



# **Concise Explanatory Statement Chapter 173-455 WAC, Air Quality Fee Rule**

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## **Summary of Rulemaking and Response to Comments**

Washington State Department of Ecology  
Olympia, Washington  
March 2023, Publication 23-02-015

## Publication Information

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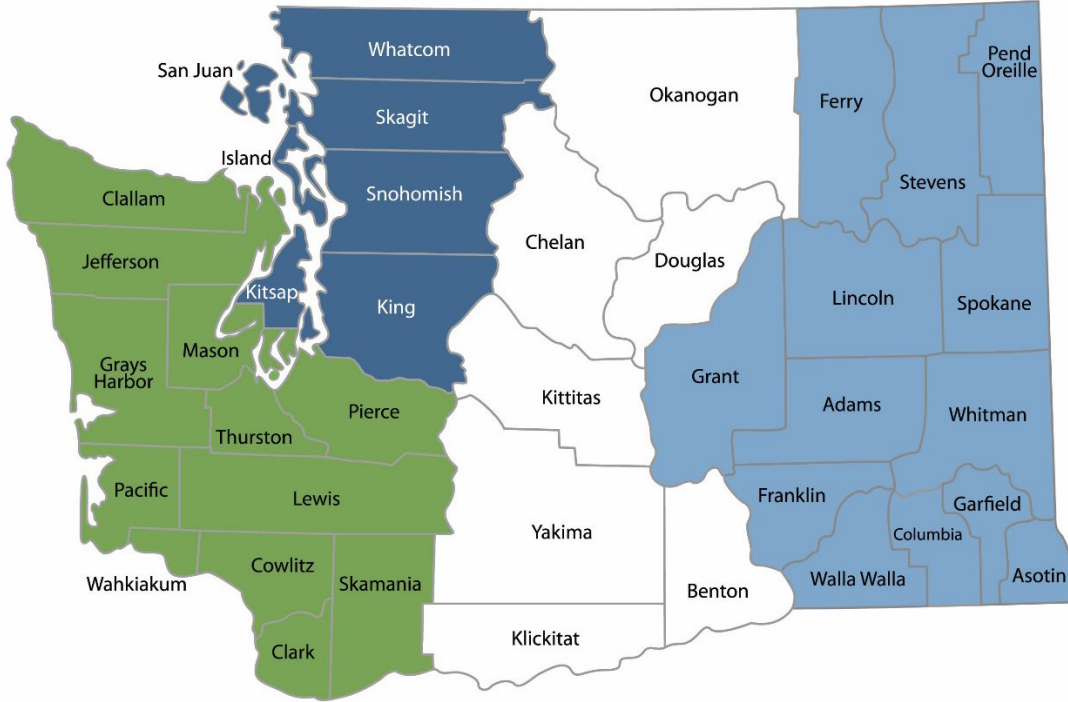
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<sup>1</sup> <http://www.ecology.wa.gov/contact>

# Department of Ecology's Regional Offices

## Map of Counties Served



<b>Southwest Region</b> 360-407-6300	<b>Northwest Region</b> 206-594-0000	<b>Central Region</b> 509-575-2490	<b>Eastern Region</b> 509-329-3400
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Region	Counties Served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	PO Box 330316 Shoreline, WA 98133	206-594-0000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Across Washington	PO Box 46700 Olympia, WA 98504	360-407-6000

# Concise Explanatory Statement

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## Chapter 173-455 WAC, Air Quality Fee Rule

Air Quality Program  
Washington State Department of Ecology  
Olympia, WA

**March 2023 | Publication 23-02-015**



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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# Table of Contents

**Introduction .....1**

**Reasons for Adopting the Rule .....2**

**Differences Between the Proposed Rule and Adopted Rule.....2**

**List of commenters and response to comments.....3**

    l-1: .....3

    l-2: .....3

## 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:	Air Quality Fee Rule
WAC Chapter(s):	173-455
Adopted date:	March 3, 2023
Effective date:	July 1, 2023

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

This rulemaking amends the Air Quality Fee Rule to adjust permit fees and establish a process for future fee adjustments. Fee adjustments are needed to recover program costs for permit issuance and the new fee adjustment process will ensure future adjustments are smaller and more predictable for permittees instead of large and infrequent.

The Washington Clean Air Act (RCW 70A.15) is intended to preserve, protect, and enhance air quality for current and future generations. Several provisions of this law (RCW 70A.15.2210, 70A.15.2230, and 70A.15.6270) direct Ecology to establish fees that cover the costs associated with issuing air quality permits. Ecology issues air quality permits to help ensure that sources of air pollution comply with state and federal air pollution laws.

There is a widening gap between Ecology's Air Quality permit fees and permit program costs. The current fees were established based on program costs in 2012. To determine a new hourly rate which reflects current program costs, Ecology performed a workload analysis of Air Quality permitting hours billed between 2017 and 2021 across all job classes. The cost calculated by the workload analysis was then rounded down to the nearest dollar to ensure permit fees do not exceed program costs.

The new section (-031) establishes a consistent and predictable process for future fee adjustments. Ecology will create a program budget and workload analysis each year after 2023. If fee adjustments are needed Ecology may set new fees for a two-year period following a public comment period. Industry has communicated with Ecology that they prefer more frequent incremental increases rather than infrequent significant fee increases, as they use frequent (often annual) incremental increases for their customers as well. The new fee adjustment process will allow Ecology to charge fees that cover program costs and give permittees small cost adjustments that occur on a predictable timeline.

## 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 minor differences between the proposed rule filed on September 7, 2022, and the adopted rule filed on February 23, 2023. Ecology made these changes to ensure clarity and consistency.

The following content describes the changes and Ecology's reason for making them.

1. A new subsection (3) was added to WAC 173-455-031 to clarify that in years where a fee adjustment is not needed, Ecology will post notice that fee changes are not needed instead of posting a draft fee schedule to the Ecology website.
2. The rule's effective date of July 1, 2023 was inserted into WAC 173-455-120 in place of the words "rule effective date" for the sake of clarity.



# List of commenters and response to comments

We received two comments from individuals on the proposed rule. They were received from Patricia Davis and an anonymous commenter. The full text of these comments as well as Ecology's response can be found below:

## Comments Received

### I-1:

#### Comment I-1-1

I support the changes in the rule making and fee changes. Nothing is more important than clean air and clean water! Entities who do not honor our air and water must be fined, not only to pay for the program but also as incentive to STOP POLLUTING OUR BREATHING AIR AND FINITE WATER ON THE THIS PLANET. No excuses....no waivers. RESPECT this planet and our lives tied to it.

Patricia Davis, Seattle WA

### I-2:

#### Comment I-2-1

I would like to express my support for WSR 22-19-100's proposed rules submitted by the Department of Ecology. Permitting and licensing fees are an important tool for preventing pollution and combatting climate change. Though they do not necessarily perform the most impactful role when it comes to accomplishing those goals, they are an essential component in the broader regulatory scheme for mitigation of pollution and greenhouse gas emissions. It is important that these permitting programs continue to operate effectively, and I believe these proposed rules will promote that goal.

These changes to the Washington Administrative Code would permit the Department to more regularly adjust its fees pursuant to the Washington Clear [sic] Air Act. RCW 70A.15.6270 directs the Department of Ecology to collect fees sufficient to cover the costs of operating its related permit programs. Though more frequent fee updates will not necessarily have a direct and noticeable impact on emissions, it is important that the Department of Ecology remains capable of operating those programs. The current fees were established in 2012 and have not been updated since, leading to a gap in revenue generated by those permits and the costs of the permit programs themselves. These rules will allow Ecology to increase permit fees every two years and allow them to circumvent the formal rule-making process. More frequent fee updates will allow the Department to continue operating its permitting programs without becoming a drain on government funds.

I also think that changing fees through an the informal, notice-and-comment process would be sufficient for this sort of rule. The formal rulemaking process is slow and cumbersome, and I do not think trial-type hearings are necessary to accomplish what should be a relatively simple administrative update. Most importantly, the language of the Washington Clean Air act does not require formal rulemaking procedures in order to affect this type of rule.

Particularly in recent years with air quality becoming a substantial problem in Washington, anything that can be done to further regulate emissions is essential. As I write this comment, the Air Quality Index at my home in Seattle reads 198 AQI, on the borderline between Unhealthy and Very Unhealthy. While this particular incident of poor air quality is a result of wildfire smoke, it highlights the important of promoting clean air generally in the state. If the wildfires are going to contribute to hazardous air conditions, it is the responsibility of the government to do everything it can to prevent and regulate other sources from contributing further. Thus, I support this proposed rulemaking.

## **Ecology's response to comments**

Thank you for submitting comments on this rulemaking. We appreciate your support in our efforts to protect, preserve, and enhance Washington's environment for current and future generations.

The permits Ecology issues for industrial air pollutants and outdoor burning play an important role in Ecology's mission to protect air quality. This rulemaking supports that important regulatory role by covering the cost to issue permits.

The fee adjustments in this rulemaking will not impact current emissions, as one commenter pointed out. Maintaining a healthy permit writing program allows Ecology to continue providing permits in an efficient and fiscally sustainable way. The new process for adjusting fees will also support an efficient program by allowing Ecology to keep fees better aligned with program costs in the future.