



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-400 WAC

General Regulations for Air Pollution

Sources

Chapter 173-401 WAC

Operating Permit Regulation

Summary of rule making and response to comments

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**Chapter 173-400 WAC
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Air Quality Program
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Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

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

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

Title: General Regulations for Air Pollution Sources
Chapter 173-400 WAC

Title: Operating Permit Regulation
Chapter 173-401 WAC

Adopted date: August 10, 2011

Effective date: September 10, 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

Washington Clean Air Act, Chapter 70.94 RCW

The state legislature enacted Washington's first Clean Air Act in 1957. The Act has been periodically amended since that time. The most significant amendments that affect the activities covered by this rule occurred in 1965, 1971, and 1991.

The Act directs Ecology to establish rules to implement the state clean air act programs and requirements. In addition to the state Clean Air Act's requirements, the federal Clean Air Act and regulations require Ecology to have in place specific programs and requirements to protect air quality. These rule revisions specifically fulfill federal requirements.

Reason for this rule proposal

Chapter 173-400 WAC and Chapter 173-401 WAC implement the federal greenhouse gas (GHG) rules. Ecology amended them to assure consistency between the state and federal regulations.

Ecology is taking this action to comply with regulatory action the Environmental Protection Agency took on July 20, 2011. This action defers for a period of three years the application of the Prevention of Significant Deterioration (PSD) and Title V permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources. Stationary sources that combust biomass (or otherwise emit biogenic CO₂ emissions) and construct or modify

during the deferral period will avoid the application of PSD to the biogenic CO₂ emissions resulting from those actions. This deferral applies only to biogenic CO₂ emissions and does not affect non-greenhouse gas pollutants or other greenhouse gases. This deferral does not pertain to the greenhouse gas reporting program.

This rule making amends the rules that help the state's business and industry meet our statewide green energy goals. It aligns federal and state regulatory requirements and provides clarity and consistency for the regulated community.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(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 some differences between the proposed rule filed on June 22, 2011 and the adopted rule filed on August 10, 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 describes the changes and Ecology's reasons for making them.

Ecology updated Chapter 173-400 WAC and Chapter 173-401 WAC to ensure consistency with the federal regulations. EPA revised the regulatory language between the January 2011 proposal and the final regulation issued in July 2011. Ecology's final edits to the rule incorporate these changes. EPA's final language was published as a final rule in 40 CFR Part 51, 52, 70, and 71 of the Federal Register, Volume 76, Number 139 on July 20, 2011.

The differences between the proposed rule and the final rule are shown here, formatted with underline and strikethrough to indicate new and ~~deleted~~ language.

WAC 173-400-720 (40 (a)(iv)

The following subparts of 40 CFR 52.21, in effect on ~~July 1~~ July 20, 2011, are adopted by reference.

WAC 173-401-200 (35)(b)

For purposes of this subsection (b), prior to ~~July 1~~ July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, byproducts, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

Response to Comments

No comments were submitted for this rule making during the comment period.

Ecology accepted comments between June 22, 2011 and August 2, 2011.

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Appendix A: Transcripts from public hearings.

Lacey, Washington –June 23, 2011

Good evening. I'm Dave Zink. I'm the hearings officer for this hearing. This afternoon we were to conduct a hearing on proposed amendments, a rule proposal for Chapter 173-400 Washington Administrative Code, General regulations for air pollution sources and Chapter 173-401 for the, operating permit regulation.

Let the record show that it is now 6:23 P.M. on July 26, 2011. Let the record show that this hearing is being held at the Ecology building headquarters, auditorium, in Lacey. Legal notices of this hearing were published in the Washington State Register on June 22, 2011, and in the Washington State Register 11-13-127. In addition, email notices of the hearing were sent to 100 interested people and notice was also published in the Daily Journal of Commerce on June 24, 2011.

Since no one attended this meeting, let the record show that Ecology held a hearing on this rule proposal and no one attended the public hearing.

Let the record show that this hearing is adjourned at 6:25 on July 26, 2011.