



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-405 WAC, Kraft Pulping Mills
Chapter 173-410 WAC, Sulfite Pulping Mills
Chapter 173-415 WAC, Primary Aluminum Plants

*Summary of rulemaking and response to
comments*

April 2019

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Publication and Contact Information

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Concise Explanatory Statement

Chapter 173-405 WAC - Kraft Pulping Mills

Chapter 173-410 WAC - Kraft Pulping Mills

Chapter 173-415 WAC - Primary Aluminum Plants

Air Quality Program

Washington State Department of Ecology

Olympia, Washington

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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 173-405 WAC Kraft Pulping Mills
 Chapter 173-410 WAC Sulfite Pulping Mills
 Chapter 173-415 WAC Primary Aluminum Plants

Adopted date: April 23, 2019

Effective date: May 24, 2019

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 focused on the following statewide air quality rules that are enacted under RCW 70.94.395 to set requirements and standards for pulping mills and primary aluminum plants:

- Chapter 173-405 WAC – Kraft Pulping Mills,
- Chapter 173-410 WAC – Sulfite Pulping Mills, and
- Chapter 173-415 WAC – Primary Plants

The primary purpose of this revision is to align the three statewide rules with Chapter 173-400 WAC (General Regulations for Air Pollution Sources), the federal Clean Air Act (CAA), and the Environmental Protection Agency (EPA) startup, shutdown, and malfunction (SSM) policy.

The CAA and EPA’s SSM policy require emission standards to apply continuously without automatic or discretionary exemptions, even during periods of SSM. Contrary to the CAA requirements and EPA’s SSM policy, Chapter 173-400 WAC exempted or allowed a source to avoid an enforcement action for exceedances of emission standards during periods of startup, shutdown, and scheduled maintenance (80 F.R. 33840). EPA determined WAC 173-400-107 had overly broad enforcement discretion that potentially barred enforcement action by EPA and citizens in federal courts (80 F.R. 33840). On August 16, 2018, Ecology adopted amendments to Chapter 173-400 WAC to correct EPA-identified deficiencies, and meet the CAA requirements, and EPA’s SSM policy that allow comprehensive enforcement of applicable requirements.

This rulemaking harmonizes Chapters 173-405, 173-410, and 173-415 WAC with Chapter 173-400 WAC through adoption by reference of the SSM related provisions to:

- Remove impermissible provisions that shield sources from civil penalties for excess emissions during startup, shutdown, and scheduled maintenance.
- Establish alternative emission standards for soot-blowing and grate cleaning, refractory curing, and startup and shutdown of hog-fuel boilers with dry particulate controls.
- Outline the process for establishing facility-specific alternative emission limits for specific short-term operation modes like SSM that exceed the otherwise applicable emission standards in the SIP.
- Simplify the excess emission notification and reporting requirements.

We also made other amendments that include:

- Extending the time allowed for submission of source testing reports to 60 days instead of 15 days for pulping mills and 30 days for primary aluminum plants. We did this to provide a more realistic timeframe to complete and submit a source test report to Ecology.
- Deleting provisions that are outdated and not applicable to facilities covered by these rules.
- Correcting typos and citations, and clarifying rule language without changing the intent of the rules.

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 CR-102 November 7, 2018 and the adopted rule filed on CR-103 April 23, 2019. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.

The following content describes the changes and Ecology's reasons for making them. Where a change was made solely for editing or clarification purposes, we did not include it in this section. The additions to the language are underlined and the deletions have strikethrough text.

WAC 173-415-030 Emission Standards

- (7) Source testing. To demonstrate compliance with this chapter, the testing provisions of chapters 173-400, 173-481 WAC and ~~((MACT))~~ the requirements ~~((as specified))~~ in 40 C.F.R. Part 63, Subpart LL shall be ~~((used as))~~ applicable.

- **Reasons for Change**

After considering the public comment on the proposed rule, Ecology decided not to adopt the amendments in WAC 173-415-030(7) that are related to performance testing frequency for secondary total fluoride emissions from potlines of primary aluminum plants. We decided this in order to meet the primary purpose of the rulemaking within our established timeline. The primary purpose of this rulemaking is to align the three rules with the new SSM requirements adopted in the Chapter 173-400 WAC, the federal Clean Air Act, and EPA's SSM policy. Ecology will continue to evaluate the options to address fluoride monitoring frequency in a future action in a manner that protects human health and the environment, and meets the needs of the stakeholders.

List of Commenters and Response to Comments

Ecology accepted comments between November 7 and December 20, 2018. You can see the original content of the comments we received at <http://ac.ecology.commentinput.com/?id=35Zx2>.

List of Entities that Provided Comments

Ecology received comments on the proposed Chapter 173-405, 173-410, and 173-415 from:

- Robert Dickey (individual)
- Alcoa-Intalco Aluminum (business)
- Northwest Pulp and Paper Association (organization)

Comment Topics List

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

Washington State Department of Ecology used the following topics to group comments together:

- Kraft pulping rule:
 - General comment
 - Other TRS emission unit standard
 - Opacity standard
 - Alternative emission limitation
 - Monitoring requirements
 - Streamlining the requirements in Chapter 173-405 WAC
- Aluminum plants rule:
 - Source testing frequency
 - Streamlining the requirements in Chapter 173-415 WAC
 - Support for aligning SSM requirements

Table 1. Individual Comment Index

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Individual			
	Dickey, Robert	Kraft: General comment	I-1-1
Business			
Intalco Aluminum	Jorgensen, Roland	Source testing frequency	B-1-1 to B-1-8 and B-1-10
		Streamlining the requirements in Chapter 173-415 WAC	B-1-9
		Support for aligning SSM requirements	B-1-11
Organization			
Northwest Pulp & Paper Association	McCabe, Christian	Other TRS emission unit standard	O-1-1
		Opacity standard	O-1-2
		Alternative emission limitation	O-1-3
		Monitoring requirements	O-1-4
		Streamlining the requirements in Chapter 173-405 WAC	O-1-5

Comments and Responses

Comments on Kraft rule, Chapter 173-405 WAC

General comment

Commenter: Robert Dickey - Comment I-1-1

I have lived in Port Hadlock since 1991 at the same address. When we built our home we were very aware of the mill and its toxic emissions so this is why we built our home far away from the mill plume. We never smelled the mill until the Clean Air Act was in place from George Bush which took away the EPA regulation. Since then the odor from the mill gets more and more severe. I have developed asthma and my wife suffers from burning throat and eyes and gets migraines from the toxic stench the Port Townsend Mill dumps into the air we all breathe. This is “b.....t” and not acceptable. Kraft mills are toxic and the rules and laws have slacked and we are not protected with the politics and weak environmental laws imposed because of politics. Even in their studies they hide and lie and cheat. Do your job and stop this. I pray for an Erin Brockovitch and a class action lawsuit as this mill is a serious health threat to this county and a toxic polluter and adds huge amounts of pollution and nutrient loading to the water and air and environment. They also waste huge amounts of water.

Response to general comment

Thank you very much for your comments. We have shared your comments with those responsible for regulating the Port Townsend Paper Mill (Ecology's Industrial Section) to make them aware of your concerns. You may visit Industrial Section's website for more information on how to submit an odor complaint, find contact information, and get information on any current Ecology actions occurring for the site (<https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Industrial-facilities-permits/Port-Townsend-Paper>).

Comments on other TRS emission unit standard

Commenter: Northwest Pulp & Paper Association, Christian McCabe - Comment O-1-1

WAC 173-405-040(4) Other TRS emission units – We support the two proposed revisions in this subsection. Although the language changes are minor, both provide some clarity on agency intentions and are consistent with past rule implementation practice.

Response to Kraft: Other TRS emission unit standard

Thank you for your comments.

Comments on opacity standard

Commenter: Northwest Pulp & Paper Association, Christian McCabe - Comment O-1-2

WAC 173-405-040(6) Opacity – We support the incorporation and referencing of alternative emission limits for hog fuel/wood-fired boilers during startup/shutdown/maintenance, soot blowing/ grate cleaning, and furnace refractory curing activities. These originate from the Chapter 173-400 WAC General Air Regulation.

Response to opacity standard

Thank you for your comments.

Comments on alternative emission limitation

Commenter: Northwest Pulp & Paper Association, Christian McCabe - Comment O-1-3

WAC 173-405-040(7) Alternative emission limitation – Similarly, we support the incorporation/referencing of WAC 173-400-081 and -082 into the Kraft pulp mill regulation.

Response to alternative emission limitation

Thank you for your comments.

Comments on monitoring requirements

Commenter: Northwest Pulp & Paper Association, Christian McCabe - Comment O-1-4

WAC 173-405-072 Monitoring requirements – The rule language adjustment to stretch the allowed submittal timeline for source test results to 60 days following the testing is appreciated. This simply acknowledges the typical time frame needed for source test contractors to produce a final test report.

Response to monitoring requirements

Thank you for your comments.

Comments on streamlining the requirements in Chapter 173-405 WAC

Commenter: Northwest Pulp & Paper Association, Christian McCabe - Comment O-1-5

Finally, the opportunity before the Dept. of Ecology and the industry is to review Chapter 173-405 WAC, identify the few applicable requirements unique to the Kraft mill rule, and to create a subsection in the General Air Regulation to house those. Obsolete requirements in the Kraft mill rule could be eliminated. This action would allow Chapter 173-405 WAC to be rescinded. Substantial administrative benefits would be enjoyed by Ecology and the industry, as the redundant requirements appearing in both the Kraft and General regulations could be removed from Air Operating Permits.

Ecology recognizes this opportunity with some discussion in the Least Burdensome Alternative analysis presentation provided with this rule amendment package, and makes a soft commitment to address this in future rule-making. Unfortunately, NWPPA views this as a missed opportunity and encourages early action in this regard and looks forward to working with Ecology to accomplish this goal.

Response to Kraft: Streamlining the requirements in Chapter 173-405 WAC

Ecology agrees there may be benefits in streamlining Chapters 173-405, 173-410, and 173-415 WAC against Chapter 173-400 WAC and related state and federal requirements. This might reduce the burden of having regulatory requirements in multiple locations. As explained during the stakeholder meetings, streamlining these regulations requires carefully examining the equivalence of the requirements in the different rules to account for nuance and reduce potential redundancy. Ecology also needs to evaluate the legal implications of merging these source category rules into the general air regulation rule. A potential update of this nature may warrant its own rulemaking. While streamlining the rules might reduce regulatory burden, and improve consistency and clarity, Ecology cannot guarantee that any rulemaking action will result in the reduction of regulatory requirements. We reaffirm our commitment to approach this proposal when considering future rulemaking and look forward to working with our stakeholders on these issues.

Comments on Primary Aluminum Plants rule, Chapter 173-415 WAC

Comments on source testing frequency for secondary total fluoride

Commenter: Intalco Aluminum, Roland Jorgensen - Comment B-1-1 through B-1-8, and B-1-10

The proposed changes Ecology made to Chapter 173-415-030(7) are incorrect because

- The proposed changes Ecology made to Chapter 173-415-030(7) are incorrect and inconsistent with the primary purpose given by Ecology in its filing with the Office of the Code Reviser.
- Monthly fluoride testing is not a requirement in the current Chapter 173-415 WAC, which needs to be maintained in the future Chapter 173-415 WAC regulation.
- The requirement to perform monthly fluoride emission testing significantly changes the testing requirements of the currently codified regulation.

- The testing requirement baseline used by Ecology in its Preliminary Regulatory Analyses was erroneous and incomplete.
- Ecology glosses over important elements of the required APA Significant Legislative Rule (SLR) Review (RCW 34.05.328).
- The claim that monthly performance testing provides superior protection of human health and the environment is undocumented.
- The fluoride testing requirement of WAC 173-415-030(7) should be consistent with the testing requirements of the emission standards for which compliance is being demonstrated.
- Neither the 40 CFR 63, Subpart LL, WAC 173-415-030, nor the Washington Ambient Air Quality and environmental Standards for Fluorides establish an emission standard for “secondary total fluoride emissions.”
- Intalco has no history of exceedance of the fluoride emission standards.

Response on Source testing frequency

After considering the public comments received on the proposed rule, Ecology decided not to adopt the amendments to WAC 173-415-030(7) that are related to performance testing frequency for secondary fluoride emissions from potlines of primary aluminum plants.

We decided this in order to meet the primary purpose of the rulemaking within our established timeline. The primary purpose of this rulemaking is to align the three rules with the new SSM requirements adopted in the Chapter 173-400 WAC, the federal Clean Air Act, and EPA’s SSM policy. Ecology will continue to evaluate the options to address fluoride monitoring frequency in a future action in a manner that protects human health and the environment, and meets the needs of the stakeholders.

We also responded to the comments as follows:

Scope: The proposed change in WAC 173-415-030(7) is in scope with the rule announcement and rule proposal. Although the primary purpose of the rulemaking is to align Chapters 173-405, 173-410, and 173-415 WAC with Chapter 173-400 WAC, the federal Clean Air Act, and the United States Environmental Protection Agency (EPA) startup, shutdown, and malfunction policy (80 FR 33840, June 12, 2015), Ecology also announced that it has other purposes to address in this rulemaking.

Ecology clearly articulated this in the rule announcement as well as the stakeholder meetings held on July 17, 2018 and August 14, 2018 that Alcoa-Intalco’s representative attended.

Performance testing frequency in the rule: Ecology’s interpretation of Chapter 173-415 WAC, Chapter 70.94 RCW and 40 CFR 63 Subpart LL leads us to conclude that Ecology retains the option to require monthly total fluoride testing. Since we are removing the amendments related to performance testing frequency from our proposal, we can provide more analysis and have a more robust discussion if and when Ecology addresses this in future rulemaking.

The emission standards is for total fluoride: The emission standard is for total fluoride emission from potlines of primary aluminum plants. The emissions from each potline are composed of total fluoride emissions from the primary control system (primary emissions) and the secondary emissions that include the emissions from the secondary emission control system or roof monitor. About 90 percent or more of total fluoride emissions from potlines are secondary emissions.

History of exceedance of total fluoride emission standard: The two primary aluminum facilities in Washington have documented exceedances of the TF emission standard in their monthly performance testing. Alcoa-Intalco has a history of exceedances of the total fluoride emission standards in several monthly performance test results during 2016-2017. Alcoa-Wenatchee has a similar history of exceeding the total fluoride emission standard in some of its monthly performance test results during its 2014-2015 operation, before its curtailment.

Preliminary Regulatory Analyses (PRA): Ecology supports the economic analysis and its conclusion. Since we are removing the amendment related to performance testing frequency from our proposal, we can provide more analysis and have more robust discussion if and when Ecology addresses this in future rulemaking.

Comments on streamlining the requirements in Chapter 173-415 WAC

Commenter: Intalco Aluminum, Roland Jorgensen - Comment B-1-9

Stakeholder discussion during the pre-proposal phase of this rule-making included a request for Ecology to identify the remaining applicable requirements in Chapter 173-415 WAC, to shift those into a new source category-specific section in Chapter 173-400 WAC, and then to rescind this Primary Aluminum Plants regulation. The regulatory reform attributes of streamlining the regulations and rescinding Chapter 173-415 WAC are undeniable. The Industrial Section affirmed the merits of this action, and we note the soft commitment Ecology offers to accomplish this action. Unfortunately, the agency's intention to include extensive and poorly supported source testing requirements into WAC 173-415-030(7) works against this ultimate outcome.

The mismatch of this proposed language with source category NESHAP requirements and the existing Chapter 173-415 WAC language has been discussed. Setting aside the merits of any additional source testing interests, the proposed rule language also would create a significant rule-structure problem. First, a choice to bury these unique requirements in the regulation creates applicable requirements for other primary aluminum plants. These uber-source test requirements are aimed specifically at Intalco. They may or may not be appropriate for other plants, a consideration that should be based on a customized source-specific review. Second, any agency interest in source-specific monitoring requirements can be most efficiently imposed through a regulatory order and Air Operating Permit addition. They do not need to be codified in nearly a full page of regulation language. Ecology certainly has this regulatory authority. Finally, placing these requirements in rule complicates the eventual Chapter 173-415 WAC to Chapter 173-400 WAC transfer. The agency should be strategic in taking the first step to that desired outcome.

Response to streamlining the requirements in Chapter 173-415 WAC

Ecology agrees there may be benefits in streamlining Chapters 173-405, 173-410, and 173-415 WAC against Chapter 173-400 WAC and related state and federal requirements. This might reduce the burden of having regulatory requirements in multiple locations. As explained during the stakeholder meetings, streamlining these regulations requires a careful examination of the equivalence of the requirements in the different rules to account for nuance and reduce potential redundancy. Ecology also needs to evaluate the legal implications of merging these source category rules into the general air regulation rule. A potential update of this nature may warrant its own rulemaking. While streamlining the rules might reduce regulatory burden, and improve consistency and clarity, Ecology cannot guarantee that any rulemaking action will result in the reduction of regulatory requirements. We reaffirm our commitment to approach this proposal when considering future rulemaking and look forward to working with our stakeholders on these issues.

Comments on support for aligning SSM requirements

Commenter: Intalco Aluminum, Roland Jorgensen - Comment B-1-11

We support Ecology's proposed rulemaking that aligns the statewide Chapter 173-415 WAC rule with the General Regulations for Air Pollution Sources (Chapter 173-400 WAC), the Federal Clean Air Act, and the Environmental Protection Agency startup, shutdown, and malfunction policy. As indicated previously, we are pleased to have this opportunity to participate in your rule making process and to provide meaningful comments on Ecology's proposed rule that will directly impact our primary aluminum production businesses that are located in Washington. As a point of emphasis, our records indicate that there have been no exceedances of either the WAC173-415-030(1) or the applicable 40 CFR 63, Subpart LL fluoride emission standard since their applicability date; and we have also not documented non-compliance with the requirements of WAC173-481-100 or WAC 173-481-110 since monitoring began.

Response to support for aligning SSM requirements

Thank you for your comments.