



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-400 WAC
General Regulations for Air Pollution Sources
and
Chapter 173-455 WAC
Air Quality Fee Rule

Summary of rulemaking and response to comments

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Concise Explanatory Statement

*Chapter 173-400 WAC
General Regulations for Air Pollution Sources*

and

*Chapter 173-455 WAC
Air Quality Fee Rule*

Air Quality Program
Washington State Department of Ecology
Olympia, Washington

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Table of Contents

Introduction.....	1
Reasons for Adopting the Rule.....	2
Differences Between the Proposed Rule and Adopted Rule	4

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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 and Chapter(s): Chapter 173-400 WAC General Regulations for Air Pollution Sources and Chapter 173-455 WAC Air Quality Fee Rule

Adopted date: October 25, 2018

Effective date: November 25, 2018

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>.

Reasons for Adopting the Rule

The amendments focus on the General Regulations for Air Pollution Sources and the Air Quality Fee Rule.

Chapter 173-400 WAC, General Regulations for Air Pollution Sources - establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting federal air quality standards.

Chapter 173-455 WAC, Air Quality Fee Rule - consolidates most of the air quality related fees into one chapter. This makes it easier for the regulated community to find the fees they may need to pay.

The Washington Clean Air Act (Chapter 70.94 RCW) authorizes Ecology to classify air contaminant sources that may cause or contribute to air pollution and require these sources to register or report to Ecology. In addition, Chapter 70.94 RCW authorizes Ecology to collect fees to cover the costs of operating the registration program, and to cover costs of reviewing carbon dioxide mitigation plan components.

Existing registration program fees fund about 54 percent of the estimated cost of operating the registration program. This is not a sustainable practice, as it does not reflect actual fee-eligible costs to operate the program. Moreover, the existing fee structure and schedule for the registration program do not equitably distribute fees across all registered sources. The amended fee structure and schedule will recover about 95 percent of the total cost of the registration program by 2021. Ecology will recover the rest of the costs (about five percent) through programmatic changes, such as program efficiency, better tracking of staff hours, combining site visits to reduce travel, and updating data management systems. Ecology made the decision to have a goal of funding 95 percent rather than 100 percent of the costs of the program to avoid overcharging facilities in the future, and then needing to issue refunds.

The existing fee structure does not equitably distribute fees across all sources. In order to more broadly and equitably establish the funding base for this program, we are expanding registration to all emissions sources that are subject to WAC 173-400-100 and that are not required to obtain an air operating permit under RCW 70.94.161, including those that do not currently register or pay a fee. This will treat sources more equitably and allow fees to better reflect use of program resources.

Currently, Ecology must conduct rulemaking to update the registration fee schedule. The proposed amendments will establish a new fee structure as well as a new public process for updating the registration fee schedule without new rulemaking. This will cost the agency less time and resources and provide fee payers smaller, more frequent, and predictable fee changes.

The amendments coordinate the posting of the draft budget, and the tier assignments and fees for each source. The rule also provides a 60-day comment period for appealing a tier assignment. Ecology will review the appeals, assign final tiers, and assign final tier-based fees. This process

will ensure Ecology is able to consistently and fairly fund the expected cost of the registration program.

The \$65 per hour rate in the existing rule does not reflect current hourly costs of Ecology staff handling carbon dioxide mitigation applications, plan approvals, and inspections. The proposed amendments include a \$95 hourly rate for these activities to reflect current hourly employee costs.

The proposed amendments include an option for facility owners or operators to pay their fee within 90 days of receiving their billing statements, instead of within 30 days. This would give the owners or operators more time to budget for fees.

Housekeeping changes include clarification and rewording types of amendments that do not have any material impact on the meanings or requirements in the rule.

Below is a summary of the rule amendments

The proposed amendments make the following changes not required by other laws or rules:

- Changing registration coverage and reporting.
- Setting a new registration fee structure and schedule for 2019 – 2021.
- Establishing a process to update the registration fee schedule in 2022 and beyond.
- Updating hourly rates for managing carbon dioxide mitigation.
- Allowing 90 days for payment of fees.
- Housekeeping changes.

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 20, 2018 and the adopted rule filed on October 25, 2018. 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 from the rule proposal to the adopted language and Ecology's reasons for making them.

Changes in Chapter 173-400 WAC

Ecology changed "will" and "shall" to "must" in the following provisions. Changes were made in response to stakeholder and staff comments and to avoid confusion:

WAC 173-400-060

Test methods from 40 C.F.R. Parts 51, 60, 61, and 63 (in effect on the date in WAC 173-400-025) and any other approved test procedures in ecology's "Source Test Manual - Procedures For Compliance Testing" as of September 20, 2004, ~~will~~ must be used to determine compliance.

WAC 173-400-100(1)

(1) Source classification list. In counties without a local air pollution control authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories ~~shall~~ must register the source with ecology.

WAC 173-400-100(2)

(2) Equipment classification list. In counties without a local authority, the owner or operator of the following equipment ~~shall~~ must register the source with ecology.

WAC 173-400-101

(1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required ~~shall~~ must register the source emission unit with the permitting authority. The owner or operator ~~shall~~ must make reports containing information required by the permitting authority concerning location, size and height of contaminant outlets, processes employed, nature and

quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration form. Sources ~~shall~~must provide registration information in a manner and time prescribed by the permitting authority and ~~shall~~must complete and return them within the time specified on the form. Sources ~~shall~~must list each emission unit within the facility separately unless the permitting authority determines that the facility may combine certain emission units into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative ~~shall~~must sign the registration form for each source. The owner or operator of the source is responsible for notifying the permitting authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction ~~shall~~must maintain an operation and maintenance plan for process and control equipment. The plan ~~shall~~must reflect good industrial practice and ~~shall~~must include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The source owner or operator ~~shall~~must review and update the plan at least annually. The source owner or operator ~~shall~~must make a copy of the plan available to ecology upon request.

(5) Report of closure. The owner or operator ~~shall~~must file a report of closure with the permitting authority within ninety days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator ~~shall~~must report to the permitting authority within ninety days of any change of ownership or change in operator.

WAC 173-400-103

(3) Owner or operator review.

(a) By August 1st of each year, ecology ~~will~~must provide the owner or operator of the source an opportunity to review emission estimates prepared by ecology.

(b) (ii) Ecology ~~will~~must evaluate the information provided to determine whether the owner or operator based it on currently accepted engineering criteria.

WAC 173-400-105

The owner or operator of a source ~~shall~~must upon notification by ((the director of)) ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

- (1) Emission inventory. The owner and operator of an air contaminant source ~~shall~~ must submit an inventory of emissions from the source each year. The inventory ~~will~~ must include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. Sources ~~shall~~ must provide registration information in a manner prescribed by the permitting authority for the submittal of these inventories. When the permitting authority requests emission inventory information for a calendar year, the owner or operator ~~shall~~ must submit the emissions inventory no later than ((one hundred five days)) ~~April 1st~~ April 15 after the end of the calendar year for which the emissions inventory was requested. If April 15 falls on a weekend, then the deadline to file shall be the next business day. The owner and operator ~~shall~~ must maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.
- (2) Monitoring. Ecology ~~shall~~ must conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.
- (3) Investigation of conditions. Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority ~~shall~~ must have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.
- (4) Source testing. The source owner or operator ~~shall~~ must allow the permitting authority to obtain a sample from any emissions unit.
- (5) Continuous monitoring and recording. Owners and operators of the following categories of sources ~~shall~~ must install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.
 - (d) (ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection ~~shall~~ must be subject to approval by ecology.
 - (e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection ~~shall~~ must demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 C.F.R. Part 51, Appendix P, Sections 3, 4 and 5 (in effect on the date in WAC 173-400-025).
 - (g)(i) Emission units and sources subject to those standards ~~shall~~ must comply with the data collection requirements that apply to those standards.
- (7)(a) The owner or operator ~~shall~~ must recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during

each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonably preventable condition, and the source conducts any necessary repairs to the monitoring system in a timely manner.

(b) The owner or operator ~~shall~~must install a continuous emission monitoring system that meets the performance specification in 40 C.F.R. Part 60, Appendix B in effect at the time of its installation, and ~~shall~~must operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), and EPA's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) An owner or operator ~~will~~must include all monitoring data in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, a source ~~will~~must collect no valid data until the monitoring system passes a quality assurance test or audit.

(d) An owner or operator ~~will~~must maintain continuous operation of all continuous monitoring systems except for instances of system breakdowns, repairs, calibration checks, and zero and span adjustments required under (a) of this subsection.

(ii) Continuous monitoring systems for measuring emissions other than opacity ~~shall~~must complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator ~~shall~~must retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator ~~shall~~must submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the owner or operator recorded the data. This report ~~shall~~must include:

Reasons for change in response to stakeholder and staff comments:

WAC 173-400-101 Registration issuance

(2) Registration ~~form~~.

Sources must provide registration information in a manner and time prescribed by the permitting authority and must ~~complete and return them~~ provide the required information within the time specified ~~on the form by the permitting authority~~.

Reason for change

Ecology no longer uses the form referenced in this chapter. We revised the language to reflect the current process.

WAC 173-400-102 Scope of registration and reporting requirements

(2) A source that is subject to WAC 173-400-100, but not subject to new source review under WAC 173-400-110(5), must register with ecology. ~~(2) A source that is subject to new source review under WAC 173-400-110(5) must register with ecology~~

Reason for change

Clarification that sources not subject to WAC 173-400-110(5) are required to register. This clarification was made by staff request.

WAC 173-400-102 Scope of registration and reporting requirements

~~(4) Requesting evaluation of an emissions inventory determination.~~

~~(a) Ecology will finalize an emissions inventory by April 30th of each year, or biennially.~~

~~(b) A source may request review of an ecology emissions inventory determination by May 31st of each year. The request must include information, such as:~~

~~(i) A more recent estimate of annual emissions;~~

~~(ii) Documentation on the source(s) of the new data and the calculation methods used to estimate emissions; or~~

~~(iii) Other supporting information.~~

~~(c) Ecology must notify the source of ecology's decision no later than August 1st.~~

Reason for change

Removed the provision to avoid confusion with duplicate information in Chapter 173-400-103. Per stakeholder's comments.

WAC 173-400-103 Emission estimates

(2)(d)(iii)(A) ~~December~~ January 1st if a request was sent by September 30th of that year

Reason for change

Changed the date from December 1st to January 1st to reflect our decision to move the web posting to January 1 of the subsequent year.

(2)(d)(iii)(B) Within ~~sixty~~ ninety days of receiving a request submitted under (ii)(B) of this subsection.

Reason for change

Changed the timeframe to review an emissions inventory from 60 to 90 days to align the process with current practices.

WAC 173-400-105 Records, monitoring and reporting

(1) after the end of the calendar year for which the emissions inventory was requested. If April 15 falls on a weekend, then the deadline to file shall be the next business day.

Reason for change

Changed the date from April 1st to April 15th. This was an oversight. One hundred five days after the end of the year is April 15th, not April 1st.

Added language to clarify that if April 15 falls on a weekend, the deadline to file shall be the next business day.

(7)(a) Note: This means that a continuous emissions monitor (CEM) must provide valid data for all but 36 hours for each month. (95 percent standard).

Reason for change

Added a note to clarify that a continuous emissions monitor must provide valid data for all but 36 hours for each month (95 percent standard). In response to comment from local clean air agency.

(7)(f)(iii) Note: CEM must provide valid data for all but two hours per day. (90 percent standard)

Reason for change

Added a note to clarify that a continuous emissions monitor must provide valid data for all but two hours per day (90 percent standard). Comment from local clean air agency.

Changes in Chapter 173-455 WAC

WAC 173-455-039 Source registration tiers

(2) Source registration tiers. For the purpose of assessing registration fees, ecology ~~shall~~must assign sources required to register with ecology to one of six tiers based on emissions in Table 1 in (b) of this subsection.

(a) Ecology ~~will~~must use the following emissions inventory for each source:

(b) Ecology ~~will~~must assign a source to a tier based on Table 1.

WAC 173-455-040 Source registration fees

(1)Registration fee. Each source required to register with ecology ~~shall~~must pay an annual fee based on the source registration tier to which it is assigned in WAC 173-455-039.

(4)(a)(ii) Ecology ~~will~~must base the budget on the program costs for the previous twelve-month period consistent with RCW 70.94.151(2)

WAC 173-455-050 Carbon dioxide mitigation program fees

(1) RCW 70.94.892 authorizes ecology to determine, assess, and collect fees sufficient to cover costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval for a facility. The order of approval ~~will~~must specify the costs necessary to monitor the source's conformance to the carbon dioxide mitigation plan.

Reason for change

To clarify the intent of the requirements, and avoid confusion between “must”, “shall” and “may”. Ecology replaced “shall” with “must” where appropriate. Per stakeholder and staff comments.

WAC 173-455-036 Fee increases

(1) Ecology may adjust fees for the registration program based on the cost of administering the registration program consistent with RCW 70.94.151(2), and the procedures in WAC 173-455-039 and 173-455-040.

~~(1) Ecology must follow the processes in subsection((s)) (2) ((and (3))) of this section for increasing any of the following fees:~~

(2) Ecology may propose fee increases based on a workload analysis for increasing any of the following fees:

- ~~(a) ((Air contaminant source registration fees in WAC 173-455-040;~~
- ~~(b)) Carbon dioxide mitigation program fees in WAC 173-455-050;~~
- ~~((c)) (b) Weather modification fees in WAC 173-455-070;~~
- ~~((d)) (c) Control technology fees in WAC 173-455-100;~~
- ~~((e)) (d) New source review fees in WAC 173-455-120;~~
- ~~((f)) (e) Air pollution standards variance fee in WAC 173-455-130; and~~
- ~~((g)) (f) Nonroad engine permit fee in WAC 173-455-140.~~

~~(2) Ecology may propose fee increases ((in even-numbered years for each year in the upcoming biennium. A workload analysis must support the fee increase. Prior to making any changes, ecology will post the new fees on the agency web site no later than November 30th of the year preceding the date on which the new fees will take place. If directed by RCW 43.135.055, fee increases will only occur after the legislature authorizes the increase.~~

~~(3) Ecology may adjust fees by the fiscal growth factor calculated under chapter 43.135 RCW as follows:~~

~~———— New fee=Existing fee x (1+FGF)~~

~~Where FGF means the annual fiscal growth factor calculated under chapter 43.135 RCW (expressed as a decimal))~~

~~for the registration program based on the cost of administering the registration program consistent with RCW 70.94.151(2), and the procedures in WAC 173-455-039 and 173-455-040.~~

Reason for change

In the proposed language, we deleted subsection (2) of this section and replaced it with language that is specific to registration program fees. In doing so, we inadvertently left no mechanism to update any of the non-registration fees listed in the section. The new language clarifies that updates to other fees will be based on a workload analysis.

WAC 173-455-039 Source registration tiers

~~(3)(d) Final tier assignment. Ecology must notify the source of the final tier placement by December-January 1st of the year ~~before~~when the new fee schedule goes into effect.~~

Reason for change

Better align the process with current practices.

WAC 173-455-040 Source registration fees

~~(7)(b) Ecology may assess a ~~penalty~~ late fee equal to three times the amount of the original fee owed ~~to~~ against sources knowingly under-reporting emissions, or failing to pay registration fees ~~after the ninety-first day past by the ninety-first day after the receipt of ecology's billing statement the due date~~ .~~

Reason for change

Clarifying the intent, that Ecology can assess late fees after the 90-day period.

Replaced “penalty” with “late fees” to be consistent with the next section (7)(c). Replaced “the due date” with “after the receipt of ecology’s billing” to be consistent with the section (7)(a).

List of Commenters and Response to Comments

Comments and Responses are grouped together and organized by topic. Under each topic heading you can see all the comments Ecology received for that topic followed by Ecology's single response to all the comments on that topic.

Ecology used the following topics to group comments together:

- Open Burning
- Support
- Removal of fees from the WAC
- Concerns
- Fee increases - financial burden
- PM10 Emission Factor for Feedlots
- PM10 Component should be removed because of SB5196
- Budget Related Issues
- Concerns about TAPs
- Fees based on Worst Case Emissions
- Fee Driven Program
- SM80 Fees
- Lack of Clarity in the Rules
- Conflicting Schedules
- Inconsistency must - shall - may
- Program Efficiency
- Emission Gap in Tiers
- Emergency Engines
- General Comment
- Recovery of Program Costs
- Appeal Process
- Workload

Individual Commenter Index

Affiliation	Commenter Name	Topics where comments were assigned	Comment Numbers
Individual			
	Davis, Patricia	General Comment	I-1-1
	Clark, Gale	Open Burning	I-2-1
	Dobbins,	Open Burning	I-3-1
	Davis, Patricia	General Comment	I-4-1
Washington Cattle Feeders Association	Field, Jack	Support	I-5-1
		Removal of fees from the WAC	I-5-2
		PM10 Emission Factor for Feedlots	I-5-3
		PM10 Component should be removed because of SB5196	I-5-4

Affiliation	Commenter Name	Topics where comments were assigned	Comment Numbers
		Budget Related Issues	I-5-5
		Concerns about TAPs	I-5-6
		Fees based on Worst Case Emissions	I-5-7
		Fee Driven Program	I-5-8
		Recovery of Program Costs	I-5-9
		Appeal Process	I-5-10
		Workload	I-5-11
Business			
	Scovill, Peter	Fee increases - financial burden	B-1-1
J.R. Simplot Company	Kinsey, Krista	Support	B-2-1
		Removal of fees from the WAC	B-2-2
		Concerns	B-2-3
		PM10 Emission Factor for Feedlots	B-2-4
		PM10 Component should be removed because of SB5196	B-2-5
		SM80 Fees	B-2-6
		Lack of Clarity in the Rules	B-2-7
		Conflicting Schedules	B-2-8
		Inconsistency must - shall - may	B-2-9
AT&T Services, Inc.	Patton, Barbara	Emergency Engines	B-3-1
CPM Development Corporation	McDonald, Jana	Removal of fees from the WAC	B-4-1
		Concerns	B-4-2
		Budget Related Issues	B-4-3
		Conflicting Schedules	B-4-4
		Inconsistency must - shall - may	B-4-5
		Program Efficiency	B-4-6
		Emission Gap in Tiers	B-4-7
WCFA	Field, Jack*	Unclassified	B-5-1
Organization			
Environmental, Health and Safety Communications Panel (EHSCP)	Stolte, Bryan	Emergency Engines	O-1-1

* Same comments as I-5-1 through I-5-11

Comments received on the WAC 173-400 and WAC 173-455 proposed rule making

Comment numbers from Individual Commenter Index table are included in parenthesis

Comment on – SUPPORT

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-1)

I would like to thank the department for the opportunity to testify for the work group that had met through the summer. We'll look forward to working with the department on this and thank you for the chance to testify.

Commenter: Simplot (B-2-1)

Ecology's proposal to implement the fee increase over a three-year period rather than a two-year period allows industry to better absorb the significant increases proposed. The proposal to classify sources into Tiers based on annual actual emissions of specific criteria pollutants and assign flat fee to each Tier rather than a "fee-per-ton" should allow for less variability in fees from year to year.

Response:

We thank you for your support for this rulemaking. It is the result of many combined efforts.

Comment on – CONCERNS

Commenter: Simplot (B-2-3)

However, the proposed rule that Ecology has issued includes language that was not supported by the stakeholder group and new language that was not considered during the stakeholder meetings.

Response:

Ecology finalized the proposed rule language taking in account the comments we received during conversations with and feedback from the stakeholders during the stakeholder meetings. Ecology drafted the language to accommodate the current procedures and processes in the registration fee program while accommodating many of the stakeholders' requests.

Commenter: CPM Development Corporation (B-4-2)

As a participant of the workgroup, I am disappointed in the final outcome. While I support Ecology's efforts in seeking input from stakeholders, the process was disrupted several times with many changes in Ecology staff participating in the group. The process seemed to falter at that point. It was apparent that much of the previous information and discussions between Ecology and the workgroup did not carry over and time did not allow for more time to reestablish a solid working relationship between Ecology and the workgroup. After the last significant change in Ecology staff, there was one stakeholder holder meeting and one conference call, which due to technical difficulties, most of the workgroup participants were only able to listen and not able to provide input or ask questions. This final draft has significant changes that were not discussed with the workgroup or reflect workgroup input. CPM believes it would be beneficial for Ecology to reconvene the workgroup to have an opportunity to review and discuss these changes.

Response:

Staff turnover is sometimes unavoidable when working on a project over a duration of two and a half years. We mitigate this by having a rigid record keeping process, active management oversight, and maintaining open dialogue between our rule team, regional office participants, and stakeholders.

The stakeholder meetings were almost exclusively held face-to-face in Moses Lake. The one meeting to which you refer that we hosted via WebEx, we reached out to the participants after the technical difficulties and prior to the proposal phase of the project to make sure we gathered their input. We are confident that after five stakeholder meetings, numerous one-on-one conversations, and a thorough economic analysis, we have drafted a rule with industry participation that efficiently and fairly achieves all of the goals of this project.

Comment on - OPEN BURNING

Commenter: Gale Clark (I-2-1) and Dobbins (I-3-1)

RE: Chapter 173-400 WAC. Establishes regulatory framework to ensure healthy air quality. How do you propose to ensure healthy air quality when forest "controlled" burns are allowed under the guise of maintaining healthy forests and reducing wild fire? We in the valleys of the Washington eastside suffer the extremely unhealthy consequences of such decisions.

Response:

Thank you very much for your comment. Prescribed burning is under the jurisdiction of the Washington State Department of Natural Resources (DNR). They are currently revising their Smoke Management Plan as a separate rulemaking effort. There will be an opportunity to comment on that draft plan in the future. Your opinion is very important to the development of that plan. Please contact Jonathan Guzzo at DNR at jonathan.guzzo@dnr.wa.gov for information on how to participate in their process.

Comment on - FEE INCREASES – FINANCIAL BURDEN

Commenter: Peter Scovill (B-1-1)

In regards to the fees we pay each year, I would not want to see an increase above the \$400 I am paying for a Tier 2 level. While I can appreciate the cost of conducting your audit activities and other duties has increased, so has mine. Unlike your agency, I cannot just send out a letter of increase and customers will comply. I do not have that luxury of asking customers to pay more for the same work, simply because my costs have risen. This is a very competitive industry, despite the economic statistics, our construction activity continues to decrease each year and I have competitors who compete with me, and are not within your scope of regulations. I have had a steady decrease each year since 2010, and your fee has gone from \$0, to \$250 and now \$400. I cannot pay any more for a smaller activity level. Any increase will mean I will close this business by 2019.

Response:

Reducing the impact of fee increases was an important goal of this rulemaking. We worked with our industry partners to come up several options to ease the burden:

1. A fee reduction option,

2. A payment plan option,
3. Extending the payment due period from 30 days to 90 days.

Section WAC 173-455-040(6): a small business owner may request a fee reduction when the business owner thinks the registration fees results in extreme economic hardship. If approved, Ecology may reduce the registration fee by no more than 50%.

Section WAC 173-455-040(7)(c):The business owner may request to pay the registration fee on a payment plan, see. The business owner needs to request the payment plan within 30 days of the receipt of ecology's billing statement and the owner pays the fee on time as outlined in the payment plan.

Section WAC 173-455-040(7)(a): the payment due period is within 90 days of receipt of the billing statement.

Comment on - REMOVAL OF FEES FROM THE WAC

Commenter: Simplot (B-2-2)

Simplot strongly opposes removal of the registration fees from the WAC. By keeping the fees in the WAC, the regulated community is afforded legislative oversight for all registration fee increases. Although Ecology has outlined a process in the proposed rules for registration fee increases outside of rulemaking, if Ecology is moving towards removing fees from rule, a defined and consistent process for all fee adjustment should be incorporated into a new rule for all fees. Removing the registration fees from the WAC without this process in place 'is premature. Ecology is proposing to increase other fees in this action and proposes to keep those fee amounts in the rule. Therefore, removing the registration fees from the rule is inconsistent with Ecology's action on other fees.

Commenter: CPM Development Corporation (B-4-1)

Fees should remain in rule to protect the integrity of the program and registered sources. Ecology has not shared budget numbers to determine costs and CPM believes it is important that all parties have an opportunity to determine if the new fee structure is meeting Ecology's goals before allowing for automatic increases.

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-2)

We are firmly opposed to any changes in the process in which the fees are changed. We do believe they need to be maintained in-rule with administrative hearings, advertisings, and opportunities for the public to engage. We believe it would be too easy for fee increases should the rule be changed to allow the agency to automatically increase fees.

Response:

Ecology removed the registration fees from the WAC to avoid lengthy, resource demanding, and costly rulemaking processes in future budget adjustments. This enables Ecology to address the stakeholder goal of avoiding suddenly doubling fees in the future by allowing us to make minor fee adjustments in a timely manner. This is the most efficient and transparent way to change fees. We have committed this process to rule and it will provide opportunities for industry to challenge their fees in a timely manner.

WAC 173-455-040(4) provides a process for determining the fee schedule for 2022 and beyond, thus protecting the integrity of the program. The fee schedule will be based on an annual budget that reflects the cost of the program as authorized by RCW 70.94.151(2). There is still a public review process, in that Ecology must post the draft budget and draft registration fee schedule on the agency's website and provide a 60-day comment period on the draft budget and fee schedule. The final budget and fee schedule will be posted by December 1. Using this process, all parties will have the opportunity to weigh in on fee increases. The public process created under the proposed amendments provide transparency in the fee-setting process.

Comment on – PM₁₀ EMISSIONS FACTOR FOR FEEDLOTS

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-3)

The Washington Cattle Feeders also does not believe that the PM₁₀ calculations that the Department of Ecology uses on cattle feedlots is accurate for our facilities here in the Columbia Basin. We implement a variety of best management practices to mitigate fugitive emissions off pens. And that is one of the largest drivers that goes into our fee calculation. We also believe that the fee increase is quite dramatic and will have a negative impact on new facilities being sited here in Washington State when we look at some of the regulatory challenges that we face that neighboring states such as Oregon, Idaho, or international neighbors don't face.

Commenter: Simplot (B-2-2)

Simplot strongly opposes use of Ecology's cattle feedlot PM₁₀ emission factor particularly for use in registration Tier classification. Simplot, as well as the Washington Cattle Feeders Association (WCFA), has been vocal regarding the emission factor and continue to disagree with Ecology's position on use of the factor. Simplot understands that under the current proposal, the PM₁₀ emission factor, and the associated control efficiencies recommended by Ecology will be used to determine Tier classification for cattle feedlots. Simplot understands that the WCFA and Ecology will be collaborating on appropriate control efficiency usage in emission calculations considering the passage of Substitute Senate Bill 5196, "Odor and Fugitive Oust-Cattle Feedlots-Exemption". Simplot looks forward to Ecology engaging with WCFA on this important topic, but in interim, recommends Ecology utilize the previously acceptable PM₁₀ emission factor for registration Tier classification for all feedlots.

Response:

It is not clear to Ecology what the commenter is referring to as the “previously acceptable PM₁₀ emission factor.” However, past estimates of feedlot dust emissions by the Environmental Protection Agency (EPA) were based on emissions at just one feedlot. Utilizing research conducted at multiple facilities and locations consistent with Eastern Washington, Ecology developed a PM₁₀ Emission Factor for Cattle Feedlots that we believe is the most accurate emission factor for Eastern Washington. In 2018, EPA proposed new Nationwide Emission Factors that include recent research at a variety of feedlot locations. After review of the new EPA CAFO emission factors, Ecology determined that our recently-developed emissions factors are more accurate for Washington State than the newly revised EPA emission factors, which are is higher than the Ecology developed factors.

Comment on – PM₁₀ COMPONENT SHOULD BE REMOVED BECAUSE OF SB5196

Commenter: Simplot (B-2-5)

Simplot understands that the WCFA and Ecology will be collaborating on appropriate control efficiency usage in emission calculations considering the passage of Substitute Senate Bill 5196, "Odor and Fugitive Oust-Cattle Feedlots-Exemption".

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-4)

I think that's it other than I guess one final thing, in looking at the fees, the Washington Cattle Feeders believe that, again, the component of PM 10 and a fugitive emission for a registered source, we'd like to see that component removed based upon the efforts that we're doing and with the passage of substitute Senate Bill 5196 two years ago where it said fugitive emissions were exempt as an agricultural activity as long as a fugitive dust control plan was implemented and best management practices being employed on the ground.

Response:

The exemption under RCW 70.94.640, as amended by SB 5196, exempts odors and fugitive dust at feedlots following approved fugitive dust control management plans from requirements under certain circumstances. RCW 70.94.640 does not exempt entire facilities from the registration requirement or limit how such fees are calculated.

Comment on – BUDGET RELATED ISSUES

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-5)

The cattle feeders would like to have a request entered into the record that the budgetary drivers, in terms of the general fund appropriation for the program be included in their synopsis or response to questions. Any federal funds that are received from EPA region 10 for the Department of Ecology's efforts that they do on behalf of EPA, so the regulated entities and members of the public have the opportunity to see the amount of general fund dollars and federal dollars currently that are in the program. So we can then see going forward the difference.

Response:

RCW 70.94.151(2) gives Ecology the authority to recover the cost of the registration program:

“...The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program...”

Ecology does not receive any funds from EPA to support the registration program.

We determined that we would establish our budget to recover 95 percent of our costs of the program. The budget analysis and the total fees collect by 2021 show that the total cost recovery will be about 95 percent.

We determine the budget based on the total staff assigned to the registration program in the Eastern Regional Office and the Central Regional Office. The staff include environmental scientists, administrative staff and management oversight. The RCW allows but does not require that we fully support the program by the users of the program. From its inception in 1987 state taxpayers have subsidized this program. Previous fund sources have dried up over the years, while the demands of the program have expanded and relying on other sources is no longer a viable alternative. In addition, the legislature has stated, "It is the policy of the state that costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause pollution." RCW 70.94.011.

Commenter: CPM Development Corporation (B-4-3)

173-455-040 (4) – Change from "workload analysis" to annual budget. What is the determination of the annual budget? The intent of the workload analysis method was to ensure that only program costs were being assess to the program and to provide detailed information regarding time and monies spent allowing for transparency of the fee process.

Response:

In WAC 173-455-040(4), the phrase "workload analysis" was replaced by "annual budget" because, although it is the same analysis, the phrase "annual budget" is more appropriate because it is an estimate of our upcoming cost of the program. Ecology will provide details of the analysis in each year's proposed budget. We removed several elements from the original workload analysis, such as enforcement actions, and appeal costs to reflect the intent of RCW 70.94.151(2).

Comment on – CONCERNS ABOUT TAPS

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-6)

We're also quite concerned that TAPs, even though they're not considered part of the regulatory mechanism at the moment, we believe they may, in the future and this causes great uncertainty to cattle feeders as, again, we don't believe there is accuracy in the PM 10, let alone the taps calculation since we're dealing with live animals.

Response:

As the commenter acknowledges, TAPs (toxic air pollutants) are not part of the fee-setting mechanism for the registration program at this point. If Ecology ever determines to use emissions of TAPs in determining registration program fees, Ecology will need to add that requirement to the rule in a formal rulemaking process. Such a process would include a stakeholder process involving all stakeholders, including this commenter.

Comment on – FEES ARE BASED ON WORST CASE EMISSIONS

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-7)

We're also concerned about the impacts that any new source may have as existing sources may rely upon emission inventories. New sources are calculated on estimates and those estimates are based upon the worst-case scenario for any individual operation in their six specified tiers. We believe this could and may create an unfair regulatory framework on that initial year for businesses and would ask the department to consider an alternative approach, if possible, by allowing individuals to bring actual data forward rather than the estimates.

Response:

For the initial year of registration, Ecology calculates the emissions inventories based on emissions information obtained from the owner or operator.

Facilities provide all the information necessary to calculate the emissions, including the use of source specific factors if Ecology approves them. It is in the best interest of the source to provide Ecology the most accurate information possible to calculate the inventories. Sources can work with Ecology staff to calculate the inventories. The owner can request a review of Ecology's emission inventories if they think the inventory is incorrect (WAC 173-400-102(4)(a)).

We base the fees on the most current emissions inventories available to Ecology. We calculate emissions using emission factors, an activity level, and, if applicable, a control efficiency factor. In general, we use EPA's AP-42 emission factors to calculate the emissions. In some cases, we use source specific emission factors.

Comment on – FEE DRIVEN PROGRAM

Commenter: Jack Field (Washington Cattle Feeders Association) (I-5-8)

We certainly are committed to work with the department on this but again, believe that the switch in fees from general fund to 100 percent fee-driven is far too great a burden to place on the less than 600 regulated sources when we look at clean air being a state-wide benefit. We would strongly encourage the department to look further and harder at general funds or federal dollars to do this, to ease the burden on businesses large and small here and ensure that we can maintain viable industries.

Response:

RCW 70.94.151(2) has given Ecology the authority to recover the cost of the registration program since 1987.

In addition, the legislature has stated, "It is the policy of the state that costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause pollution." RCW 70.94.011.

Finally, the 535 or so sources covered under Ecology's registration program are not the only sources paying for the state-wide benefit of clean air. Local air authorities also administer registration programs, and charge their registered sources. See, for example, Puget Sound Clean Air Authority regulation 5.07 (setting fees for registration sources in the Puget Sound region).

Stakeholders agreed that all air pollutant sources should contribute to the registration program and pay fees. The quantified costs to regulated facilities imposed by the proposed rule

amendments are offset by the quantified benefits to Washington taxpayers from having the registration program costs paid by those emitting air pollution.

Comment on – SM80 FEES

Commenter: Simplot (B-2-6)

Ecology has proposed that all synthetic minor sources, regardless of actual emissions, pay a flat fee. It is understandable that synthetic minor sources may require additional resources by Ecology staff due to the number and type of emission points, source testing, etc. However, under the current proposal, a synthetic minor source with actual emissions of less than 20 tons per year will pay six times more than a minor facility with an equivalent actual emission rate. A synthetic minor source shouldn't be classified into the smallest of Tiers, however, should be acknowledged in some way for limiting actual emissions. Under the current proposal, Ecology offers no incentive for a synthetic minor source to reduce actual emissions.

Response:

We apply the EPA definition of a synthetic minor source, which is a source whose emissions are equal to or greater than 80 percent of a federal air toxics rule. Rather than being subject to the federal requirements based on the potential-to-emit of emissions, a business asks for a permit limit to remain out of the federal air toxics program.

These synthetic minor sources require more work than another business with similar emissions. They require annual federal reporting and record keeping requirements and annual inspections.

We acknowledge these sources for limiting their actual emissions by classifying them as a synthetic minor. There is always an incentive for any source to curtail or reduce their emissions. If they could, they would fall in a lower tier. The federal requirements provide an incentive for a business to reduce its emissions. A business is able to ask for a permit revision to limit its emissions. Once the source and the permitting agency establish the lower emission limit, we would place the registration source in a different tier.

Comment on – LACK OF CLARITY IN THE RULES

Commenter: Simplot (B-2-7)

Several changes were incorporated into the proposed rule by Ecology after the last stakeholder meeting. Unfortunately, without the benefit of discussing the intent and language with stakeholders, Ecology has proposed rule language that is unclear and in some cases inconsistent. Comments to the following sections and subsections are provided below:

WAC 173-455-036. Fee Increases

Ecology deleted subsection (2) of this section and replaced it with language that is specific to registration program fees. It appears with this proposal, Ecology would have no mechanism to update any of the non-registration fees listed in the section. While likely unintentional, it illustrates that removal of registration fees from the rule at this time is premature, as unintended consequences are likely to unfold. The language for this section in the proposed rule was incorporated after the final stakeholder meeting, therefore stakeholders were not afforded the opportunity to provide this specific feedback during the rulemaking process.

Response:

WAC 173-455-036. Fee Increases: removal of the cited provision was an oversight on the part of Ecology and pointed out to us thanks to active stakeholder participation. We rewrote this section in the final rule.

WAC 173-455-039. Source Registration Tiers

Ecology has added "A source loses its registration status when a registration fee has not been paid [173-455-039(1)]." Registration status is not defined in the rules, therefore it is unclear what Ecology means with this statement. Ecology has also proposed to include language in WAC 173-455-040(7) stating, "Failure to pay all or part of a registration fee may result in an enforcement action." The consequences of non-compliance with applicable requirements are already addressed in WAC 173-400-230. Ecology should remove 173-455-039(1) from the proposed rule due to ambiguity.

Response:

WAC 173-455-039(1). Source Registration Tiers:

This provision was not changed during this rulemaking. The intent of 173-455-039(1) is to require payment to maintain a New Source Review (NSR) permit or a Notice of Construction Approval Order. A source cannot operate without an NSR permit or Notice of Construction Approval, as a result, the source has to cease operation.

WAC 173-455-040(4). Registration Fee Schedule for Year 2022 and Beyond

Prior to this version of the proposed rule, Ecology had consistently referred to a "workload analysis" as the mechanism for determining the revenue necessary to offset the cost of the fee-eligible activities in the registration program. In the proposed rule, Ecology has replaced "workload analysis" with "annual budget" Without a workload analysis, how will Ecology demonstrate all fee increases are for fee-eligible activities? The workload analysis presented to the stakeholder group demonstrated that not one Ecology employee spent all of their time on registration program fee-eligible activities. A workload analysis will provide the transparency needed for the process Ecology has proposed.

Response:

In WAC 173-455-040(4), we replaced the phrase "workload analysis" by "annual budget" because the phrase "annual budget" is more appropriate. It is an estimate of our upcoming cost of the program as authorized by RCW 70.94.151(2). Ecology will provide details in the proposed budget. We removed several elements from the original workload analysis, such as enforcement actions, appeal costs. We made these changes to reflect the intent of RCW 70.94.151(2).

WAC 173-400-102. Scope of registration and reporting

These sections were substantially updated from the most recent draft version presented to the stakeholder group. Each of these sections include emission inventories and timelines. The proposed language makes the requirements for emission inventories confusing and timelines appear to conflict with one another.

Emission Inventories

WAC 173-400-102(1) states the "section applies to sources subject to WAC-173-400-100 [source classifications subject to registration program] located in a county without a local air pollution control authority." Subsection 400-102(3)(b) goes on to state that sources must submit an "emission inventory" and specifically lists items that "must" be included in the emission inventory report:

"An emissions inventory report must [emphasis added] include the information required by ecology, an order of approval, or regulatory order:

- I. Emission sources;
- II. Types and amounts of raw materials and fuels used;
- III. Types, amounts and concentrations of air contaminants emitted;
- IV. Data on emission units and control devices;
- V. Data on emission points;
- VI. Other information related to the registration program as requested by ecology."

Response:

We updated this section during the development of the proposed draft language, and after the public comment period to clarify and outline the requirements with which a source that must register must comply. The items listed in 400-102 are the minimum required data that we need in an emission inventory. The items listed in 400-103 are optional data that a source could include to help refine its emissions inventory.

WAC 173-400-103. Emission estimates

173-400-103(1) again states the "section applies to a source subject to WAC 173-400-100 located in a county without a local air pollution control authority." Subsection 400- 103(2)(a) provides the procedure for estimating emissions from a source and states,

"An emissions inventory report may {emphasis added] include:

- I. An estimate of actual emissions taking into account equipment;
- II. Operating conditions;
- III. Air pollution control measures;
- IV. A flowchart of plant processes;
- V. Operational parameters; and
- VI. Specifications of air pollution control equipment."

Response:

The language in 173-400-103(1) - "An emissions inventory report may include..." indicates that providing the listed items is optional, to provide more accurate information with which to calculate the emissions inventories.

WAC 173-400-105. Records, monitoring and reporting

Finally, 173-400-105(1) also provides for what the emission inventory must include. There is no applicability subsection within this section to clearly indicate whether or not it applies to the registration program, but the subsection has been edited to include language specific to the registration program, as shown below.

"Emission inventory. The owner and operator of an air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter. PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon

monoxide, total reduced sulfur compounds (TRS) fluorides, lead, VOCs, Ammonia, and other contaminants. Sources shall provide registration information in a manner prescribed- by the permitting authority for the submittal of these inventories [emphasis added]. When the permitting authority requests emission inventory information for a calendar year, the owner or operator shall submit the emissions inventory no later than April 1st after the end of the calendar year for which the emissions inventory was requested. The owner and operator shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. The owner or operator may base emission estimates used in the inventory on the most recent published EPA emission factors for a source category, or other information available to the owner and operator, whichever is the better estimate." Why has Ecology provided three different sections to describe what must be, or may be, included in an emissions inventory for a source subject to the registration program? To further confuse the matter, 173-400-102(4)(a) states "Ecology will finalize an emissions inventory by April 30th of each year, or biennially-." It is unclear if Ecology is preparing the emission inventory, or if Ecology is reviewing an emission inventory, or if it is a combination of each. Ecology should reconvene a workgroup regarding use of the term "emission inventory" in these sections to ensure source obligations are clearly defined. Without clearly defined requirements, sources may not understand their regulatory obligations.

Response:

This language did not change from the current WAC. This section applies to all registered and permitted sources. The following sentence in 173-400-105(1), "Sources shall provide registration information in a manner prescribed by the permitting authority for the submittal of these inventories" refer to sections WAC 173-400-102 and WAC 173-400-103. Section 173-400-102(4) has been deleted to avoid confusion.

WAC 173-400-040(7)

Ecology has not included the date when the registration fee billing statement referenced in 173-455-040(7) will be submitted to the source. That subsection also stipulates fees are due within 90 days of receipt of the billing statement, and failing to pay part or all of the fee after the 91st day may result in a penalty that is three times the original fee amount and/or enforcement action. If the timeline in 400-103 is applied, and if the billing statement accompanies Ecology's submittal to sources on August 1, Ecology's final decision deadline is approximately 120 days after August 1. To avoid the risk of the penalties identified, that timeline would require a source to pay the fee before Ecology completes the review. The proposed rules do not appear to offer a mechanism to delay payment if the source has requested a review or change of the emission estimates or tier designation.

Response:

Ecology's August 1 submittal provides notification of initial tier placement. There is a 60 day appeal process for tier placement in WAC 173-455-039(4). WAC 173-455-039(3)(d) specifies that Ecology will notify the source of the final tier placement on January 1st. This is when we mail the billing out. Payments are due by April 1st. The timelines are adjusted and the schedule is as follows:

Jan 31: emission inventory forms due
Aug 1: notify sources of tier placement
Sep 30: appeal deadline for tier placement
Oct 1 – Dec 15: review and finalize appeals
Jan 1 of the next year: mail bills

Comment on – CONFLICTING SCHEDULES

Commenter: Simplot (B-2-8)

Sections 173-400-102, -103, and -105 all contain schedules for various activities in the registration process regarding emission inventory timelines, fee increase timelines, tier placement evaluation, and emission inventory determinations by Ecology. The schedules for these activities are confusing and appear to conflict in some cases.

- 173-400-105
 - April 1 - Emission inventory due date; 105(1)

- 173-400-102
 - April 30 - Ecology finalizes an emission inventory; 102(4)(a)
 - May 31 - A source may request review of an Ecology emission inventory determination; 102(4)(b)
 - August 31 - Ecology will notify the source of ecology's decision (on review of emission inventory determination); 102(4)(c)

- 173-400-103
 - August 1 - Ecology will provide the owner or operator of the source an opportunity to review emission estimates prepared by ecology; 103(3){a}
 - September 30 - The source must provide comments to Ecology to change tier placement for the upcoming year, or by October 1 or later to update a future emission inventory; 103(3)(d)(ii)(A)
 - December 1 - Ecology must make a final determination on the request to change a tier placement; 103(3)(d)(iii)(A)

It is unclear what Ecology is finalizing on April 30 in accordance with 173-400-102(4)(a) versus what Ecology is providing to sources on August 1, in accordance with 173-400- 103(3)(a). It is unclear why a source would need to provide a request on May 31 and September 30 to have Ecology reconsider emission estimates and/or tier placement.

Commenter: CPM Development Corporation (B-4-4)

173-400-102, 103 & 105 - All contain schedules for various activities in the registration process and all have varying schedules that are confusing and need clarification. It is unclear to the registered source as to what dates are required for each thing, the dates should be specifically outlined and not buried in lines of text. Furthermore, there is no date as to when the registration fee billing statement will be provided to the source.

Response:

Ecology recognized the confusion and changed the dates to align the schedules as noted in the response to the previous comments.

Comment on – INCONSISTENCY “MUST”, “SHALL”, AND “MAY”

Commenter: CPM Development Corporation (B-4-5)

173-400-102(1), 103(1)& 105(1) - These sections all refer to emission inventory and state that sources are to submit some sort of emission inventory report. However, each of these sections have different language as to what that report is or should include - "may", "must", "shall" include or submit. Ecology needs to correct the inconsistencies and clarify these sections.

Commenter: Simplot (B-2-9)

In various sections in their comment letter

Response:

Ecology clarified the intent of the requirements and replaced “shall” with “must” where appropriate. The language in 173-400-103(1) - "An emissions inventory report may include..." indicates that providing the elements listed is optional, to provide more accurate information to calculate the inventories.

Comment on – PROGRAM EFFICIENCY

Commenter: CPM Development Corporation (B-4-6)

Current Ecology Air Quality systems, databases and practices are archaic, time consuming and a burden for both the Dept. and regulated sources. There are likely many opportunities for cost savings to the program that Ecology needs to explore prior to implementing a near full cost recovery program with significant fee increases to many sources. (I.e. online reporting similar to Stormwater section, avoiding duplicate reporting, etc.)

Response:

Ecology agrees that our system and processes could be made more efficient, and is currently developing a database and work practices that are less time consuming and improve workflow. We are considering the following work-practices:

- Identifying database management needs.
- Better tracking of staff hours.
- Prioritizing staff time.
- Electronic device use during site visits.
- Combining site visits to reduce travel.

Comment on - EMISSIONS GAP IN TIER

Commenter: CPM Development Corporation (B-4-7)

CPM Development Corporation does not support the large gap of emissions in Tier 4 nor the large increase of fees from Tier 4 to 5. The workgroup was consistent in supporting less of a gap from 20-70 tons in Tier 4 and if necessary, adding an additional Tier. CPM Development Corporation asks Ecology to review Table 1 and Table 2 for a more equitable solution.

Response:

Ecology reviewed the Tier distribution as suggested by the workgroup. After several revisions of the Tier structure, and looking at the distribution of sources, we determined that the proposed Tier structure is shared and equitable as provided in RCW 70.94.011 “It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.”

Ecology looked at the contribution and distribution of source categories: Tier 1, 3, 4, and 5 pay between 6 and 8 percent of the total revenue. Tier 2 (with the most number of sources) pay about 46 percent of the total, while the Tier 6 sources pay about 26 percent of the total.

When we recognized that we have been recovering only about half of our fee-eligible funding, one of the messages we heard from stakeholders, and a guiding principle we adopted into this fee structure, was to try to avoid more than doubling anyone’s fees. This was the best option to accomplish that goal. Out of 540 sources, only five have fees that more than double.

Comment on –EMERGENCY ENGINES

Commenter: Environmental Health & Safety Communications Panel (O-1-1)

While it does not appear that the Department intended to capture emergency engines under 500 HP, the proposed rule (by deleting the detailed applicability and exclusion provisions at WAC 173-400-102) now appears to include them if they are subject to a New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAP). Table 8 of the preamble estimated the proposed rule would impact 148 additional sources. However, based on calculations from our membership, we estimate this will affect at least 300 additional emergency engines in the communications industry alone. We believe if emergency engines in all industries are included there will be thousands of newly regulated engines, all of which operate very infrequently with inconsequential impact to air quality.

Businesses typically requiring emergency stationary internal combustion engines include:

- Police, fire and other emergency responders,
- Hospitals and urgent care facilities,
- Doctor or medical offices,
- Nursing homes,
- Schools,
- Day care facilities,
- Churches, and
- Grocery and retail stores.

Requiring registrations and emission inventory reports for these engines will create an unnecessary burden on both the regulated community and the Department with little or no environmental benefit.

The EHSCP recommends two changes to WAC 173-400-100 Source classifications to clarify the emergency engine exception (additions are in bold italicized text).

We suggest the following amendment to paragraph (c).

(c) Any category of stationary source that includes an emissions unit subject to a new source performance standard (NSPS) under 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), other than subpart AAA (Standards of Performance for New Residential Wood Heaters), and emergency stationary internal combustion engines, as defined at 40 C.F.R. § 60.4219 or 40 C.F.R. § 60.4248, that are rated at less than 500 horsepower;

We suggest the following amendment to paragraph (e).

(e) Any source, or emissions unit subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (~~Maximum Achievable Control Technology (MACT) standard~~) under 40 C.F.R. Part 63 (in effect on the date in WAC 173-400-025) that is not subject to chapter 173-401 WAC, other than emergency stationary RICE, as defined at 40 C.F.R. § 63.6675, that are rated at less than 500 horsepower;

Commenter: AT&T (B-3-1)

While it does not appear that the Department intended to capture emergency engines under 500 HP, the proposed rule (by deleting the detailed applicability and exclusion provisions at WAC 173-400-102) now appears to include them if they are subject to a New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAP). Requiring registrations and emission inventory reports for these engines will create an unnecessary burden on both the regulated community and the Department with little or no environmental benefit.

Response:

The rule does not capture emergency engines below 500 HP. WAC 173-400-100(2)(j) exempts emergency generators located at a stationary source that are smaller than 500 BHP. Emergency stationary internal combustion engines and other than emergency station reciprocation combustion engines are classified as equipment and not sources.

In the equipment classification at WAC 173-400-100(2)(j), limits registration to stationary internal combustion engines and turbines rated at 500 horsepower or more. EPA defines stationary internal combustion engines as “any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile”. (40 CFR 63, subpart ZZZZ, definitions). The proposed revisions to WAC 173-102 did not affect emergency engines. A “stationary internal combustion engine and turbine” means an emergency engine permanently located at a stationary source.

Comment on – GENERAL COMMENT

Commenter: Patricia Davis (I-4-1)

Please ENSURE that our air quality has maximum protections and that the Trump Administration does not throw away our health for dollars I am less concerned about saving money than saving lives Thank you Patricia Davis

Response:

Thank you for your comment. We agree that it our responsibility to ensure that our air quality remain the best it can for the people of Washington.

Comment on – RECOVERY OF PROGRAM COSTS

Commenter: Washington Cattle Feeders Association (I-5-9)

We would also like to see the written and clear direction that dictates that the program become 100 percent fee-supported. Whether that is something from the governor's office or the legislature or if this is a decision made within the program.

Response:

RCW 70.94.151(2) has given Ecology the authority to recover 100 percent of the cost of the registration program since 1987. In addition, the legislature has stated, “It is the policy of the state that costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause pollution.” RCW 70.94.011. It was an Ecology management goal that the proposed fee structure covers 95 percent of the cost of the program by 2021.

Comment on – APPEAL PROCESS

Commenter: Washington Cattle Feeders Association (I-5-10)

The Washington Cattle Feeders would like to see the appeal process clearly defined in the rule for any individual, whether it be any of the regulated sources have an opportunity to understand how they could challenge their fee.

Response:

The rule provides a 60 day appeal process for tier placement in WAC 173-455-039. That provision requires Ecology to notify sources of their draft tier placement by August 1st. Then there is a 60 day appeal period for sources to appeal their placement. Ecology will review appeals from October 1 until December 15. We will mail the final tier placement and the billing on January 1st.

Comment on – WORKLOAD

Commenter: Washington Cattle Feeders Association (I-5-11)

We, again, would like to see a clear breakdown of the administrative workload that the program has on each of the -- on the current tiers and on the soon-to-be six specified tiers to see how the proposed fees break back or actually go to the delivery of the services, in terms of the amount of hours that a specified entity at tier one, two, et cetera would see in terms of service versus the fees that they would pay.

Response:

At this time, Ecology tracks time spent on registration-related activities only generally as registration program time. Ecology does not track time spent on specific registration program related activities by task, source or source category. Therefore, Ecology cannot provide the information requested in this comment. Ecology will provide details of the tasks and costs in each year’s proposed budget. We removed several elements from the original workload analysis, such as enforcement actions and appeal costs. These activities will no longer be considered fee-eligible activities, in accordance with the intent of RCW 70.94.151(2).

The registration fee covers the following services:

- Initial registration,
- Annual or other periodic reports from the source owner providing information directly related to air pollution registration,
- On-site inspections necessary to verify compliance with registration requirements,
- Data storage and retrieval systems necessary for support of the registration program,
- Emission inventory reports verification from information provided by sources pursuant to registration program requirements,
- Staff review, including engineering or other reliable analysis for accuracy and contemporaneousness of information provided by sources pursuant to registration program requirements,
- Clerical and other office support provided in direct support of the registration program, and
- Administrative support provided in directly carrying out the registration program.