



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Concise Explanatory Statement**

**Chapter 173-401 WAC**

**Operating Permit Regulation**

---

*Summary of rulemaking and response to comments*

February 2016  
Publication no. 16-02-003

## Publication and Contact Information

This publication is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1602003.html>

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](http://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

Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

To request ADA accommodation, call (360) 407-6800, 711 (relay service), or 877-833-6341 (TTY).

# **Concise Explanatory Statement**

---

## **Chapter 173-401 WAC Operating Permit Regulation**

Air Quality Program  
Washington State Department of Ecology  
Olympia, Washington 98504-7600

*This page is purposely left blank.*

# Table of Contents

Introduction.....	1
Reasons for Adopting the Rule.....	1
Differences Between the Proposed Rule and Adopted Rule .....	3
Commenter Index.....	4
Response to Comments.....	4
Appendices.....	15

*This page is purposely left blank.*

# 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: Operating Permit Regulation  
WAC Chapter(s): 173-401  
Adopted date: February 3, 2016  
Effective date: March 5, 2016

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

## Reasons for Adopting the Rule

This rulemaking amends Chapter 173-401 WAC Operating Permit Regulation. The amendments:

- Update language for the complexity portion of Ecology's air operating permit (AOP) fees to allow for fair fee distribution to Ecology AOP sources.
- Revise audit provisions.
- Clarify applicability requirements.
- Clarify rule provisions, update language to be consistent with state and federal rules, and correct errors.

Reasons supporting the amendments include:

1. Fees – Air Operating Permit (AOP) sources are required under state and federal law to pay fees that cover the full cost of the AOP program. The amendments:
  - 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. Under that process, some fees for Ecology AOP sources will increase and others may decrease.

2. Audits – Fiscal and performance audits of AOP permitting agencies are required by state law. The 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. Reducing the performance audit frequency also lowers program costs.
  - Remove audit questions from the rule and redesign the performance audit focus. Redesigning the performance audit provisions provides more meaningful feedback to each permitting agency and their regulated communities.
3. Applicability – The applicability section of the rule determines which sources must comply with AOP requirements. The amendments:
  - Update applicability for nonmajor AOP sources to align with the federal operating permit rule.
4. Rule Language – The amendments:
  - Update language to align with federal rules.
  - Lessen confusion and increase usability of the rule.
  - Correct errors.



# 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 August 4, 2015 and the adopted rule filed on February 3, 2016. 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:

<b>Section</b>	<b>Change(s)</b>	<b>Purpose/Effect</b>
200(35)	Changed July 1, 2011 to January 2, 2011.	Changed to align with date EPA required permitting agencies to include greenhouse gas emissions. July 1 no longer valid due to US Supreme Court decision invalidating part of the EPA rule that required AOPs for otherwise minor sources with 100,000 tpy CO <sub>2</sub> e emissions.
510(1)	Deleted proposed text “and unregulated emission units at nonmajor sources as described in”.  Added text “or units not regulated under”.	Ecology received comment that “unregulated emission units” is not a defined term. Text has been corrected for clarity of the intent.

# Commenter Index

Below is a list of names of organizations or individuals who submitted comments on the rule proposal and where you can find Ecology's response to the comment(s). Ecology's response immediately follows each individual comment.

Commenter	Page
Amundson, Mark, Northwest Clean Air Agency	3
Brewer, Gretchen, PT AirWatchers	4
Faust, Eric, Department of Energy	10
Johnson, Ken, Weyerhaeuser	11
Kenworthy, Craig, Puget Sound Clean Air Agency	12
Martin, Patricia, Quincy, Washington	12
Papish, Uri, Southwest Clean Air Agency	12
VanNatta, Katheryn, Northwest Pulp & Paper Association	13

## Response to Comments

Ecology accepted comments between August 4, 2015 and September 18, 2015. This section provides verbatim or by summary the comments that we received during this period and our responses. (RCW 34.05.325(6)(a)(iii))

This Concise Explanatory Statement responds to the identified comments in a comment-and-response format. Ecology's response follows each comment or summary of comments.

**The following are summaries of comments received from Mark Amundson, Director, Northwest Clean Air Agency (NWCAA):**

**NWCAA Comment:** The commenter supports amendments to Chapter 173-401 WAC.

In particular, NWCAA is fully supportive of amendments in WAC 173-401-300. NWCAA believes changes to 173-401-300 make the language more clear and consistent with EPA's Title V program language with regard to Title V permits for nonmajor sources. NWCAA also believes changes to WAC 173-401-300 are necessary to clarify whether an agency has authority to issue a Title V permit for a nonmajor source subject to 40 CFR Part 70(c)(2). NWCAA is concerned that without the changes, the language lacks clarity and may lead to future misunderstandings about NWCAA's ability to issue the permits.

NWCAA is aware of concerns by others that the changes will limit the ability of agencies in Washington to include all of the emission units at a nonmajor source in the Title V permit. NWCAA disagrees and believe the changes do not limit an agency from including other emission units onsite in a Title V permit. NWCAA believe the changes state what shall be included, but does not exclude other emission units. NWCAA interprets the language to be the minimum

requirement and that an agency could include additional emission units onsite in the permit and identify the purpose for that inclusion in the permit's statement of basis.

The commenter also believes the amendments are consistent with EPA rulemaking actions, which discuss the Title V requirements related to nonmajor sources.

**Response:** Ecology believes the amendments to WAC 173-401-300 make the rule more flexible and more consistent with federal language. Ecology agrees that decisions made on applicability of emission units should be documented in the permit's statement of basis. Ecology also agrees that the amendments are consistent with recent EPA rulemakings.

**The following are summaries of comments received from Gretchen Brewer, Director, PT AirWatchers:**

**PT AirWatchers Comment #1:** At the public hearing on this rule, Ms. Brewer commented on the Small Business Economic Impact Statement (SBEIS), page 1.2. referencing the proposed rule amendment “clarifying applicability requirements to allow nonmajor sources with AOP to have the permit requirements only for the subset of their units that made them subject to their permit.” Ms. Brewer commented that this sounds like segmenting and wanted to know if this is different from segmenting.

**Response:** Ecology is uncertain what the commenter means by “segmenting”, but believes the commenter may be referring to what is often called “piece-mealing emissions”.

Under the federal Clean Air Act, air operating permits are generally required only for major sources of air pollutants, which are sources that emit more than 100 tons per year of any criteria pollutant or more than 25 tons per year of hazardous air pollutants. The federal Clean Air Act also requires some types of emission units to be covered by an air operating permit even when they are located at nonmajor sources. The language Ms. Brewer quotes refers to air operating permit coverage of nonmajor sources triggered by these types of emission units. This language does not invite segmenting for two reasons. First, the question of whether or not the emissions of the source as a whole are high enough to require the entire source to be covered by air operating permit is determined by the total emissions from all the emission units at the source. Second, all emission units at a source, other than those exempt under WAC 173-400-100, must be covered by a notice of construction approval order even if they are not required to be covered by an air operating permit.

**PT AirWatchers Comment #2:** Commenter asks for clarity on what “legally and practicably enforceable” means and the intent and expected effect of this change.

**Response:** According to EPA, (guidance memo dated Jan 25 1995, from Kathie A. Stein to Directors of air regions, subject “Guidance and Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits”), legally and practicably enforceable permit conditions in source-specific permits are those that specify (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, annually); and (3) the method to determine compliance including appropriate monitoring recordkeeping and reporting.

The elimination of the requirement for federal enforceability is based on a memorandum issued by EPA in 1996 acknowledging a DC Circuit Court of Appeals decision.

The memorandum states:

*In Clean Air Implementation Project v. EPA, No. 96-1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for Federal enforceability for PTE limits under part 70. Because the court vacated this requirement, the term “federally enforceable” in section 70.2 should now be read to mean “federally enforceable or legally and practicably enforceable by a State or local air pollution control agency” pending any additional rulemaking by the EPA.*

In response to that, Ecology amended requirements for voluntary orders limiting potential to emit (WAC 173-400-091) and removed the term. Ecology believes it makes sense for Ecology to modify the requirements in WAC 173-401 accordingly.

**PT AirWatchers Comment #3:** In WAC 173-401-200 (35)(a), Ecology added language to the definition for “Subject to regulation”. The commenter states the changes are problematic and asks where greenhouse gases will be regulated/limited. Also states the AO date (July 1, 2011) should be eliminated.

**Response:** Greenhouse gases (GHGs) are a regulated pollutant under Title V of the Federal Clean Air Act. But a 2014 US Supreme Court case (UARG v. EPA, cite) clarified that AOPs are only required for GHGs at sources that are otherwise Title V sources for some other regulated pollutant and then only if a source’s emissions of CO<sub>2</sub> equivalents exceed 100,000 tons per year.

Based on that determination, sources that triggered AOP permitting requirements based solely on their GHG emissions no longer are required to get an AOP.

Ecology is modifying WAC 173-401-200 to be consistent with the 2014 court decision.

July 1, 2011 was the date EPA authorized permitting agencies to begin using 100,000 tons per year of CO<sub>2</sub> equivalents as trigger for requiring AOPs for sources not otherwise required to have AOPs. Because the US Supreme Court invalidated the portion of EPA’s rule that required AOPs for otherwise minor sources with 100,000 tpy CO<sub>2</sub>e emissions, this date is no longer meaningful. Ecology will change the date to January 2, 2011, which is the date EPA required permitting agencies to include greenhouse gas emissions in AOPs for sources otherwise required to have AOPs.

**PT AirWatchers Comment #4:** In WAC 173-401-300(2)(a)(i), Ecology deleted language requiring Ecology to complete a rulemaking to determine AOP applicability for nonmajor sources. The commenter asks what the effect of the change is. The commenter would like to see nonmajor sources held to at least the same standards as major sources.

**Response:** The deleted language is outdated because it authorized Ecology to take an action by a date that has already passed. Ecology did not take that action within the time allowed. Therefore, deleting this language has no effect on the requirements of the rule. This rulemaking does, however, update language addressing nonmajor sources to align with current federal requirements for nonmajor sources.

**PT AirWatchers Comment #5:** In WAC 173-401-300(2)(d)(ii), Ecology deleted and added a section number. The commenter does not see any change and asks for clarity.

**Response:** Commenter is correct. There is no change. The deletion and re-addition of the section number is a typographical error.

**PT AirWatchers Comment #6:** In WAC 173-401-300(3)(a), and (b), Ecology adds language on applicability for nonmajor sources. Commenter states that the rule should be the same for major and nonmajor sources and that emissions should be included from all units at the facility. The commenter is concerned that to do otherwise invites segmenting the operations to avoid regulation and gaming the system.

**Response:** Under the federal Clean Air Act, air operating permits are generally required only for major sources of air pollutants, which are sources that emit more than 100 tons per year of any criteria pollutant or more than 25 tons per year of hazardous air pollutants. The federal Clean Air Act also requires some types of emission units to be covered by an air operating permit even when they are located at nonmajor sources. WAC 173-401-300(3)(b) refers to air operating permit coverage triggered by these emission units.

The language of WAC 173-401-300(3)(b) does not invite segmenting for two reasons. First, the question of whether or not the emissions of the source as a whole are high enough to require the entire source to be covered by an air operating permit is determined by the total emissions from all the emission units at the source. Second, all emission units at a source, other than insignificant emission units, must be covered by a notice of construction approval order even if they are not required to be covered by an air operating permit.

**PT AirWatchers Comment #7:** In WAC 173-401-300(3)(a), and (b), Ecology adds language on applicability for nonmajor sources. Commenter has three concerns:

- (1) Exclusion of significant pollutants;
- (2) Low enough triggers for inclusion;
- (3) Trigger for combined amount of pollutants.

Regarding concern number (1), for non-major sources, does (b) exclude pollutants that may be significant (should be watched) even though they did not trigger inclusion. Regarding concern numbers (2) and (3), for non-major sources, are facility-wide emissions of a given pollutant or pollutants in total a trigger or is inclusion based on emissions of individual emission units? If the latter, does it allow or encourage "segmenting" to avoid regulation?

**Response:** Under the federal Clean Air Act, some specific types of emission units are required to be covered by an air operating permit even when they are located at nonmajor sources. WAC 173-401-300(3)(b) refers to AOP coverage requirements triggered by these emission units, and is therefore not based on the pollutants emitted. The question of whether or not the emissions of the source as a whole are high enough to require the entire source to be covered by an air operating permit is determined by the total emissions from all the emission units at the source.

**PT AirWatchers Comment #8:** In WAC 173-401-300(5)(b). Commenter asks for clarification of why Ecology deleted words Class A and Class B.

**Response:** The deletion of the words “Class A and Class B” reflects the 2009 change in Ecology’s toxic air pollutant rule (WAC 173-460-150) that eliminated the division of toxic air pollutants into Class A toxic air pollutants and Class B toxic air pollutants. Now there is just one list that includes all state toxic air pollutants.

**PT AirWatchers Comment #9:** In WAC 173-401-300(5). Commenter requests to add a provision for including the real effects on real people.

**Response:** This comment addresses issues that are outside the scope of this rulemaking. However, the comment will reside in Ecology’s business record for this action, in accordance with our public records and records retention procedures.

**PT AirWatchers Comment #10:** Commenter asks for clarity on what “legally and practicably enforceable” means and what the intent and expected effect of this change.

**Response:** According to EPA guidance, legally and practicably enforceable permit conditions for source-specific permits are those that specify (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, annually); and (3) the method to determine compliance including appropriate monitoring, recordkeeping and reporting. The elimination of the requirement for federal enforceability on a memorandum issued from EPA in 1996 acknowledging a DC Circuit Court of Appeals decision.

The memorandum states:

*In Clean Air Implementation Project v. EPA, No. 96-1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for Federal enforceability for PTE limits under part 70. Because the court vacated this requirement, the term “federally enforceable” in section 70.2 should now be read to mean “federally enforceable or legally and practicably enforceable by a State or local air pollution control agency” pending any additional rulemaking by the EPA.*

In response to that, Ecology amended requirements for voluntary orders limiting potential to emit (WAC 173-400-091) and removed the term. Ecology believes it makes sense for Ecology to modify the requirements in WAC 173-401 accordingly.

**PT AirWatchers Comment #11:** In WAC 173-401-300(7)(b)(i), Ecology adds language “At the request of the owner or operator of a source”. Commenter asks if this change restricts conditions to lower pollution levels than already allowed. The commenter believes that if this is true, it would appear the benefit would be cleaner air. The commenter asks if this owners actually make this request.

**Response:** Yes, this restricts conditions. Most air quality construction permits allow operations to run 24-hours a day, 7 days a week. This could trigger applicability of a federal rule. WAC 173-400-091 allows owners to request a limit on their emissions to avoid federal rule requirements for higher emissions. With this option, there would be a benefit to cleaner air from lower emissions.

**PT AirWatchers Comment #12:** In WAC 173-401-300(7)(b)(iii), Ecology deletes language “Following federal approval . . .” Commenter states federal enforcement backstop must be maintained.

**Response:** The federal approval requirement is being deleted because the federal requirement that the relevant permit conditions be federally enforceable has been changed to the requirement that permit conditions be legally and practicably enforceable.

**PT AirWatchers Comment #13:** Commenter refers to added language “unregulated emissions units at nonmajor sources” in WAC 173-401-510(1). The commenter states that if the emissions at a nonmajor source considered in total would kick it above the minimum regulated levels, then it should have oversight.

**Response:** Ecology has changed the language in WAC 173-401-510(1) to eliminate the term “unregulated emission unit”.

The commenter is correct that if a nonmajor stationary source directly emits or has the potential to emit any criteria pollutant in excess of 100 tons per year, or has a combination of all hazardous pollutants in excess of 25 tons, or any one hazardous pollutant in excess of 10 tons, they become a regulated major source.

**PT AirWatchers Comment #14:** Regarding WAC 173-401-531. Commenter asks when the precautionary principle will be implemented.

**Response:** WAC 173-401-531 is not being amended at this time. The comment addresses issues that are outside the scope of this rulemaking. However, the comment will reside in Ecology’s business record for this action, in accordance with our public records and records retention procedures.

**PT AirWatchers Comment #15:** Regarding WAC 173-401-630(5)(c)(v). Commenter states this is a good addition and directs owner/operators to be proactive in providing any additional relevant information.

**Response:** Ecology agrees that the addition of this text requires the owner/operator to self-report any additional relevant information.

**PT AirWatchers Comment #16:** In WAC 173-401-800(2)(b), Ecology deletes outdated language and includes more up-to-date language about public notice requirements. Commenter appreciates the change in the public notice requirement.

**Response:** Ecology strives to reach the greatest number of affected people during our public comment periods. We believe this change will improve government transparency to the public.

**PT AirWatchers Comment #17:** In WAC 173-401-900, Ecology adds language for the process to determine the complexity level of sources regulated by Ecology. Commenter believes “upon first blush” these changes to be a good addition.

**Response:** Thank you for your comment.

**PT AirWatchers Comment #18:** Commenter has several comments regarding the changes in WAC 173-401-920. In summary, these include support of increased public process and transparency, concern about weakening the audit process, the need for more “environmental improvements”, concern about how well permits are written or enforced, and if permits are effective in carrying out the mission of enhancing a cleaner environment. Commenter also suggests Ecology’s web design should enable the public to easily locate information. Commenter appreciates the detailed information about the committee, and requests one or more representatives of environmental groups be required to sit on the committee.

**Response:** In revising the audit provisions, Ecology engaged in a robust stakeholder process. The stakeholder committee and others participating in the stakeholder process helped to streamline the fiscal audit requirements. Part of the streamlining included putting the fiscal audit requirements in their own subsection for ease of readability and following the process. Ecology worked to include current fiscal audit components in the streamlined language.

The stakeholder committee also looked at the performance audit requirements noting that those provisions were designed at the inception of the program in the early 1990s to ensure permitting authorities were able to meet the administrative obligations of the new program. Now, more than 20 years later, Washington’s well-established air operating permit program no longer requires such frequent, repetitive administrative checks on program performance.

Further, EPA conducts periodic air operating permit program reviews and periodic State Review Frameworks. The EPA process covers some of the same program activities as the current state audit process. The stakeholder committee agreed that the current program of state audits coupled with program audits performed by EPA unnecessarily uses resources and provides no added value.

Ecology believes the changes to the audit program will maintain accountability while allowing both the regulating agencies and the permittees to shift focus to current, relevant, and more meaningful permitting program challenges.

Thank you for your suggestions regarding Ecology’s web pages. Updates and improved web design are a priority for Ecology. All programs within the agency are working on improved ease of navigation. We encourage the commenter and other members of the public to let us know about concerns they find when navigating our web pages.

**PT AirWatchers Comment #19:** In WAC 173-401-925(2), Ecology changes the word “conclusions” to “observations”. Commenter asks what the effect of this change is.

**Response:** This change more accurately represents the way we respond to the petition referenced in 173-401-925. Ecology responds by sharing data requested, but the response does not necessarily reach a conclusion.

**PT AirWatchers Comment #20:** Regarding WAC 173-401-940(1)(q). Commenter states fees to small business should be low enough to not create an obstacle to participation, and/or on a scale that diminishes rapidly as the size of the business decreases.

**Response:** Ecology agrees that some help with fees should be provided to small businesses that are AOP sources consistent with RCW 70.94.162.



**The following is the summary of comments received from Eric Faust, Department of Energy:**

**Dept. of Energy Comment:** Commenter suggests words be added to WAC 173-401-900(5)(b)(iv)(A) to ensure adequate information is provided to the public during the review process on how Ecology determines the complexity level for Ecology's regulated sources. Commenter requests that the information be detailed enough to ensure a permittee or any member of the public can clearly understand and completely evaluate the determination. Comment states that a lack of information will be a barrier to meaningful public comment.

**Response:** Ecology agrees that the new public review process will work effectively only if Ecology provides enough information about complexity determinations to allow for meaningful public comment. Ecology believes the new language in WAC 173-401-900(5)(b) adequately outlines the types of information Ecology must provide during the new public review process.

Ecology believes the proposed language is sufficient and that it allows for flexibility to develop the best process for fair distribution of the fees. No changes were made as a result of this comment.

**The following is the summary of comments received from Ken Johnson, Weyerhaeuser:**

**Weyerhaeuser Comment #1:** The commenter notes that Ecology is making significant changes in WAC 173-401-920(3) and (4). The commenter states that the AOP program is mature and stable, and not much would be expected to change over a three year period. The commenter also states that it is hard to imagine what new information would be revealed in a "periodic intensive" performance audit that would not be revealed in a "routine" audit. The commenter suggests these two performance audits be collapsed into a single effort and scheduled to occur every four or six years. The report would be called a "Routine and Periodic Intensive Performance Audit" to satisfy the statutory requirement.

**Response:** Ecology worked extensively with stakeholders to streamline the audit process. Ecology believes the new audit process strikes the right balance between the requirement to audit the AOP program and the recognition that the AOP program is mature and stable. Intensive performance audits only occur if requested, and are designed to look at information related to specific issues that have been identified, above and beyond the information generally reviewed in a routine audit.

**Weyerhaeuser Comment #2:** The commenter also comments on WAC 173-401-900 (3). The commenter states that permittees care most about the workload analysis and the permit fee estimates that emerge from the fee determination process. The commenter states that the workload analysis supports development of a forward-looking/prospective budget. The commenter suggests that the budget which emerges from the effort be informed by and synched to the data from the WAC 173-401-920(2) *Tracking of revenues, time and expenditures* effort. The commenter is concerned that this will not occur. The commenter's perception is that the workload estimate yields a bloated budget that is not supported by the actual staff time expended. The commenter states Ecology has repeatedly heard this criticism and in response included new rule language in a preliminary draft of the rule amendment which read, "Determine if the time account summary of actual work performed in the prior fiscal year reasonable matches the workload estimates on which the biennial budget was based." Commenter requests the language be added back.

**Response:** Ecology believes that the workload analysis results in an accurate determination of Ecology's costs to run the AOP program. Activities covered in AOP program costs include issuing and renewing AOPs; Title V compliance and enforcement activities, including inspections; rulemaking; performance audits; fiscal audits; providing technical assistance to local air agencies, industries, and other affected groups on permitting major sources; and managing the Title V emission inventory. Ecology and the Air Operating Permit Coordinator are working on identifying whether it is possible to streamline processes to improve performance and reduce costs.

An example of Ecology's commitment to addressing budgeting concerns is the review process Ecology has added for the AOP fee allocation process. Ecology added the annual fee review process to create transparency and allow the public to comment on Ecology's fee development process each fall. We encourage active participation in this process.

**The following is the summary of comments received from Craig Kenworthy, Puget Sound Clean Air Agency (PSCAA):**

**PSCAA Comment:** The commenter states PSCAA participated in the stakeholder process leading up to the proposal and fully supports amendments to Chapter 173-401 WAC.

In particular, PSCAA is supportive of amendments making the applicability language in WAC 173-401-300 more consistent with the EPA's Title V program language (found in both 40 CFR Part 70 for state/local programs and 40 CFR Part 71 for EPA issued operating permits). PSCAA considers the amendments clear and helpful. The commenter also points out the term "relevant emission units" is not defined and that the amended language is clear and consistent with EPA Title V program elements.

PSCAA is aware that some agencies have concerns that the amendments will limit the ability of agencies in Washington to include all of the emission units at a nonmajor source in the Title V permit. PSCAA disagrees and believes the changes do not limit an agency from including other emission units onsite in a final permit. They believe the changes state what shall be include, but does not exclude other emission units. PSCAA interprets the language to be the minimum requirement and that an agency could include additional emission units onsite in the permit and identify the purpose for that inclusion in the permit's statement of basis.

**Response:** Ecology believes the amendments to WAC 173-401-300 make the rule more flexible and make it easier for staff from state and local permitting offices to determine the applicability of the rule to major and nonmajor emission units in the Washington state air operating permit program. Ecology believes that decisions made on applicability of emission units should be documented in the permit's statement of basis. Ecology also agrees that the amendments are consistent with recent EPA rulemakings.

**The following is the summary of comments received from Patricia Martin, Quincy, Washington:**

**Martin Comment:** Regarding WAC 173-400-300(5)(b). Commenter is concerned about removing words "Class A or Class B" and that this is backsliding.

**Response:** Removing the obsolete words "Class A or Class B" is not backsliding. In 2009, Ecology revised WAC 173-460 to combine the lists of Class A and Class B toxic air pollutants into

one list. Thus, the terms Class A and Class B no longer exist in WAC 173-460. Removing the reference to Class A and Class B toxic air pollutants in WAC 173-401 is therefore necessary to be consistent with the current language contained in WAC 173-460.

**The following is the summary of comments received from Uri Papish, Southwest Clean Air Agency (SWCAA):**

**SWCAA Comment # 1:** SWCAA is opposed to amended language in WAC173-401-300. The agency requests that the language be removed or revised. The agency requests clarity on if local agencies have the authority to require all sources to include all emission units in AOPs.

**Response:** Ecology appreciates SWCAA's participation in the rulemaking stakeholder process and the comments the agency submitted.

The amended language in WAC 173-401-300 updates 20-year-old language to be consistent with federal language in 40 CFR Part 70.

The intent of the amended language in WAC 173-401-300 is to provide flexibility when determining applicability of Washington's AOP program to nonmajor sources. The applicability of the AOP program must be evaluated by the regulating authority on a case-by-case basis to determine which laws and rules apply. Permit decisions on the applicability of the AOP program to specific emission units should be documented in the permit's statement of basis.

**SWCAA Comment #2:** SWCAA believes local air authorities in Washington have authority to adopt more stringent AOP requirements.

**Response:** The AOP statute RCW 70.94.161 directs Ecology to establish statewide rules for the operating permit program consistent with federal requirements. It states, "[t]he permit program established by these rules shall be administered by the department and delegated local air authorities." RCW 70.94.331(6) provides that "Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent **emission standards and operating restrictions**". Other than the more stringent emission standards and operating restrictions, a delegated authority must follow the statewide rules.

**SWCAA Comment #3:** SWCAA believes amended language in WAC 173-401-300 is inconsistent with state law and has potential impact on delegation of Washington's AOP program.

**Response:** Ecology is adopting existing federal language. Communications with EPA Region 10 have indicated that the adoption of this language will not impact Washington's AOP program approvability and program delegation.

**SWCAA Comment #4:** SWCAA is concerned the amended language in WAC 173-401-300 imposes administrative burden on local air agencies and may increase total fees to sources.

**Response:** Ecology recognizes the frustration being expressed by the SWCAA. Ecology has heard differing opinions on whether splitting a source into Title V and non-Title V units would increase the cost of regulation. We believe the amended language allows the flexibility needed to address the complex questions of AOP applicability on a case-by-case.

**The following is the summary of comments received from Katheryn VanNatta, Northwest Pulp & Paper Association (NWPPA):**

**NWPPA Comment:** Regarding WAC 173-401-920(3). Commenter states NWPPA’s long-held policy is that there should be a provable and transparent nexus between agency fees and the amount of agency work performed for that fee. NWPPA believes the rule amendments fall short of meeting that policy. NWPPA asks Ecology to reinstate previous draft rule language, in WAC 173-401-920(3)(b)(ii) stating, “Determine if the time accounting summary of actual work performed in the prior fiscal year reasonably matches the workload estimates on which the biennial budget was based.”

**Response:** RCW 70.94.162 requires Ecology to allocate its permit administration costs based on (i) the number of permit program sources under its jurisdiction; (ii) the complexity of permit program sources, and (iii) the amount of pollution emitted by each source. RCW 70.94.162(5)(a). Ecology cannot change the number of permit program sources or the emissions from those sources. However, the changes to the cost allocation process for complexity are designed to better reflect the amount of work the agency performs for each particular source.

Ecology believes that its workload analysis results in an accurate determination of Ecology’s costs to run the AOP program. Activities covered by Ecology’s AOP costs include issuing and renewing AOPs; Title V compliance and enforcement activities, including inspections; rulemaking; performance audits; fiscal audits; providing technical assistance to local air agencies, industries, and other affected groups on permitting major sources; managing the Title V emission inventory. Ecology and the Air Operating Permit Coordinator are working on identifying whether it is possible to streamline processes to improve performance and reduce costs.

An example of Ecology’s commitment to addressing budgeting concerns is the review process Ecology has added for the AOP fee allocation process. Ecology added the annual fee review process to create transparency and allow the public to comment on Ecology’s fee development process each fall. We encourage active participation in this process.

# Appendices

The appendices below are posted on Ecology's webpage at:  
<https://fortress.wa.gov/ecy/publications/SummaryPages/1602003.html>

**Appendix A. Copies of all written comments**

**Appendix B. Transcript from public hearing**