger a fee.” *Matthews*

Ecology's response

Ecology remains committed to providing outstanding public service. As such, we will continue to provide pre-application assistance. Under the new system, we provide 2 hours of free consultation on a project. We believe two hours or one meeting lasting two hours provides a reasonable mechanism to assist applicants in identifying applicable requirements in the preliminary stages of a project. As we implement this new way of conducting permitting, we will continue to evaluate its usefulness. We will adjust this boundary if experience with the new program suggests corrections are warranted.

Comment: “Ecology should consider a fee for expedited processing. NWPPA rarely advocates increases in fees, however, there may be times when an applicant needs expedited processing to meet other timeline commitments. For example, financing may be contingent on timely processing or a project may have seasonal limits as to when construction may take place. It would be helpful to have a fee mechanism for expedited permitting if requested by the applicant.” **Matthews**

Ecology's response

Ecology agrees that there may be times when an applicant needs expedited processing. Unfortunately, Ecology believes that our statutory authority does not extend to establishing this fee. Moving a request to the front of the line does not increase our direct and indirect costs; it simply moves one customer ahead in the line, at the expense of others. Whenever possible we juggle our services to accommodate those with pressing needs.

Comment: “For a facility trying to determine the specific cost of applying for a permit, the proposed rule is confusing and cumbersome. The fee schedule table which was provided in the public comment period was more helpful than the written proposal. We recommend including the table provided at the public comment sessions in the WAC 173-455 regulation and only using written description where qualification or explanations are necessary. Numerical information is much easier to read and understand when presented in tabular format. **Hodgson**

Ecology's response

We provided the fee schedule table as outreach material. We're glad that you found the information useful. We will continue to provide the information in this format and it will remain available on our website. However, we will retain the rule language at this time. We will evaluate substituting a fee table for rule language in the next rule-making action.

Comment: “My other concern is that if this does go forward, will other departments of the DOE take on this same fee scale like the water permitting and some of the other departments that we deal with on a regular basis? If they have a budget shortfall, will we automatically be paying for different permits that we have? And so, how much more money is that gonna cost us to keep the plant operating?” **Zyskowski, testimony in Spokane**

Ecology's response

Thank you for your comment.

Comments on specific rule language

Comment: “Ecology should define in the regulation what is included in: ‘Hourly rate’ and ‘Make a final determination.’” **NWPPA**

Ecology's response

We changed “make a final determination” to “issue a final decision” for consistency with WAC 173-400-111 and RCW 70.94.152(9). Ecology disagrees with the request to define hourly rate. An implementation team at Ecology is evaluating whether to develop guidance on what is included in an hourly rate.

Comment: The regulation would be much improved if terms such as “minimal engineering review” were clearly defined. Does this mean 0.5 hrs or 4 hrs? **Hodgson**

Ecology's response

We agree. We changed “minimal engineering review” to an “hour or less of engineering review.”

Comment: “Why are General Orders separated into categories, with different SEPA fee structures? This appears arbitrary.” **Hodgson**

Ecology's response

General orders are separated into two categories with different fees. Through our time tracking project, we determined that the current fee for the eight general orders was appropriate for processing an order with a completed SEPA review. These general orders represent the most common type of source permitted by Ecology's regional offices. Any additional general orders we develop will be more complicated and require significant development costs. The asphalt plant general order reflects this difference.

All new source review applications are subject to SEPA. The cost of SEPA review is included as part of our review of a permit application with an initial fee and an hourly rate. The flat fee for a general order and relocation notice covers all processing costs. Since some locations would have gone through SEPA review, we decided to break out the fee so that an application that needs SEPA review pays for the additional work.

Comment: “Nonroad engines notifications have been clarified in the April 1, 2011 WAC 173-400, but the nonroad engine fee is still listed as an hourly rate. Ecology should have a reasonable estimate of the processing time. We recommend including a flat fee for the nonroad engine notifications.” **Hodgson**

Ecology's response

To streamline notifications for nonroad engines between 500 and 2000 brakehorse power, we are revising our general order applications and notifications to include this information. There is no additional fee for this combination form. In addition, we are developing a separate notification form for nonroad engines in this range. Unfortunately, we can't establish a fee that wasn't included in the proposed rule. As a policy, we will establish a fee consistent with other flat fees in the rule for the smaller sized nonroad engines. Engines larger than 2,000 brakehorse power require a more complex review because written approval is required so the fee for this will remain at the hourly rate. However, we will develop a form for this category to simplify and expedite their review.

Comments from Ken Johnson

Comment: “WAC 173-455-120(2) – The parenthetical reference to “WAC 173-400-110” in the second line creates some confusion. The construction of this rule section certainly implies that Ecology means to reference WAC 173-400-110(2) in the parenthetical.” **Johnson**

Ecology’s response

Ecology believes the existing language is sufficient. The reference directs the reader to the new source review provisions in the rule. We agree with you that construction or modification of an emissions unit or an activity exempt under sections 110(4) Emission unit and activity exemptions or 110(5) Exemptions based on emissions does not require filing of a notice of construction application. If we have problems implementing this section due to the reference to WAC 173-400-110, we will consider revising the rule language the next time we open up the fee rule.

Comment: “For complex permitting activities it is very likely the established fee will be exhausted and the applicant will soon be paying at the \$95/staff hour rate. For example, it is easy to image a PSD permitting activity requiring more than 158 hours of Ecology staff time. As a cash savings opportunity, there should be recognition and allowance for the permittee to contribute to the work products required of Ecology in a Final Determination. A good example will be the preparation of the Technical Support Document accompanying a PSD permit. The applicant is certainly knowledgeable about their NSR project and has access to the Ecology template for preparation of a TSD, such that the initial drafting might more efficiently be completed by the applicant. This practice has been employed in the past. It is understood that Ecology would be under no obligation to accept the work product. In the Response to Comments it would be useful if Ecology would affirm this opportunity.” **Johnson**

Ecology’s response

Ecology welcomes the submittal of additional materials with any permit. Ecology agrees that we are under no obligation to accept the work product. We lowered the fee for modifying a Prevention of Significant Deterioration permit to encourage applicants to submit work products with their request. We believe that a request for a PSD permit revision that includes a draft technical support document and a draft permit is more likely to be processed for the initial fee of \$7,500. We also believe that a permit revision request without those additional documents is likely to be closer to the current fee of \$10,000. An additional advantage of submitting a draft permit is that it directs Ecology staff to the exact needs of an applicant, which is not always apparent in a permit revision application.

Comment” “WAC 173-455-120 should include a “cost-containment” section, either as a new subsection or perhaps as an addition to WAC 173-455-120(17). The policy concept and rule language could read:

‘If the reimbursable Ecology costs reach twice the fee defined in WAC 173-455-120 for the new source review category, the applicant and Ecology will evaluate opportunities to control reimbursable costs to reach a final determination on a Notice of Construction.’”

Johnson

Ecology's response

Your comment echoes thoughts and concerns raised throughout the rule development process. It is Ecology's intent to avoid "sticker shock." We never want an applicant to be surprised that the review of their project has exceeded the number of hours covered by the base application fee.

We encourage all applicants to work closely with Ecology's review staff so that the review process, timeline, and costs are clear. Ecology is developing a protocol with pre-determined intervals for checking in with applicants.

Ecology finds that it would be premature to codify this protocol/procedure at this time. Our initial approach needs to be flexible and responsive as we will be learning through experience and want the protocol/procedure to be responsive to unanticipated needs or consequences. Your suggestions and guidance are helpful and provide guidance that we can use as we prepare to rollout this new fee schedule.

Many applicants have the resources and talent to make technical contributions that can assist in the application review. Those contributions are welcome. Please work with your reviewer to determine what additional or supplemental materials would be most helpful. It is our goal to review all applications as expeditiously as possible at an affordable and equitable rate.

Comment: "Possible Duplicate Permit Fee Payment -- The Air Operating Permit regulation at WAC 173-401-500(10)(a) and (b) provides for an integrated review in which Ecology would process a Notice of Construction application and amendment of the air operating permit, in parallel. AOP sources pay an annual permit fee that includes charges for "Permit Modifications – Significant and Minor" whether a modification occurs or not.¹ Is Ecology's time tracking system robust enough to distinguish between NOC reviews and final determinations, and AOP modifications, being accomplished by the same engineer?" **Johnson**

¹ In Ecology's Air Quality Program FY 2012-2013 AOP Workload Analysis, the Industrial Section will be collecting \$97,000/biennium for these task categories.

Ecology's response

Ecology's new time tracking system will be robust enough to distinguish between NOC reviews and final determinations, and AOP modifications accomplished by the same engineer. These are separate programs with their own project tracking codes so a new source review project will be tracked as a distinct activity, as will work on a modification of an air operating permit.

Commenter Index

The table below lists the names of individuals and organizations who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s). Commenters are arranged in the order that the comments were received.

Commentor	Representing	Page #
Beth Fifield Hodgson	Spring Environmental, Inc.	9, 10, 11, 13, 14, 15, 17, 18
Robert Zyskowski	Vaagen Brothers	11, 12, 17
Roger Mola	Fiber-Tech Industries, Inc.	8, 9, 14
Terry Ryan and Marty O'Malley	Washington State University	14
Llewellyn Matthews	Northwest Pulp and Paper Association (NWPPA)	9, 10, 11, 12, 13, 14, 15, 16, 17
Frank Holmes	Western States Petroleum Associates (WSPA)	8, 9, 11, 13, 14, 15, 16
Ken Johnson	Weyerhaeuser	19, 20

Appendix A: Copies of all written comments

Ecology received three email comments, two written letters, and one email with a letter attached.

Email 1.

From: Mola, Roger [mailto:rmola@Fiber-Tech.net]
Sent: Monday, March 14, 2011 11:56 AM
To: ECY RE AQComments
Subject: Fee increases

For such substantial fee increases, the Department should provide the stakeholders with budget and historic cost information. Furthermore, the change from the flat fee based to the higher base fees will serve to put a greater fee burden on small businesses that can least afford this additional regulatory cost.

Before the Department implements something like a 46% hourly rate increase, the stakeholders should have some documentation that the Department is managing its costs, and making adjustments that reflect the decrease in business activity in the State.

Roger Mola
Director - Regulatory Affairs
Fiber-Tech Industries, Inc.
2000 Kenskill Avenue
Washington Courthouse, OH 43160
Phone: 740-335-9400
Fax: 740-335-4843

Email 2.

From: O'Malley, Marty [mailto:martyo@wsu.edu]
Sent: Tuesday, March 15, 2011 12:43 PM
To: ECY RE AQComments
Cc: Patterson, Gene; Ryan, Terry A.
Subject: FW: Ecology seeks comment on fee change for air permit work

<<Proposed NSR Fee Schedule.pdf>>

One comment: The fee schedule is a flat rate per permit activity based on Ecology not exceeding a defined number of hours, with the cost escalating at \$95 per hour for any hours required in addition to the defined limit. Since Ecology will have to track their hours to know if the defined limit has been exceeded, they will know the hours spent on a permit application. So they should also credit the client if less time than defined is spent on a permit, also at \$95 per hour. Could be done by revising the description in their Fee table as shown in red below.

* Ecology hourly rate	Fee or Credit for difference in time spent on action beyond-in Comparison to the allowable hours in a fee category	\$95 per hour	Hourly rate
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Thanks,

Terry Ryan & Marty O'Malley
Washington State University

Email 3.

From: Beth Fifield Hodgson [mailto:beth@springenvironmental.com]
Sent: Friday, April 15, 2011 5:18 PM
To: ECY RE AQComments
Cc: Alford, Crystal (ECY); Peterson, Kary (ECY)
Subject: Ecology Proposed Rulemaking - Comments on Fee Change for Air Permit Work (WAC 173-455)
Importance: High

Good afternoon Elena,
I was able to attend the April 7th public hearing in Spokane which was moderated by Crystal Alford and Kary Peterson of ERO, but my firm and our clients have some concerns with the proposed air permitting fees. I did provide public testimony and these comments are reiterated below as well additional comments based on further review of the proposed rulemaking. Please consider the following:

What measures has Ecology taken to streamline its permitting process? The Rule Proposal Notice and the preamble provide no evidence that Ecology has made efforts to consolidate the permit processing time and control the permitting costs. This fee structure change is harmful to the business community if Ecology takes this as an opportunity to saddle industry with an

inefficient and costly process, especially during a period when businesses are struggling with lay-offs, shutdowns, increased raw material fees, and higher taxes.

- We recommend that Ecology review means to streamline the permitting process. The Idaho Department of Environmental Quality provides a model with their program which is summarized at http://www.deq.idaho.gov/air/permits_forms/permitting/applicant_deq_responsibilities.pdf. IDEQ has developed an electronic system to track the permits through the steps to ensure timely processing.
- For a facility trying to determine the specific cost of applying for a permit, the proposed rule is confusing and cumbersome. The fee schedule table which was provided in the public comment period was more helpful than the written proposal.
- We recommend including the table provided at the public comment sessions in the WAC 173-455 regulation and only using written description where qualification or explanations are necessary. Numerical information is much easier to read and understand when presented in tabular format.
- The proposed rule provides no cost structure to ensure timely and reasonable permit processing. There is the potential for changes in the process for the permit by the regulator (as has happened in several cases). As a consult, my firm provides time and materials or fixed price proposals to our clients and we are accountable for any overruns although changes in scope are grounds for changing the maximum amount.
- Since Ecology is proposing to bill on an hourly rate, Spring Environmental recommends that there be a clear notification process at specific cost points, perhaps when the completeness determination is made, such that a reasonable maximum projected amount is quoted to the applicant.
- We recommend that there be some sort of accountability system within Ecology to ensure that permits are processed efficiently and timely. Perhaps a formal audit system should be outlined in WAC 173-455.
- What mechanism is available for recourse in the event of unreasonable permit processing fees? This is not addressed in the proposed fee structure regulations. If one of my clients is unhappy with the cost of our services, they contact me directly to discuss or can simply not pay our invoice.
- Spring Environmental recommends that a mechanism be available for unbiased review if any complaints are made relative to unreasonable processing time.
- When will Ecology send the final bill? This is an important issue, due to the requirement that the agency be paid in full prior to permit issuance. This could cause additional delay if, after the completion of the 30 day public comment period, only then is the bill sent to the company. The payment processing could be an extra 45-60 days. This is harmful to the business community, as it delays projects and business.

- Spring Environmental recommends that Ecology provide an estimate of the final bill to the company as soon as the permit is out for public comment.
- Nonroad engines notifications have been clarified in the April 1, 2011 WAC 173-400, but the nonroad engine fee is still listed as an hourly rate. Ecology should have a reasonable estimate of the processing time.
- We recommend including a flat fee for the nonroad engine notifications.
- The regulation would be much improved if terms such as “minimal engineering review” were clearly defined. Does this mean 0.5 hrs or 4 hrs?
- How are the billable hours determined (e.g. 1-hour increments, or 0.25-hr increments)? This needs further clarification. Also, if a project doesn’t use the full amount of staff time, will Ecology provide a refund of the initial fee?
- The proposed fees are 20 to 30% higher than other regional agency costs. What is the basis?
- Why are General Orders separated into categories, with different SEPA fee structures? This appears arbitrary.

If you have any questions on our comments, please contact me via e-mail or telephone using the contact information below. Thank you for your consideration.

Sincerely,
Beth

Beth Fifield Hodgson, P.E.
Spring Environmental, Inc.
Spokane, WA 99201
TEL: 509.328.7500 ext. 301
FAX: 509.328.7501
www.springenvironmental.com
<http://www.linkedin.com/in/bethfifieldhodgson>



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MERCER ISLAND, WASHINGTON 98040
(206) 414-7290 FAX (206) 414-7297

Via email and regular mail
AQComments@ecy.wa.gov.

Department of Ecology Air Quality Program
Elena Guilfoil
PO Box 47600
Olympia, WA 98504-7600

April 15, 2011

RE: Comments: Revision of Chapter 173-455, Air Quality Fee Rule

Dear Ms. Guilfoil;

Northwest Pulp and Paper Association (NWPPA) submits these comments for the rulemaking record pertaining to the Department of Ecology proposal to increase fees associated with permit actions under the air quality new source review rules.

Ecology is attempting to address budget shortfalls as well as features of the existing rule that leave Ecology unable to recoup costs for some activities related to permit review. Ecology is acting pursuant to two statutory authorizations. Engrossed Second Substitute Bill 1244 (2009) allows Ecology to increase new source review fees. The basic authority is RCW 70.94.152 which provides authority for Ecology to establish notice of construction and other review fees and specifies:

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures (emphasis added).

GENERAL COMMENTS

NWPPA's primary concern is that the proposal lacks an adequate strategy and methodologies for complying with the requirements for a workload driven process and tracking expenses as required by the basic authority statute cited above. Ecology can adequately document revenue and can document that the fees do not cover program costs to the extent Ecology would like. What Ecology has failed to include are provisions for cost containment and assurances that resources will be utilized efficiently. It is not enough to simply ask for increased revenue without demonstrating cost cutting and cost containment efforts. The proposal includes nothing that addresses efficient use of resources in reaching decisions on permitting.

The proposal to charge hourly fees if the time for processing a permit exceeds that which is contemplated by the basic fee is fraught with issues and could lead to unacceptably open-ended fee bills.

Virtually all of the specific comments below address this concern and recommends measures Ecology can take. There may be other ideas that work even better for Ecology. The bottom-line is this: if Ecology intends to charge a fee for services then it must demonstrate that it is efficient in delivering a quality service.

SPECIFIC COMMENTS

1. More Definition and Accountability Mechanisms are Needed

Ecology should define in the regulation what is included in:

- "Hourly rate"
- "Make a final determination"

NWPPA appreciates the effort and analysis Ecology has undertaken to support its proposal to increase fees. In examining the underlying fee statute, however, it appears that Ecology should do more in the rule itself to define the basis of the fees (work-load model) and to create a tracking mechanism that aligns with the basis of the fees.

Also Ecology should define categories of tasks that are typically required for reviewing these applications. This list of activities should be used for Ecology staff to track time spent on various activities.

It is not enough to simply say the program costs more than it receives in fee revenue and therefore fees must increase.

The regulated community expects that Ecology will document how staff is spending time in processing these applications and that this record will be readily available.

2. PSD Applicability Fees: Support After Providing Initial Consultation

- NWPPA supports the concept.

NWPPA supports Ecology's effort to re-coup the costs of PSD applicability determinations. It is our understanding that applicants have been able to avail themselves of significant Ecology resources consulting on complicated matters prior to the time an application is formally submitted and a fee requirement is triggered. NWPPA supports Ecology's efforts to recoup these costs when they become excessive. However, NWPPA urges Ecology to have some specific mechanism to assist applicants in the preliminary stages of considering a project and identifying applicable requirements that would not trigger a fee.

3. Expedited Permitting

- Ecology should consider a fee for expedited processing.

NWPPA rarely advocates increases in fees, however, there may be times when an applicant needs expedited processing to meet other timeline commitments. For example, financing may be contingent on timely processing or a project may have seasonal limits as to when construction may take place. It would be helpful to have a fee mechanism for expedited permitting if requested by the applicant.

4. There is no mechanism for controlling costs/hours spent on a given project particularly once the hourly rate is triggered.

- How does Ecology account for differences in capability of staff?
- How does Ecology account for review by Ecology managers?
- What type of stop-loss provision can Ecology provide so that the hourly rate does not trigger endless fees?
- NWPPA recommends that hourly fees be limited to hours expended by the permitting engineer.

NWPPA is concerned that Ecology is venturing in a new direction by authorizing hourly fees after the hours included in the "initial" fees are expended. Ecology does not have experience with hourly fees and should take interim steps towards implementing this concept. Specifically, Ecology should develop some type of "stop-loss" or limit that will not be exceeded without agreement from the applicant.

NWPPA is concerned that Ecology does not have procedures in place to limit common types of cost overages that could occur, as listed in the above questions. A new staffer may be less efficient and either spend too much time on a given task or incur additional hours for management supervision. By the same token, one manager may send work back multiple times for revisions while another may not. Such variables as these could easily push hours outside the number of hours anticipated for a task, and if present, should not be the basis for triggering hourly fees. In addition, this dynamic is potentially compounded for sources regulated by the Industrial Section. For example, an applicant may have a project that triggers review by both Ecology Air Programs and the Industrial Section, as well as the managers in both.

Very simply, such activities as multiple and duplicative management reviews, as well as other scenarios could result in unacceptably open-ended fees. For this reason, NWPPA recommends that when hourly fees are triggered, the fees should only be for work directly performed by the permit engineer.

5. Ecology Does Not Defined Fee Limits for Public Processes that are Controversial

- The public process should be defined in terms of certain minimum tasks (notice, one public hearing and a specific number of hours for respond to comments) and additional hourly fees should not be applicable for this activity.

It appears from the proposed language and supporting documents that “hours spent on the application” includes that hours needed to address the public process. This should be re-visited. The applicant is not in control of the time required to address public concerns.

For controversial projects, the time commitments can be endless and furthermore, some public involvement can become a proxy for issues not relevant to the approval of the particular permit. Also, public confidence in the process can be diminished if the public perceives that Ecology is influenced by fees received from the applicant.

6. Ecology has not defined any accounting mechanism

- The proposal should be more specific defining the tasks included in each fee category.
- Alternately, Ecology should define the categories of activities against which time can be charged.

Most criticism of fees charged by Ecology stem from the perception that it takes the staff too long to perform particular tasks. The more specific Ecology can be the better. In other fee programs there are examples of Ecology activities that take far longer than would be the case for a private entity performing a similar task.

Ecology estimates of costs appear to be derived from averaging overall costs. In undertaking such a large expansion of fee collecting authority, Ecology should expect that fee payors will want to examine the basis of the fees. The proposed rules should set forth clearly the categories of activities against which fees could be charged so that an applicant can follow the reasonableness of the fees.

7. The rules should include an appeal procedure

- The rules should include a mechanism to question and if appropriate, to appeal the particular fee.
- Ecology should not have the option to cease processing an application if a task is under appeal.

Currently the rules provide that Ecology will cease processing an application if a fee, or portion of a fee is not paid. If a party disputes a fee, (or fee component) there should be a mechanism to stay the fee until the matter is resolved.

Currently the rules provide that Ecology will cease processing an application if a fee, or portion of a fee is not paid. If a party disputes a fee, (or fee component) there should be a mechanism to stay the fee until the matter is resolved.

In sum, NWPPA certainly understands the budget issues caused by the current economic conditions, and supports the concept that Ecology should have the resources necessary to process permit applications. Nevertheless, NWPPA believes that portions of the proposal are too nebulous and open-ended. Ecology would do well to place these fee programs on a more specific footing so that over time, the appropriateness of the fees can be examined.

The current proposal does not do enough to provide the accountability and efficiency all of us, public and private, expect in these times of limited resources.

Thank-you for the opportunity to make these comments.

Sincerely,

A handwritten signature in cursive script that reads "Llewellyn Matthews".

Llewellyn Matthews,
Executive Director
llewellyn@nwpulppandpaper.org



Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Frank E. Holmes
Director, Northwest Region

April 15, 2011

Ms. Elena Guilfoil
Department of Ecology Air Quality Program
P. O. Box 47600
Olympia, Washington 98504-7600

RE: WAC 173-455-120, New Source Review Fees Comments

Dear Ms. Guilfoil:

Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, Washington and Hawaii.

We appreciate the opportunity to comment on the proposed amendments to WAC 173-455-120 New Source Review Fees.

WSPA is not opposed to the effort to improve the cost recovery for agency staff time required for New Source Review (NSR) in order to avoid delays in processing applications. However, a fee-for-service concept can be complex and resource-intensive, and places an obligation on the agency to provide detailed justification for the fees to each applicant.

The following comments are offered constructively to obtain a clear understanding of how the fee process will work, and to raise some issues of concern:

1. Under a fee-for-service approach, no applicant should pay more than the actual cost of processing the application and issuing or denying an order of approval. This premise leads to two concerns about the proposed rule:
 - Fees are based on an hourly rate with an initial fee that assumes a minimum number of hours will be needed. The department acknowledged there was little

975 Carpenter Road NE, Suite 106, Lacey, Washington 98516
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- data on which to set initial fees for some categories of NSR. There should be a process for refunding any fees that exceed the cost of work required to process an application.
 - The proposed rule recognizes the need for reducing fees for small businesses. That also leaves a gap in funding the NSR program. WSPA does not oppose the reduction for small business but would not be in favor of an arbitrary increase in fees for other NSR applicants to fund the reduction.
2. Workload created by third party appeals should not be a fee-eligible expense charged to the applicant.
 3. Detailed statements should be provided to the applicant when an invoice is submitted. The hours charged to each review activity should be provided with the invoice.
 4. WAC 173-400 allows Ecology up to a year to make a preliminary determination on a PSD permit after an application is complete. For lengthy application reviews, interim status or statements on fees accrued would be useful.
 5. There is no process for questioning the fees charged. An administrative review should be available.
 6. A fee for service system is more complex than the flat fees currently in use. Time accounting and invoice preparation are two of the additional activities required. What are the added costs involved and are they included in the fee structure?
 7. There are other general concerns inherent in switching to a fee-for-service concept:
 - One initial rule-making principle, stated early in the rule revision discussions, was fees be “knowable and predictable”. A flat fee meets that criteria but the proposed fee structure does not. Total fees are not known until an order of approval is issued or denied.
 - There are always differences between employees experience, knowledge, ability and ideas of what is needed for an adequate NSR. The hours needed to process applications may vary by the staff involved. There is no incentive for staff to work expeditiously to process Notice of Construction Applications (NOCA) when every hour is billed to the applicants. Management needs to be involved and that adds another layer of expense.
 - Cost recovery is defined differently in various documents. The draft cost benefit analysis refers to 2009 legislative action that directs Ecology to increase fees to meet actual costs. One of the initial principles of the rule-making was full cost

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recovery. The rule proposal notice mentions applicants paying the full cost of their permits, but another paragraph just says to make the process more financially self-sufficient.

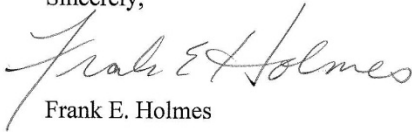
The rule provides for reduced fees to small business. Are funds available to make up for the reductions from small business? Will these reductions cause a loss of staff and thereby slow down NSR processing? How do you resolve the conflict between applicants paying full cost for their NSR review and providing a reduction mandated for small business? Is it assured that other applicants will not be charged, directly or indirectly, to make up for the reduced fees?

- NOCAs may involve staff from two regional offices: the Industrial Section and possibly several units of the Air Program. This also includes supervisors and management from each unit. How many staff members may be charging time to a PSD application? Will there be some management oversight to assure consistency, effectiveness and efficiency, and to minimize processing delays?

8. The major concern is to avoid any further delays in processing applications.

Thank you for the opportunity to comment on the proposed changes to the NSR fees.

Sincerely,



Frank E. Holmes

975 Carpenter Road NE, Suite 106, Lacey, Washington 98516
360 352-4516 • 360 352-4507 Fax

Email 4.

From: Johnson, Ken [mailto:ken.johnson@weyerhaeuser.com]
Sent: Monday, June 06, 2011 11:35 AM
To: Guilfoil, Elena (ECY)
Subject: Weyerhaeuser Comments on Proposed WAC 173-455

Elena, I see the Weyerhaeuser comments were not considered in Ecology's adoption of WAC 173-455. Here they are. They were timely submitted. What to do?

Ken Johnson
Weyerhaeuser Company
CH1 J32
P.O. Box 9777
Federal Way, WA 98063-9777
Phone 253-924-3426
ken.johnson@weyerhaeuser.com

<<CommentsonWAC173455March2011.docx>>

Environment, Health & Safety



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E-Mail: ken.johnson@weyerhaeuser.com

March 21, 2011

Elena Guilfoil
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Sent by Electronic Mail to egui461@ecy.wa.gov

Subject: Proposed Revisions to WAC 173-455 *Air Quality Fee*

Dear Ms. Guilfoil:

Provided below are Weyerhaeuser NR Company comments on this proposed rule revision.

1. WAC 173-455-120(2) – The parenthetical reference to “WAC 173-400-110” in the second line creates some confusion. The construction of this rule section certainly implies that Ecology means to reference WAC 173-400-110(2) in the parenthetical.
 - Linking the “Review of new source” with a reference to -110(2) completes the logical parallel with the subsequent parenthetical couplet; i.e., the “modification of an existing source with an emission increase” and WAC 173-400-110(3).
 - If the parenthetical “WAC 173-400-110” is left unchanged, it might create some uncertainty on whether WAC 173-400-110(4) *Emission unit and activity exemptions* and WAC 173-400-110(5) *Exemptions based on emissions*, are subject to permit fee payment. As these sections do not require the filing of a Notice of Construction nor Ecology issuance of an Approval Order, there are no reimbursable costs and should be no permit fee payment expected.
2. For complex permitting activities it is very likely the established fee will be exhausted and the applicant will soon be paying at the \$95/staff hour rate. For example, it is easy to image a PSD permitting activity requiring more than 158 hours of Ecology staff time. As a cash savings opportunity, there should be recognition and allowance for the permittee to contribute to the work products required of Ecology in a Final Determination. A good example will be the preparation of the Technical Support Document accompanying a PSD permit. The applicant is certainly knowledgeable about their NSR project and has access to the Ecology template for preparation of a TSD, such that the initial drafting might more efficiently be completed by the applicant. This practice has been employed in the past. It is understood that Ecology would be under no obligation to accept the work product. In the Response to Comments it would be useful if Ecology would affirm this opportunity.
3. WAC 173-455-120 should include a “cost-containment” section, either as a new subsection or perhaps as an addition to WAC 173-455-120(17). The policy concept and rule language could read:

“If the reimbursable Ecology costs reach twice the fee defined in WAC 173-455-120 for the new source review category, the applicant and Ecology will evaluate opportunities to control reimbursable costs to reach a final determination on a Notice of Construction.”

Complex permitting projects could easily exceed the Ecology staff hours/fee assigned for permit types listed in the regulation such that the \$95/staff hour is triggered. If the reimbursable cost reaches twice the listed permit fee, there should be an obligation to mutually examine cost control measures and to agree to implement them if reasonable. The Department of Ecology employs talented and experienced air permitting engineers and administrators. That said, the somewhat open-ended cost-recovery process should not allow a perception of

rewarding inefficiency or reimbursing less-essential Ecology staff to work on a permitting project.

While an applicant and Ecology staff would normally have routine conversations during the course of NOC review, creating a “check-in” point tied to escalating staff time investment/fee reimbursement will be valuable for both parties. Discussion outcomes might include:

- Definition of “in-process” permitting issues, and an examination on whether the applicant might contribute something more to assist Ecology and thus reduce agency NOC processing staff time,
 - Clarification on Ecology staff involvement, roles and responsibilities -- evaluating “needs” vs. “wants,”
 - Possible agreement on a flat fee to complete all remaining work to achieve a final determination.
4. Possible Duplicate Permit Fee Payment -- The Air Operating Permit regulation at WAC 173-401-500(10)(a) and (b) provides for an integrated review in which Ecology would process a Notice of Construction application and amendment of the air operating permit, in parallel. AOP sources pay an annual permit fee that includes charges for “Permit Modifications – Significant and Minor” whether a modification occurs or not.¹ Is Ecology’s time tracking system robust enough to distinguish between NOC reviews and final determinations, and AOP modifications, being accomplished by the same engineer?

Thank you for considering these suggestions.

Sincerely,

s/KEN JOHNSON

Ken Johnson
Corporate Environmental Manager

¹ In Ecology’s Air Quality Program FY 2012-2013 AOP Workload Analysis, the Industrial Section will be collecting \$97,000/biennium for these task categories.

Appendix B: Transcripts from public hearings.

Ecology held three public hearings in the following locations:

- April 5, 2011 in Lacey
- April 6, 2011 in Ellensburg
- April 7, 2011 in Spokane.

One member of the public attended the Lacey hearing and did not testify. Two members of the public attended the Ellensburg hearing and neither gave testimony. Two members of the public attended the Spokane hearing and both gave testimony.

April 5, 2011 Air Quality Fee Rule Hearing in Lacey, Washington

Department of Ecology
300 Desmond Drive
Angela Fritz, Ecology Hearings Officer
Transcribed by Ecology's Air Quality Program

Angela Fritz: I'm Angela Fritz, Hearings Officer, for this hearing. This evening we are conducting a hearing on the proposed amendment/rule proposal for Chapter 173-455 Washington Administrative Code Air Quality Fee Regulation.

Let the record show it is 7:34pm on April 5th, 2011, and this hearing is being held at the Department of Ecology Headquarters and Southwest Region Office, 300 Desmond Drive, in Lacey.

Legal notices of this hearing were published in the Washington State Register, March 16th, 2011, Washington State Register, Number 11-06-057. In addition, notices of the hearing were mailed to about 500 interested people. E-mail notices were sent to about 2400 interested people. And a news release was issued on March 14th, 2011. Notice was also published in the following papers on March 16, 2011: *The Daily Journal of Commerce* Seattle, the *Wenatchee World*, the *Spokesman Review* in Spokane, and the *Daily Record* in Ellensburg on March 17th, 2011.

Let the record show 1 person attended this hearing. No one wanted to provide testimony.

Let the record show this hearing adjourned at 7:36 pm.

[End of Audio]

April 6, 2011 Air Quality Fee Rule Hearing in Ellensburg, Washington

Hal Holmes Center
209 N Ruby Street
Anne Knapp, Office of Regulatory Assistance Hearings Officer
Transcribed by www.verbalink.com. Um's were not included in this transcription.

Anne Knapp: Okay, now we will begin the formal hearing section of the meeting which we record for the public record. At this time I will also read some information that is required for the record. I'm Anne Knapp, Hearing Officer for this hearing. This evening we are to conduct a hearing on proposed amendments rule proposal for Chapter 173-455 Washington Administrative Code Air Quality Fee Regulation. Let the record show it's 7:40 pm on April 6, 2011. This hearing is being held at the Hal Holmes Center, 209 North Ruby Street, Ellensburg.

Legal notices of this hearing were published in the Washington State Register on March 16, 2011 with Washington State Register Number 11-06-057. In addition, notices of the hearing were mailed to about 500 interested people. E-mail notices were sent to about 2,400 interested people. A news release was issued on March 14, 2011. Notice was also published in the following papers this year as follows: *Daily Journal of Commerce*, March 16; *Spokesman Review*, March 16; *Wenatchee World*, March 16; *Kittitas Valley News*, March 16; and *Ellensburg Daily Record*, March 17.

I will call people up to provide oral testimony based on the order I received your sign in cards. Once everyone who has indicated that they would like to testify and has had the opportunity, I will open it up for others. There's no limit to your comments tonight. And we will begin with—did you both want to speak?

Female: No, neither one of us wants to speak.

Anne Knapp: Oh, neither one of you wants to speak?

Female: Oh, is that shirking?

Anne Knapp: Well, let the record show that we have two people attending this public hearing, but no one wants to provide oral testimony and I will just clarify again, if you had some comment or suggestions for ecology, you could provide those now as well or we can ask for follow up through your informal conversations.

Okay, and if anyone would like to submit written comments, please remember they are due by April 15, 2011, to Elena Guilfoil, Department of Ecology, Air Quality Program, Post Office Box 47600, Olympia, Washington, 98504-7600 or via e-mail aqcomments@ecy.wa.gov or you can call (360) 407-7534.

So in closing, all testimony received at this hearing as well as other hearings held in Lacey Ellensburg, along with all written comments received by April 15 will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement publication to everyone that provide written comments or oral testimony on the rule proposal, everyone that signed in for today's hearing providing an e-mail address, and other interested parties on the agency's mailing list for this rule.

The Concise Explanatory Statement will, among other things, contain the agency's response to questions and issues of concern that were raised during the

public comment period. If you would like to receive a copy but did not fill out the card or sign in, please do so after the hearing.

The next steps. The next step is adoption. Ecology Director, Ted Sturdevant, will look at the public comments, the Concise Explanatory Statement, other rule documentation, and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for May 23, 2011. On whatever day the proposed rule is adopted and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further help, please do not hesitate to ask me or contact Elena Guilfoil if you have other questions. On behalf of the Department of Ecology, thank you very much for coming. I appreciate your cooperation and courtesy. Let the record show this hearing is adjourned at 7:45.

[End of Audio]

April 7, 2011 Air Quality Fee Rule Hearing in Spokane, Washington

Department of Ecology Eastern Regional Office
4601 N. Monroe Street

Kary Peterson, Ecology Hearings Officer

Transcribed by www.verbalink.com. Um's were not included in this transcription.

Kary Peterson: I'm Kary Peterson, Hearings Officer, for this hearing. This evening, we're gonna conduct a hearing on the proposed amendment/rule proposal for Chapter 173-455 Washington Administrative Code Air Quality Fee Regulation.

Let the record show it's 7:47 on April 7th, 2011, and this hearing is being held at the Department of Ecology, Eastern Regional Office, 4601 North Monroe Street in Spokane.

Legal notices of this hearing were published in the Washington State Register, March 16th, 2011, Washington State Register, No. 11-06-057. In addition, notices of the hearing were mailed to about 500 interested people. E-mail notices were sent to about 2400 interested people. And a news release was issued on March 14th, 2011. Notice was also published in the following papers: *The Daily Journal of Commerce*, *Spokesman Review*, *Wenatchee World*, all three March 16th, 2011, *The Ellensburg Daily Record* on March 17th, 2011.

I will call people up to provide oral testimony based on the order I received your sign-in cards. Once everyone who has indicated that they'd like to testify has the opportunity, I'll open it up for others.

When I call your name, please step up to the front, state your name and address for the record. Speak clearly, so that we can get a good recording of your testimony.

We will begin with Beth Hodgson.

Beth Hodgson:

Beth Hodgson with Spring Environmental, my address is 1011 North Cedar Street, Spokane 99201.

And a couple of concerns I have relative to the language in the rule, one is that the \$95.00 per hour time that's identified on there doesn't indicate who it includes. Whether it's going to be permit writers, whether it's managers, whether it's clerical, who is that actually going to apply to as far as billings?

Another concern is the accountability for this whole process. I'm a consultant, so I end up tracking time for projects and I have responsibilities to my clients to ensure that a project is completed in a timely manner and what I estimated, but there doesn't seem to be any accountability in this rule as far as how long a permit writer would take. The numbers in here are based on minimum hours, which I'm sure that many businesses are going to appreciate that and 95 percent of the time that's gonna be wonderful. 99 percent of the time that's gonna be wonderful as far as working through it. The question is that 1 percent or 5 percent of the time when a permit processing time seems unreasonable.

The next concern I have is I don't see anything in this information to indicate that Ecology has attempted to streamline the amount of time it takes them to process permits. I do know that there have been a couple of general orders out there, but I don't see anything in the preface for this or discussions on this on Ecology actually trying to streamline staff time in processing orders.

A couple of comments as far as methods to help improve the communication, one would be for the permit writer to provide some type of estimate within the 30-day completeness determination period on how much time they anticipate the project would take to complete. That would provide a means for the applicant to know that instead of being a \$1,500.00 invoice, it's going to be somewhere between, you know, \$2,000.00 and \$2,500.00, something that they can reasonably work with for budgeting purposes, rather than getting a bill for \$10,000.00 for something that would have been \$1,500.00.

And the other one is what happens if the applicant is unsatisfied with the way the permit is being processed? Currently, there's not much recourse for alternative processing, but this has essentially set up a time and materials basis for the permit writers, but not any way for the applicants to actually have any control over that.

So, those are my concerns. Thank you.

Kary Peterson:

Thank you. Next up will be, and I apologize Robert for butchering your last name, Robert Zyskowski .

Robert Zyskowski : My name is Robert Zyskowski . Address is 565 West Fifth Street in Colville, Washington 99114. I work for Vaagen Brothers.

I guess, my first concern is, as far as our industry and where were headed and the rules that are being delegated to us and how, as far as the hardship goes, for some of the projects as we have coming up a new kiln, two new kilns that we'd like to put in, which would create jobs for our small community, probably, anywhere between 30 to 40 jobs, and the problem is is that the funds that would be available in these new rules as far as the permits.

One of the things that I'd like to see is that we would have some type of estimate, so that in our budgeting process that that would be – we could look at that and determine – and then have some kind of flag at a point where it's gonna be over that, so that we could be talked to and then redo the budget to make it work.

The other concern I have is in this process, it looks like that we are the employers of the people that are going to be working on these permits. And, again, it doesn't seem like we have any recourse if, well, we don't think that the time has been too long or hasn't been processed quickly. With an estimated amount of time and money that it would take a specific job, then, at least, we would have a way to gauge where we're at in that certain process.

My other concern is that if this does go forward, will other departments of the DOE take on this same fee scale like the water permitting and some of the other departments that we deal with on a regular basis? If they have a budget shortfall, will we automatically be paying for different permits that we have? And so, how much more money is that gonna cost us to keep the plant operating?

That's pretty much all I have.

Kary Peterson: Thank you.

Robert Zyskowski: Okay.

Kary Peterson: We have no more testimonies, but, once again, that you can still submit written comments. And if you'd like to send Ecology written comments, please remember they are due by April 15th, 2011. Send them to Elena Guilfoil, Department of Ecology, Air Quality Program, Post Office Box 47600, Olympia, Washington 98504-7600 or you can e-mail at airqualitycomments@ecy.wa.gov. You can also call her at (360) 407-7534.

All testimony received at this hearing as well as at the hearings held in Lacey and Ellensburg along with all written comments received by April 15th will be part of the official hearing record for this proposal.

Ecology will send notice about the Concise Explanatory Statements publication to everyone that provided written comments or oral testimony on this rule proposal, everyone that signed in for today's hearing providing an e-mail address, other interested parties on the agency's mailing list for this rule.

The Concise Explanatory Statement will, among other things, contain the agency's response to questions and issues of concerns that were raised during the public comment period.

If you would like to receive a copy, but did not fill out a card or sign-in, please see me after the hearing.

The next steps. The next step is adoption. Ecology director Ted Sturdevant will look at the public comments, the CES, other rule documentation and staff recommendations and will make a decision about adopting the proposal.

Adoption is currently scheduled for May 23rd, 2011. On whatever day the proposed rule is adopted and filed with the code reviser, it will go into effect 31 days later.

If we can be of further help to you, please do not hesitate to ask or you can contact Elena Guilfoil if you have other questions.

On behalf of the Department of Ecology, thank you for coming. I appreciate your cooperation and courtesy.

And let the record show that this hearing is adjourned at 7:57 PM.

[End of Audio]