Concise Explanatory Statement
Chapter 173-400 WAC, General Regulations for Air Pollution Sources, Chapter 173-425 WAC, Outdoor burning, and Chapter 173-430 WAC, Agricultural burning

Summary of Rulemaking and Response to Comments

Washington State Department of Ecology
Olympia, Washington

May 2026, Publication 26-02-005

Publication Information

This document is available on the Department of Ecology's website at:
https://apps.ecology.wa.gov/publications/summarypages/2602005.html

Contact Information

Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6800

Website: Washington State Department of Ecology[1]

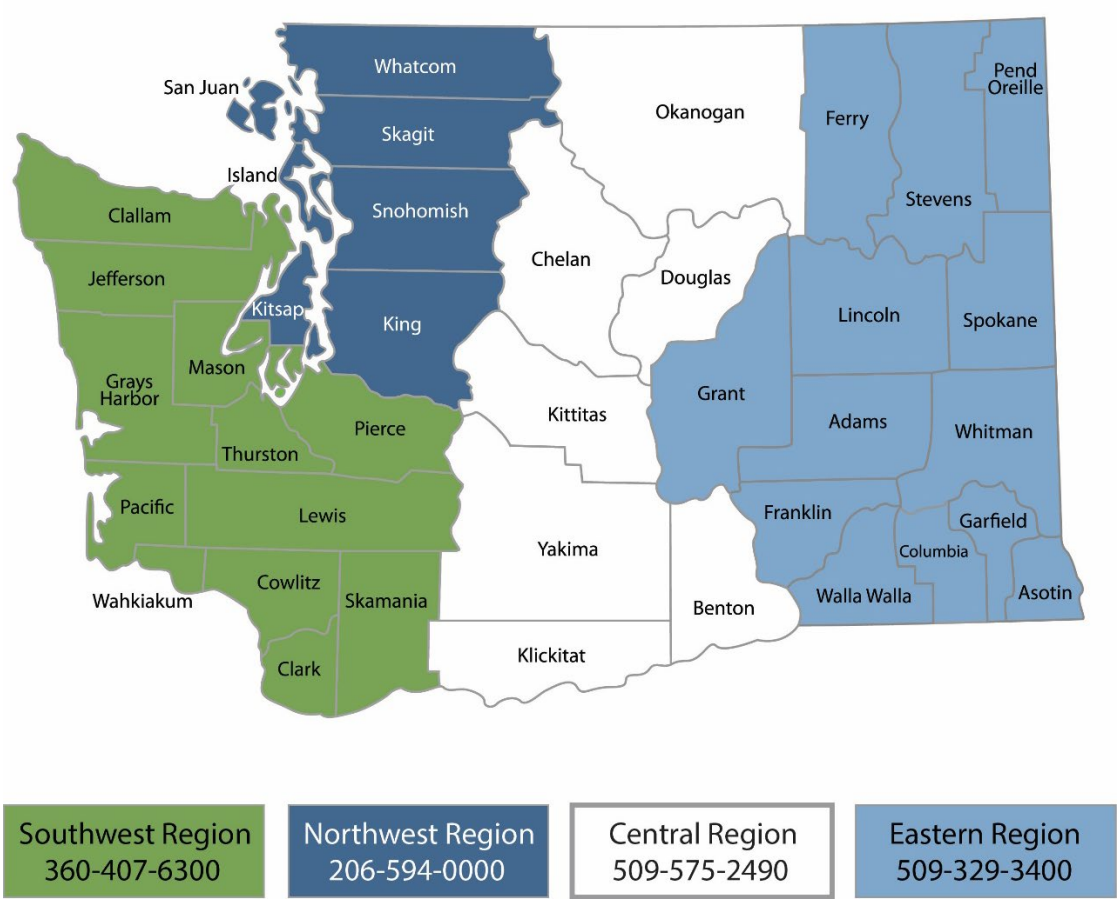
ADA Accessibility

The Department of Ecology is committed to providing people with disabilities access to our information and services by meeting or exceeding the requirements of state and federal laws. To request an ADA accommodation, email Caitlyn.Roehmholdt@ecy.wa.gov, call 360-407-7554, or call Ecology through the Washington Telecommunication Relay (TTY) at 711 or through your preferred relay service provider. Visit Ecology.wa.gov/ADA for more accessibility information.

[1] http://www.ecology.wa.gov/contact

Department of Ecology's Regional Offices

Map of Counties Served



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

Concise Explanatory Statement

Chapter 173-400 WAC, General Regulations for Air Pollution Sources, Chapter 173-425 WAC, Outdoor Burning, and Chapter 173-430 WAC, Agricultural Burning

Air Quality Program
Washington State Department of Ecology
Olympia, WA

May 2026 | Publication 26-02-005

DEPARTMENT OF
ECOLOGY
State of Washington

This page is purposely left blank

Table of Contents

Introduction **1**

Reasons for Adopting the Rule **2**

Differences Between the Proposed Rule and Adopted Rule **3**

List of Commenters **4**

Response to Written Comments **4**

Response to Oral Comments **5**

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:	[General Regulations for Air Pollution Sources, Outdoor Burning, Agricultural Burning]
WAC Chapter(s):	[Chapters 173-400, 173-425, 173-430 WAC]
Adopted date:	[May 28, 2026]
Effective date:	[June 28, 2026]

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 legislature amended Chapter 70A.15 RCW in 2024 to allow flame cap kilns to be used in agricultural and silvicultural burning whenever the normal requirements for burning have been met. The adopted rule amendment incorporates statutory changes into the appropriate WACs for agricultural burning, maintaining consistency between WAC and statute. Silvicultural burning is regulated by the Washington Department of Natural Resources, so amendments to those rules cannot be adopted by Ecology.

There has been an increased interest in the use of air curtain incinerators (ACIs), notably its potential to reduce the human health impacts from smoke associated with agricultural or silvicultural burns, especially in areas where weather conditions or population density may intensify the impact of fires on respiratory health. Despite these potential benefits, burning wood in an ACI that could otherwise be pile burned currently requires a variance before it can be permitted. Silvicultural pile burning is regulated under Chapter 332-24 WAC and agricultural burning is regulated under Chapter 173-430 WAC. However, if an agricultural or silvicultural burn takes place in an ACI, it becomes subject to Chapter 173-400 WAC, which has additional emissions requirements. The relevant requirement for the rule amendment is WAC 173-430-050, which requires that emissions particulates for ACIs be less than 0.23 gram per dscm regardless of whether the ACI is burning waste wood that could otherwise be burned under agricultural or silvicultural burn rules. ACI emissions testing suggests particulate emissions for these burns may be above the 0.23 gram per dscm limit, although they would be considerably less than an equivalent pile burn. Because their emissions would be above the particulate emissions limit, ACI burns could not be permitted without a variance for this requirement from Ecology, or from the local clean air agency with Ecology's approval. Ecology has granted one variance on the basis that the burn replaced a pile burn, which would have had higher emissions.

Part of the adopted rule amendment adjusts emissions standards for air curtain incinerators burning waste wood that would otherwise be legal for silvicultural, agricultural or outdoor burning. Anyone using an ACI for that purpose would no longer need a variance, though they would still require a notice of construction. Along with recent changes by the EPA to remove Title V permitting requirements for most ACIs burning wood waste, the proposed amendment streamlines the permitting process somewhat and decreases the regulatory cost of using ACIs. Adopting this amendment makes a variance unnecessary and is a step in streamlining permitting. Ecology will next consider developing a General Order for ACIs. With a General Order available, qualified applicants would not need to apply for a Notice of Construction. If Ecology were to adopt a General Order, there would be an approximately one-year development period which would include a public comment period.

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 November 13, 2025, and the adopted rule filed on May 28, 2026. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

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

Section	Change	Reason
WAC 173-430-030 Definition of "flame cap kiln"	Modified formatting of the definition of "flame cap kiln"	To improve consistency and align formatting with the rest of the rule
WAC 173-400-050 Section 1	Changed "open burning" to "outdoor burning"	To improve clarity and match definitions already in WAC

List of Commenters

We accepted comments during a formal public comment period that ran from November 13, 2025, to January 20, 2026. We received 3 comment submissions during the formal comment period. We also accepted oral testimony at a public hearing held on January 6, 2026. Two people provided testimony at this hearing. This document responds to the public comments we received during the formal public comment period, including those received during the public hearing. All comments have been summarized for clarity. Full written comments can be accessed online at our online public comments website. These comments remain available online for two years after the rule adoption date.

Written Formal Comments		
Comment Code	**Commenter**	**Affiliation**
I-1-1	Eric Dombrowski	Individual
O-1-1	Gabriel Travis	Kulshan Carbon Trust
A-1-1	Jeff Johnston	Olympic Region Clean Air Agency

Oral Testimony	
Commenter	**Affiliation**
Nick Kunz	Skagit Conservation District
Korina Stark	Circular Spring

Response to Written Comments

Commenter: Eric Dombrowski (I-1-1)

Comment Summary: Commenter expressed concerns regarding ACI feedstocks collected for "compost-overs" containing comingled waste and food waste and suggested rule language regulating allowed contaminant percentages.

Response: Ecology appreciates your concerns and suggestions on compost contaminants in ACI feedstocks. Your comment addresses issues that are outside the scope of this rulemaking. However, your comment will reside in Ecology's business record for this action, and your suggestions have been added to the Agency's tracking list of topics to consider in potential future rulemaking.

Commenter: Gabriel Travis (O-1-1)

Comment Summary: Commenter expressed concern that current rule language creates ambiguity on whether flame cap kilns can be used for all types of legal outdoor burning, or only in agricultural or silvicultural burning.

Response: Thank you for your comments and concerns regarding the clarity of the language in this rulemaking. After consideration, Ecology agrees that the rule language should be clarified. The language in Chapter 173-425 WAC, Outdoor burning has been revised as follows: "Use of Flame Cap Kilns is exclusively regulated under Chapter 173-430 WAC for use in Agricultural Burning and Chapter 332-24 WAC for use in Silvicultural Burning."

Commenter: Jeff Johnston (A-1-1)

Comment Summary: Commenter expressed concern regarding the usage of the term "open burning" and suggested "outdoor burning" instead, as there is a pre-existing definition for this term in Chapters 173-400 and 173-425 WAC. Additionally, the commenter requested clarified rule language on the type of burning that flame cap kilns may be used for.

Response: Thank you for your comments and concerns regarding the clarity of the language in this rulemaking. After consideration, Ecology agrees that the rule language should be clarified. The term "open burning" has been changed to "outdoor burning" in the rule language. Additionally, the language in Chapter 173-425 WAC, Outdoor burning has been revised as follows: "Use of Flame Cap Kilns is exclusively regulated under Chapter 173-430 WAC for use in Agricultural Burning and Chapter 332-24 WAC for use in Silvicultural Burning."

Response to Oral Comments

Commenter: Nick Kunz, Skagit Conservation District

Comment Summary: Commenter asked for flexibility in the language around eligibility for agricultural land that would extend beyond individuals who file Schedule F farming tax forms. The commenter also asked for clarity on whether the rule applies to flame cap kilns for legally permitted outdoor burning.

Response: Thank you for your comments and concerns. In response to the first part of the comment, eligibility for land to be classified as agricultural land is not within the scope of this rulemaking. However, your comment will reside in Ecology's business record for this action, and your suggestions have been added to the Agency's tracking list of topics to consider in potential future rulemaking.

In response to the second part of the comment, after consideration, Ecology agrees that the rule language should be clarified. The language in Chapter 173-425 WAC, Outdoor burning has been revised as follows: "Use of Flame Cap Kilns is exclusively regulated under Chapter 173-430 WAC for use in Agricultural Burning and Chapter 332-24 WAC for use in Silvicultural Burning."

Commenter: Korina Stark, Circular Spring

Comment Summary: Commenter expressed concern about which rules apply in different situations. The commenter asked for guidance on where to find out which permitting process landowners need to follow regarding any kind of outdoor burning in flame cap kilns or otherwise.

Response: Thank you for your comments and concerns. Agricultural burn permit information and instructions can be found on the Department of Ecology website (https://ecology.wa.gov/air-climate/air-quality/smoke-fire/agricultural-burning). Any changes to outdoor burning permitting requirements are beyond the scope of this rulemaking. However, your comment will reside in Ecology's business record for this action, and your suggestions have been added to the Agency's tracking list of topics to consider in potential future rulemaking.