



DEPARTMENT OF
ECOLOGY
State of Washington

Small Business Economic Impact Statement

*Chapter 173-401 WAC
Operating Permit Regulation*

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For more information contact:

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

Phone: 360-407-6800

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

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

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Small Business Economic Impact Statement

Chapter 173-401 WAC Operating Permit Regulation

Prepared by

Kasia Patora

for the

Air Quality Program
Washington State Department of Ecology
Olympia, Washington

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Table of Contents

Executive Summary iii

Section 1: Background, Baseline, and Proposed Rule 1

 1.1 Introduction 1

 1.2 Proposed rule amendments..... 2

 1.3 Reasons for the proposed rule amendments 2

 1.4 Baseline 3

Section 2: Analysis of Compliance Costs 4

Section 3: Quantification of Cost Ratios..... 4

Section 4: Actions taken to reduce impact of the rule on small businesses 4

**Section 5: The Involvement of Small Businesses and Local Government in the
Development of the Proposed Rule 5**

Section 6: The SIC Codes of Impacted Industries 7

Section 7: Impact on Jobs..... 7

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Executive Summary

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined that the proposed Air Quality rule, Operating Permit Regulation (Chapter 173-401 WAC) does not have a disproportionate impact on small business. This is because the rule only impacts large businesses. (A small business is defined by the RFA as having 50 or fewer employees.) Ecology did not, therefore, include language in the proposed rule to minimize disproportionate impacts.

The Small Business Economic Impact Statement is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #15-02-012), which contains more in-depth discussion of the analysis.

The proposed rule amendments would:

- Update language for the complexity portion of Ecology’s AOP fees to allow for fairer fee distribution to Ecology AOP sources and establish a public process for setting the distribution of fee burden. .
- Revise non-statutory audit provisions.
- Clarify applicability requirements to allow non-major sources with Air Operating permits to have permit requirements only for the subset of their units that made them subject to the permit.
- Clarify rule provisions, update language to be consistent with state and federal rules, and correct errors.

Ecology involved small businesses (or their representatives) and local governments and agencies in the development of this rule. Local clean air agencies were actively involved in informing this rulemaking.

We do not expect significant impacts to jobs statewide, because losses due to fee increases in (or within) one industry would be largely counterbalanced by gains due to fee reductions elsewhere, because fees would be redistributed using a public process under the proposed rule.

Section 1: Background, Baseline, and Proposed Rule

1.1 Introduction

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined that the proposed Air Quality rule, Operating Permit Regulation (Chapter 173-401 WAC) does not have a disproportionate impact on small business. This is because the rule only impacts large businesses. (A small business is defined by the RFA as having 50 or fewer employees.) Ecology did not, therefore, include language in the proposed rule to minimize disproportionate impacts.

The Small Business Economic Impact Statement is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #15-02-012), which contains more in-depth discussion of the analysis.

Title V of the federal Clean Air Act requires states to develop and implement an air operating permit program in accordance with 40 CFR Part 70 for businesses and industries that are the largest sources of air pollution. These operating permits are often referred to as Air Operating Permits (AOPs), Title V Permits, or Part 70 Permits. An AOP combines into one document requirements for operations, procedures, applicable regulations, emissions standards, monitoring, recordkeeping, and reporting applicable to a given source. The purpose of the air operating permit is to make it easier to comply with and enforce air pollution laws. Ecology, the Energy Facility Site Evaluation Council (EFSEC), and the seven local clean air agencies have received EPA approval to administer Washington’s air operating permit program.

Washington’s (Air) Operating Permit Regulation is chapter 173-401 WAC. The regulation requires a facility to have an air operating permit if it has the potential to emit any of the following:

- More than 100 tons per year of any criteria pollutant, such as nitrogen oxides (NO_x), volatile organic compounds (VOCs), carbon monoxide (CO), sulfur dioxide (SO₂), particulate matter smaller than 10 microns in diameter (PM₁₀), particulate matter smaller than 2.5 microns in diameter (PM_{2.5}), lead, and any ozone depleting substance.. Lower thresholds may apply in nonattainment areas;
- More than 10 tons per year of any hazardous air pollutant (HAP), as listed in subsection 112(b) of the federal Clean Air Act; or
- More than 25 tons per year of a combination of any HAPs.

A facility may also be required to have an air operating permit if it is subject to certain federal air quality requirements, including:

- Title IV Acid Rain Program;
- Certain New Source Performance Standards (NSPS); or
- Certain National Emission Standard for Hazardous Air Pollutants (NESHAP).

1.2 Proposed rule amendments

The Operating Permit Regulation rule governs the Operating Permit program administered by Ecology and delegated to local clean air agencies:

The proposed rule amendments would:

- Update language for the complexity portion of Ecology's AOP fees to allow for fairer fee distribution to Ecology AOP sources and establish a public process for setting the distribution of fee burden. .
- Revise non-statutory audit provisions.
- Clarify applicability requirements to allow non-major sources with Air Operating permits to have permit requirements only for the subset of their units that made them subject to the permit.
- Clarify rule provisions, update language to be consistent with state and federal rules, and correct errors.

1.3 Reasons for the proposed rule amendments

The overall reasons for the proposed rule amendments include:

- Fees – Sources are required under state and federal law to pay fees that cover the full cost of the AOP program. The proposed rule amendments:
 - Update language for the complexity portion of Ecology's AOP fee.
 - Allow flexibility for Ecology to develop fairer fee distribution associated with Ecology's work load for Ecology AOP sources.
 - Establish annual public process for setting the distribution of fee burden.
- Audits – Audits of permitting agencies are required by state law. The proposed rule amendments:
 - Update fiscal and performance audit requirements to better align with needs of a mature program.
 - Reduce the frequency of performance audits to match the needs of a mature program. This also reduces unnecessary program costs.
 - Remove audit questions from the rule and redesign the focus of audits. This provides more meaningful feedback to each permitting agency and its regulated communities.

- Applicability – Determines which sources must comply with AOP requirements. The proposed rule amendments:
 - Update applicability to align with the federal operating permit rule.
- Form and function – The proposed rule amendments update the rule language to align with federal rules, lessen confusion, increase usability of the rule in a modern context, and correct errors.

1.4 Baseline

The baseline for our analyses generally consists of existing rules and laws, and their requirements. For economic analyses, the baseline also includes the implementation of those regulations, including any guidelines and policies that result in behavior changes and real impacts. This is what allows us to make a consistent comparison between the state of the world with or without the proposed rule amendments.

For this rulemaking, the baseline includes:

- Federal rule:

Title V of the federal Clean Air Act requires states to develop and implement an air operating permit program in accordance with 40 CFR Part 70 for facilities that are the largest sources of air pollution. These operating permits are often referred to as Air Operating Permits (AOPs), Title V Permits, or Part 70 Permits. They combine into one document requirements for operations, procedures, applicable regulations, emissions standards, monitoring, recordkeeping, and reporting. The purpose of the air operating permit is to make it easier to comply with and enforce air pollution laws.
- State law:

The state Clean Air Act is chapter 70.94 RCW, which directly authorizes Ecology to adopt rules on this subject.
- Existing state rule:

Washington’s (Air) Operating Permit Regulation is in Chapter 173-401 Washington Administrative Code (WAC). The regulation requires a facility to have an air operating permit if it has the potential to emit any of the following:

 - More than 100 tons per year of any pollutant, such as nitrogen oxides (NO_x), volatile organic compounds (VOCs), carbon monoxide (CO), sulfur dioxide (SO₂), particulate and particulate matter (PM). Lower thresholds may apply in nonattainment areas;
 - More than 10 tons per year of any hazardous air pollutant (HAP), as listed in subsection 112(b) of the federal Clean Air Act; or
 - More than 25 tons per year of a combination of any HAPs.

Section 2: Analysis of Compliance Costs

Total compliance costs imposed by the proposed rule do not change or have a possibility of cost-savings under the proposed rule (see associated Cost-Benefit Analysis for this rulemaking). The proposed rule, however, establishes a process for Ecology to develop a complexity fee allocation based on workload used to manage each of Ecology's AOPs. For this analysis, we consider the additional compliance costs of increases in fees that might arise from such a program.

While the proposed rule does not change the total amount charged to support the Ecology-managed portion of the AOP program (it is legislatively determined), it does create a public process to develop a complexity fee distribution based on actual Ecology workload required to manage each of Ecology's AOPs.

The calculation method would be determined by the public process established in the proposed rule. Ecology did not identify any compliance costs arising directly from the proposed rule.

Section 3: Quantification of Cost Ratios

Using the most recent list of permittees in the AOP program with permits managed by Ecology, we determined the companies with controlling interest in all cases employed more than 50 employees.¹ The business sizes ranged from 50-99 employees employed in-state by interstate or international businesses, to 59 thousand employed worldwide. We therefore determined that the proposed rule does not impact small businesses, and that it was not possible to compare impacts per employee on small versus the largest ten percent of businesses, as directed by the RFA.

Section 4: Actions taken to reduce impact of the rule on small businesses

Ecology did not take any action to reduce the impact of the proposed rule on small businesses because the proposed rule does not have a disproportionate impact on small businesses.

¹ Washington Employment Security Department, Workforce Explorer database. Company websites and annual reports.

Section 5: The Involvement of Small Businesses and Local Government in the Development of the Proposed Rule

Ecology involved small businesses (or their representatives) and local governments and agencies in the development of this rule. Local clean air agencies were actively involved in informing this rulemaking. Rule development was also aided by three committees:

- Fee Allocation Advisory Committee
 - Members included:
 - Dennis Bowser, Department of Energy
 - Anya Caudill, Ecology
 - David Moore, Boeing
 - Doug Krapas, Inland Empire Paper Company (IEPCO)
 - Phil Gent, Ecology
 - Richard Hibbard, Ecology
 - Dale Jackson, Department of Energy
 - Jeff Johnston, Ecology
 - Ken Johnson, Weyerhaeuser
 - Mike Ennis, Association Washington Businesses
 - Pete Hildebrandt
 - Nancy Pritchett, Ecology
 - Crystal Rau, Ecology
 - Reed Kaldor, Fluor Hanford, Inc
 - Garin Schrieve, Ecology
 - Margo Thompson, Ecology
- Audit Provisions Advisory Committee
 - Members included:
 - Agata McIntyre, Northwest Clean Air Agency
 - April Westby, Spokane Clean Air Agency
 - Anya Caudill, Ecology
 - Crystal Rau, Ecology
 - David Moore, Boeing
 - Doug Krapas, IEPCO
 - Garin Schrieve, Ecology
 - Philip Gent, Ecology
 - Lynnette Haller, Ecology
 - Hasan Tahat, Yakima Regional Clean Air Agency
 - Richard Hibbard, Ecology

- Jeff Johnston, Ecology
 - Mark Buford, Northwest Clean Air Agency
 - Mark Goodin, Olympic Regional Clean Air Agency
 - Mike Ennis, Association of Washington Businesses
 - Paul Mairose, Southwest Clean Air Agency
 - Pete Hildebrandt
 - Nancy Pritchett, Ecology
 - Robin Priddy, Benton Clean Air Agency
 - Steve VanSlyke, Puget Sound Clean Air Agency
 - Margo Thompson, Ecology
 - Wess Safford, Southwest Clean Air Agency
- Applicability Advisory Committee
 - Members included:
 - Anya Caudill, Ecology
 - David W. Moore, Boeing
 - Doug Krapas, IEPCO
 - John C. Ewell, III, City of Lynnwood
 - Rebecca Fox, City of Anacortes
 - Dick Frank, City of Vancouver
 - William Franz, City of Anacortes
 - John St. Clair, Southwest Clean Air Agency
 - Jeff Johnston, Ecology
 - Larry Bateman, City of Bellingham
 - Mark Buford, Northwest Clean Air Agency
 - Mark Goodin, Olympic Regional Clean Air Agency
 - Agata McIntyre, Northwest Clean Air Agency
 - Stephen Nelson, Coal Creak Environmental
 - Peg Wending, City of Bellingham
 - Nancy Pritchett, Ecology
 - Margo Thompson, Ecology
 - Rich Hibbard, Ecology
 - Pamela Randolph, City of Edmonds
 - Steve VanSlyke, Puget Sound Clean Air Agency
 - Uri Papish, Southwest Clean Air Agency

Section 6: The SIC Codes of Impacted Industries

The SIC (Standard Industry Classification) system has long been replaced by the North American Industry Classification System (NAICS). Based on the list of existing permittees, the following NAICS codes may be affected by the proposed rule, based on existing permittees in the AOP program managed by Ecology:²

2122	Metal Ore Mining	3313	Alumina and Aluminum Production
2211	Power Generation and Supply	4235	Metal and Mineral Merchant Wholesalers
3211	Sawmills and Wood Preservation	4238	Machinery & Supply Merchant Wholesalers
3219	Other wood product manufacturing	4441	Building Material and Supplies Dealers
3219	Other wood product mfg	4862	Pipeline Transportation of Natural Gas
3221	Pulp, Paper, and Paperboard Mills	5416	Management & Technical Consulting Svc
3222	Converted Paper Product Manufacturing	5622	Waste Treatment and Disposal

Section 7: Impact on Jobs

We used the Washington State Office of Financial Management's Washington Input-Output Model (OFM-IO) to assess the proposed rule's impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment.³

Since the proposed rule does not stipulate a specific complexity fee distribution method or calculation, but rather establishes a public process to develop a new fee distribution based on workload used to manage each permit, we examined the scope of how fee increases and decreases affect jobs in the OFM-IO model.

If we account for the implicit transfers of burden from those businesses for which fees decrease to those for which fees increase, the statewide impact nets out to approximately no change in jobs. It is important to note that some industries are more labor-intensive than others (and also pay different wages than others), and a reduction in their fees might result in a slightly greater increase in employment than would be necessary to balance out the job-reduction resulting from an increase in fees to a less labor-intensive industry.

Since the proposed rule does not, however, create a specific new fee distribution calculation, we could not estimate the relative increases and decreases in fees across industries, and consequently could not quantify this jobs impact. Qualitatively, due to transfers of fee burden, it is likely to be near zero.

² Washington Employment Security Department, Workforce Explorer database.

³ For more information, see <http://www.ofm.wa.gov/economy/io/2007/default.asp>