

WSR 22-18-100

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-08—Filed September 7, 2022, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-016.

Title of Rule and Other Identifying Information: Ecology is proposing amendments to chapter 173-455 WAC, Air quality fee rule, in WAC 173-455-038, 173-455-050, 173-455-100, 173-455-120, 173-455-130, and 173-455-140. Ecology is also proposing to add new WAC 173-455-031.

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-455>.

Hearing Location(s): On October 13, 2022, at 1:00 p.m., webinar. Join online and see instructions <https://waecy-wa-gov.zoom.us/join/register/tZ0odeGprDIpHNIQTapzEtSYVReHobOYLJCC>. For audio call US toll number 1-253-215-8782 and enter access code 895 2812 9366; or to receive a free call back, provide your phone number when you join the event. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Date of Intended Adoption: February 15, 2023.

Submit Written Comments to: Caitlin Cannon, send US mail to Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, email Caitlin.Cannon@ecy.wa.gov, submit comments online <https://aq.ecology.commentinput.com/?id=Zax2u>, by October 20, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email ecyADACoordinator@ecy.wa.gov, visit <https://ecology.wa.gov/accessibility> for more information, by October 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule:

- WAC 173-455-031: Adds WAC 172-455-031 to establish a new process to update fees more frequently.
- Updates the hourly fee rate to reflect the new ecology rate:
 - WAC 173-455-050 Carbon dioxide mitigation fee.
 - WAC 173-455-100 Fee related to reasonably available control technology (RACT).
 - WAC 173-455-120 New source review (NSR) fees.
 - WAC 173-455-130 Air pollution standards variance fee.
 - WAC 173-455-140 Nonroad engine permit fee.
- WAC 173-455-038: Updates to specify that greenhouse gas reporting fees are found in chapter 173-441 WAC, Reporting of emissions of greenhouse gases.
- WAC 173-455-100: Relocates hourly fees pursuant to RCW 70A.15.2220 for replacement or substantial alteration of control technology to the permit fee in WAC 173-455-120 to improve usability.
- Removes fees from the text of the rule language and places them in a fee table for improved readability and to facilitate regular fee updates.
- Updates the rule language to improve the readability and clarity.

- Updates outdated references to chapter 70.94 RCW throughout the rule to chapter 70A.15 RCW.

Updates are needed to recover program costs for permit issuance and to establish a new streamlined process for future fee revisions.

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

New WAC 173-455-031 establishes a consistent and predictable process for streamlined future fee adjustment. 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, and 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 predictably.

Reasons Supporting Proposal: Current fees do not cover current program costs. Chapter 70A.15 RCW directs ecology to charge fees to cover program costs. The updated fees will cover permitting program costs.

The new streamlined process to update fees will guide regular, smaller adjustments to fees. This allows permittees to better anticipate small future fee adjustments and allows ecology to continue charging adequate fees.

Statutory Authority for Adoption: Chapter 70A.15 RCW, Washington Clean Air Act.

Statute Being Implemented: RCW 70A.15.2210, [70A.15].2230, and [70A.15].6270.

Rule is necessary because of federal law and federal court decision, 42 U.C.W. [U.S.C.] 7661-7661f and chapter 70A.15 RCW.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Washington department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Caitlin Cannon, Lacey, Washington, 360-489-4046; Implementation and Enforcement: Sanjay Barik, Union Gap, 509-379-1464 or Karin Baldwin, Spokane, 509-329-3452.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Caitlin Cannon, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-489-4046, Washington relay service or TTY call 711 or 877-833-6341, email Caitlin.Cannon@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA); chapter 19.85 RCW based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline. We identify relevant RFA exemptions (if any) for each set of requirements.

The proposed rule does impose more-than-minor costs on businesses.

SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (**Ecology publication no. 22-02-031, August 2022**).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: **Baseline:**

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments. For this rule making, the baseline includes:

- Chapter 70A.15 RCW, Washington Clean Air Act.
- Chapter 173-455 WAC, Air quality fee rule.

Establish a process to revise future fees: Baseline: Currently, the only way ecology can increase air quality permitting fees is to propose changes through the formal rule-making process. This typically takes over 12 months. The last time ecology adopted rules to increase permit fees was 2012.

Proposed: The proposed rule amendments would allow ecology to increase permit fees every two years. The proposed process is outlined below. Ecology would:

1. Prepare the draft annual budget.
2. Determine if the current fees cover costs. If they don't, proceed to step 3.
3. Draft a fee schedule that evenly distributes the increase across the permits where the current fee isn't covering costs.
4. Post the draft budget and draft fee schedule on ecology's website by August 1 of the year before the new fee schedule would go into effect.
5. Provide a 30-day public comment period on the draft budget and draft fee schedule.
6. Post the final budget and fee schedule on ecology's website by December 1 of the year before the new fee schedule goes into effect.

Expected Impact: We expect the proposed rule amendment to benefit permitted industries because they would have more predictability about any future fee increases. This will allow them to better prepare for the changes. Our permit customers told us they would prefer more frequent incremental increases because it will better align with how they increase the fees for their customers.

Relevant Exemptions: RCW 34.05.310 (4)(b), 34.05.310 (4)(g)(ii).

Update hourly fee rates: Baseline: The baseline permit fees were based on the 2012 hourly rate of \$95 for an environmental engineer 5 (EE5).

Proposed: The proposed rule amendments would update the hourly fee rate to reflect the new rate for engineering review and processing of applications for permits. Generally, ecology is proposing to increase:

- All hourly fees in the amended sections to match the new \$119/hour rate.
- All flat fees by 25 percent to match the increase from \$95/hour to \$119/hour.

Initial fees are equal to the number of covered hours, multiplied by \$119.

Ecology is also proposing to change the hourly rate for initial fees related to the prevention of significant deterioration (PSD) program. Each of these permits have a base fee which is calculated by an estimated number of hours multiplied by the hourly rate. The estimates for the necessary number of work hours are as follows:

- Written PSD applicability determinations - increased from six to 40 hours to reflect actual workload.
- PSD permit revisions - where the revision is not administrative or a major modification - reduced from 79 hours to 40 hours to reflect actual workload.
- Other fees: Second and third tier review fees initial hours reduced from 106 to 84 hours to reflect actual workload.

The new fees for new source review and other air permits would go into effect 31 days after the proposed rule changes are adopted. This is scheduled for February of 2023. The proposed new fee schedule is provided in the preliminary regulatory analyses.

Expected Impact: We expect permittees to incur increased costs associated with this proposed rule change. We also expect a benefit of closing the gap between fees charged and actual program costs. The proposed change would also allow ecology to continue providing permitting services in a comprehensive and timely manner without pulling funding sources from other projects and programs. Permittees would benefit from timely service, without suffering losses in investments due to permitting timeline and development delays.

The new source review fee is charged to any owners or operators of new sources of air emissions that are required to submit a notice of construction (NOC) application for any proposed new sources or emissions units, including portable emission sources.

The number of air quality permit applications varies from year to year and it is hard to predict how many of the covered parties would be affected in the future. We analyzed permitting activity data provided by the AQ program. Based on the three years of quarterly data, we found a variety of issued and renewed air quality permits, such as NOC approval orders and PSD permits. On average, we identified 32 initial or renewed permits and 29 revised permits for ecology to process each year. We also found that there were 213 unique entities that applied for an air quality permit since the beginning of 2020.

The cost of issuing an air quality permit varies depending on the type of source and complexity of the permit. Ecology is authorized to charge fees as needed to cover the costs associated with issuing permits.

Relevant Exemption: RCW 34.05.310 (4) (g) (ii).

Adding new references and improving readability and clarity:

Baseline: The baseline rule refers to old laws and is missing key references, and some parts are unclear or poorly organized.

Proposed: The proposed rule amendments would update the following references:

- WAC 173-455-038: Update the list of fees not included in chapter 173-455 WAC to note that greenhouse gas reporting fees are found in chapter 173-441 WAC, Reporting of emissions of greenhouse gases.
- Update outdated references to chapter 70.94 RCW throughout the rule to chapter 70A.15 RCW.

The proposed rule amendments would also clarify and organize language and requirements to improve clarity and facilitate compliance. Other changes are necessary to make rule provisions consistent.

Expected Impact: We do not expect any behavioral impact from these changes. However, the proposed rule amendments may reduce transitional costs such as time spent trying to understand the rule requirements and how to comply.

Relevant Exemption: RCW 34.05.310 (4) (d).

COSTS OF COMPLIANCE: EQUIPMENT: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

COSTS OF COMPLIANCE: SUPPLIES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR: There is a high variability between the number and complexity of permit applications ecology receives each year. We chose to base our analysis on the average gap between the new source review permit fees and actual program costs every year due to the outdated fee schedule. This approach allows us to roughly predict the total costs of the proposed new hourly fee rates for the permittees compared to the baseline.

Based on a seven-year period of data on ecology's funding and revenues, the average annual underfunding of the new source review program is equal to \$79,981.

Ecology analyzes impacts over a 20-year time span from the time of rule adoption, which is typically enough time to reflect consequences of a rule making. To take into account the new process for updating new source review and other air permitting fees for year 2024 and beyond, we adjusted future average annual costs by previously estimated changes per biennium by 4.7 percent. Note that biannual costs increase at a nominal rate, meaning that it reflects wage increases for each period in 2022 dollars.

To reflect the inflation effects over a 20-year period, we calculate the total 20-year present value based on the current real discount rate for the change caused by updated fees that would result in increased costs for all permittees. The total 20-year present value for the change caused by the adjusted fees is \$1,774,989.

As described in the preliminary regulatory analyses for this rule making, we determined an average of 32 initial or renewed permits and 29 revised permits (for an average total of 61 permit actions) for ecology to process each year. Although the cost of processing a permit application vastly differs from one application to another, the average cost of fee increases per business is \$1,311. Please see the table below for an example of the difference of initial fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase.

| Action | Current | Proposed | Difference |
|-----------------|----------|----------|------------|
| Basic project | \$1,520 | \$1,904 | \$384 |
| Complex project | \$10,070 | \$12,614 | \$2,544 |

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

COSTS OF COMPLIANCE: OTHER: Not applicable.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in the preliminary regulatory analyses for this rule making. In this section, we estimate compliance costs per employee.

As discussed in the preliminary regulatory analyses, there is a high variability between the number and complexity of permit applications ecology receives each year. We chose to base our analysis on the average gap between the new source review permit fees and actual program costs every year due to the outdated fee schedule. This approach allows us to roughly predict the total costs of the proposed new hourly fee rates for the permittees compared to the baseline.

The average affected small business likely to be covered by the proposed rule amendments employs about five people. The largest 10 percent of affected businesses employ an average of 3,225 people. Although the cost of processing a permit application vastly differs from one application to another, the average cost of fee increases per business is \$1,311. Based on cost estimates in the preliminary regulatory analyses, we estimated the following compliance costs per employee:

| Average cost of fee increase | |
|---|--------|
| Average small business employment | 5 |
| Average employment at largest ten percent of businesses | 3,225 |
| Small business cost per employee | \$262 |
| Largest business cost per employee | \$0.41 |

In the preliminary regulatory analyses, we also described an example of the difference of initial fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase. The table below shows ranges of compliance costs per employee based on estimates from the example.

| Cost of compliance differences | Low | High |
|--|--------|--------|
| Average small business employment | 5 | 5 |
| Average employment at largest 10 percent of businesses | 3,225 | 3,225 |
| Small business cost per employee | \$77 | \$509 |
| Largest business cost per employee | \$0.12 | \$0.80 |

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses, and therefore ecology must include elements in the proposed rule amendments to mitigate this disproportion, as far as is legal and feasible.

Note that this example is illustration of initial fees. In reality, project may be subject to several different fees and ecology has observed that small businesses frequently get less complex and therefore lower fee permits.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur increased costs under the proposed rule amendments could experience reduced sales or revenue if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to:

- Each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs).
- The specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices.
- The relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

The proposed rule amendments affect a wide variety of businesses. Those industries that are more able to control their pricing, likely due to geographic restrictions in various types of construction, for example, may trade off price increases for reduced sales (which may or may not result in reduced revenue). Industries with greater competi-

tion, such as various service industries, may not be as able to control their pricing, and would not see associated impacts to sales and revenue.

In general, the impact on Washington economy is insignificant. The percent difference from year to year is zero percent for all industries. The table below shows absolute economic indicators for years 2022 and 2041.

| Industry | Impact on output in 2022, in 2022 thousand dollars | Impact on output in 2041, in 2022 thousand dollars |
|----------------|--|--|
| Whole state | -31.6 | -18.3 |
| Manufacturing | 26 | -8.5 |
| Farm | -16.7 | -16.7 |
| Construction | -7.6 | -2.6 |
| Utilities | -5.8 | -5.3 |
| Mining | -9.0 | -8.5 |
| Other services | -1.8 | -1.4 |

MITIGATION OF DISPROPORTIONATE IMPACT: RFA states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(a) Reducing, modifying, eliminating substantive regulatory requirements.

(b) Simplifying, reducing, eliminating recordkeeping and reporting requirements.

(c) Reducing the frequency of inspections.

(d) Delaying compliance timetables.

(e) Reducing or modifying fine schedules for noncompliance.

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (as described in the preliminary regulatory analyses for this rule making), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

Ecology considered all of the above options and maintained all legal and feasible elements in the baseline rule that reduce costs. In addition, ecology considered the alternative rule contents discussed in the preliminary regulatory analyses for this rule making, and excluded those alternatives that would have imposed excess compliance burden on businesses.

The baseline rule already includes the following elements, which are unchanged in the proposed rule amendments, to reduce costs to small businesses.

The baseline rule already allows ecology to reduce costs for qualifying small businesses by 50 percent or \$312, whichever is greater. This is not changing.

Moreover, the baseline rule includes an extreme hardship reduction due to outstanding economic circumstances for qualifying small businesses. This is not changing.

In addition, the new streamlined process established in the proposed amendments to develop subsequent fee schedules may help small businesses better plan for permit expenses.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in our development of the proposed rule amendments, as follows:

- Ecology held two webinars for stakeholders concerning the proposed rule amendments on May 19 and June 8, 2022.
- The following stakeholders attended the webinars: Central WA Concrete, Par Pacific, Simplot, WSPA, HF Sinclair, NW Pulp and Paper, Granite Construction Company.
- Stakeholder meeting notices and materials and project updates were sent to the groups identified above and posted to ecology's rule-making website.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

- 327992 Mineral processing - (Not Rock Crushing)
- 33641 Manufacturing - Specialty
- 112112 Cattle Feedlot
- 115114 Seed Cleaner
- 212313 Rock Crusher
- 221112 Boiler - Diesel/Hog/Natural Gas
- 221320 Wastewater Treatment Plant
- 238320 Paintbooth - Non Autobody
- 311119 Animal Feed Manufacture
- 311225 Canola Oil Seed Press
- 311423 Dehydrator
- 311999 Food Processing - Nutrient Extraction
- 312140 Mint Distillery
- 321999 Wood Products
- 322120 Manufacturing - Paper
- 322211 Manufacturing - Natural Fiber Products
- 322299 Manufacturing - Natural Fiber Products
- 324121 Asphalt
- 324122 Asphaltic Cement
- 325199 Chemical Plant - Synthetic/Organic Chemical Mfg
- 325314 Fertilizer Manufacturer
- 325315 Composting
- 326140 Manufacturing - Polystyrene
- 327320 Concrete
- 331314 Smelter - Primary
- 331511 Foundry - Ferrous
- 331529 Foundry - Non Ferrous
- 331920 Coffee Roaster
- 332813 Metal Anodizing/Plating
- 333241 Food Processing - General
- 336612 Manufacturing - Boat
- 424510 Grain Handling > 10 million bushels
- 424710 Gasoline - Terminal
- 518210 Generators - Emergency
- 562212 Landfill - Open

- 611519 Firefighter Training Center
- 811121 Paintbooth - Autobody
- 812220 Crematory Human/Animal
- 812320 Laundry - Dry Cleaners

IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state. The results of REMI E3+ model show insignificant impact on jobs in the affected industries.

| Industry | Initial jobs impact | Jobs impact in 20 years |
|----------------|---------------------|-------------------------|
| Whole state | -0.5 | -0.4 |
| Manufacturing | -0.03 | -0.02 |
| Farm | -0.07 | -0.05 |
| Construction | -0.09 | -0.04 |
| Utilities | -0.006 | -0.005 |
| Mining | -0.06 | -0.04 |
| Other services | -0.004 | -0.003 |

The values in the above table represent number of full-time employees (FTEs) that would be laid off each year as a result of increased production costs. The number of FTEs decreased does not accumulate over the year and represent single point data compared to the baseline.

A copy of the statement may be obtained by contacting Caitlin Cannon, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-489-4046, Washington relay service or TTY call 711 or 877-833-6341, email Caitlin.Cannon@ecy.wa.gov.

September 7, 2022
Heather R. Bartlett
Deputy Director

OTS-3904.1

NEW SECTION

WAC 173-455-031 Process to update fees. (1) New source review and other air permitting fees for year 2024 and beyond.

(a) Fee schedule:

(i) Starting in 2023, ecology must prepare an annual budget that reflects the cost of the program;

(ii) Ecology will base the budget on the program costs per RCW 70A.15.2210(2);

(iii) Ecology may choose to establish fees to cover program costs for a two-year period;

(iv) If increases of permitting fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.

(b) Public notice. Ecology must:

(i) Post the draft budget and draft new source review and other air quality permitting fee schedule on ecology's website by August 1st of the year before the fee schedule goes into effect.

(ii) Provide a 30-day public comment period on the draft budget and draft fee schedule.

(iii) Post the final budget and fee schedule on ecology's website by December 1st of the year before the fee schedule goes into effect.

(2) Carbon dioxide mitigation fees for year 2024 and beyond.

(a) Fee schedule:

(i) Starting in 2023, ecology must prepare an annual budget that reflects the cost of the program.

(ii) Ecology will base the budget on the program costs per RCW 70A.15.6270(3);

(iii) Ecology may choose to establish fees to cover program costs for a two-year period;

(iv) If increases of carbon dioxide mitigation fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.

(b) Public notice. Ecology must:

(i) Post the draft budget and draft carbon dioxide mitigation fee schedule on ecology's website by August 1st of the year before the fee schedule goes into effect.

(ii) Provide a 30-day public comment period on the draft budget and draft fee schedule.

(iii) Post the final budget and fee schedule on ecology's website by December 1st of the year before the fee schedule goes into effect.

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AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

WAC 173-455-038 Fees not included. This chapter contains all fees required by the air quality program except the following:

(1) Air operating permit - Fees can be found in chapter 173-401 WAC.

(2) Agricultural burning - Fees can be found in chapter 173-430 WAC.

(3) (~~Motor vehicle emission inspection~~) Reporting of emissions of greenhouse gases - Fees can be found in chapter (~~173-422A~~) 173-441 WAC.

[Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-038, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-038, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-455-050 Carbon dioxide mitigation program fees. (1) **Statutory authorization.** RCW ((70.94.892)) 70A.15.6270 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 must specify)) Ecology may also collect fees sufficient to cover the additional costs ((necessary)) to monitor the source's conformance to the carbon dioxide mitigation plan.

(2) **Fees.** ((The)) Table 1 in this subsection lists the fees for the carbon dioxide mitigation program for 2023. These fees are ((added)) additional to the fees established in WAC 173-455-120, when the carbon dioxide mitigation plan requirements are triggered.

| ((Activity | Fee |
|---|---|
| a. Application review | \$95.00/hr. ¹ not to exceed \$500.00 |
| b. Mitigation plan approval | |
| i. Payment to third party | \$100.00 ² |
| ii. Purchase of CO ₂ credits | \$95.00/hr. ³ |
| iii. Direct investment | \$95.00/hr. ⁴ |
| c. Routine compliance monitoring | |
| i. Payment to third party | \$100.00 ⁵ annually until full amount paid |
| ii. Purchase of CO ₂ credits | \$95.00/hr. ⁶ |
| iii. Applicant controlled project | \$95.00/hr. ⁶ |

¹ Estimated using an EE3 per hour rate with a cap.

² Small fee primarily to check math and that the source is using an EFSEC approved qualified organization.

³ Estimated EE3 per hour rate to check that the credits purchased will be verifiable and from a reputable trading or marketing organization.

⁴ Estimated using an EE3 per hour rate.

⁵ Same as rationale for ² above.

⁶ Verify and confirm credits with the trading or marketing organization.))

Table 1 Carbon Dioxide Mitigation Program 2023 Fee Schedule

| Activity | Fee |
|--|--|
| Application review | \$119.00/hr. not to exceed \$95.00 |
| <u>Mitigation plan approval</u> <u>Payment to third party</u> | \$125.00 ¹ |
| <u>Mitigation plan approval</u> <u>Purchase of CO₂ credits</u> | \$119.00/hr. ² |
| <u>Mitigation plan approval</u> <u>Direct investment</u> | \$119.00/hr. |
| <u>Routine compliance monitoring</u> <u>Payment to third party</u> | \$125.00 annually until full amount paid |

| <u>Activity</u> | <u>Fee</u> |
|---|---------------------------------|
| <u>Routine compliance monitoring</u> <u>Purchase of CO₂ credits</u> | <u>\$119.00/hr.³</u> |
| <u>Routine compliance monitoring</u> <u>Applicant controlled project</u> | <u>\$119.00/hr.³</u> |

¹ Fee to cover the cost of checking the accuracy of calculations and that the source is using an independent qualified organization approved by the energy facility site evaluation council per RCW 80.70.050.

² Fee to cover cost of checking that the credits will be purchased from a reputable trading or marketing organization and will be derived from mitigation that is real, verified, permanent, enforceable, and additional per RCW 80.70.030.

³ Fee to cover the cost of verifying and confirming with the trading or marketing organization that the purchased credits derive from mitigation that is real, verified, permanent, enforceable, and additional per RCW 80.70.030.

(3) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031(2).

(4) The department or authority may use RCW ((70.94.085)) 70A.15.1570 to structure a cost-reimbursement agreement with the applicant.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-455-050, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-050, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-455-100 Fees related to reasonably available control technology (RACT). (1) General. Ecology ((may)) will assess and collect ((a)) fees as authorized in RCW ((70.94.153 or 70.94.154)) 70A.15.2230(7) and described in subsections (2) through ((5)) (4) of this section.

(2) ((Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application for replacement or substantial alteration of control technology - Ninety-five dollars per hour.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - Ninety-five dollars per hour.

(3)) Fee schedule for source-specific determinations where ecology performs RACT analysis and determination.

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology

will require a fee for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - Two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - One thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - Two thousand dollars.

~~((4))~~ (3) Fee schedule for source-specific determinations where the source performs the RACT analysis and ecology conducts review and issues a determination.

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology will require a fee for a RACT analysis and determination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit ~~((one hundred))~~ 100 tons per year or more of any criteria pollutant - One thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - Five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - One thousand dollars.

~~((5))~~ (4) Fee schedule for categorical RACT determinations. Ecology shall assess fees for categorical RACT determinations (for categories with more than three sources) as shown below. Ecology shall base the fees described in (a) of this subsection on the most complex source within a category. When determining complexity level for the most complex source in the category, the emission rate or number of types of emission units that results in the highest complexity level will determine the fee for the source category. Except as provided in (b) and (d) of this subsection, ecology will determine fees for individual sources in the category by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than ~~((twenty))~~ 20 tons

per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - Twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than ~~((twenty))~~ 20 tons per year and less than ~~((one hundred))~~ 100 tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ~~((ten))~~ 10 tons per year, or the analysis addresses two to five types of emissions units) - Fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed ~~((one hundred))~~ 100 tons per year, average source emissions of one or more individual toxic air pollutants exceed ~~((ten))~~ 10 tons per year, or the analysis addresses more than five types of emission units) - One hundred thousand dollars.

(b) If ecology is evaluating an emission unit for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

~~((6))~~ (5) RACT fee reductions for small businesses. Ecology may reduce the RACT analysis/review and determination fees identified in subsections (2) through ~~((5))~~ (4) of this section for a small business as provided in this subsection.

(a) Small business reduction.

(i) To qualify for ~~((the))~~ a small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020.

~~((b))~~ (ii) To receive a small business fee reduction, the owner or operator of a small business must include sufficient information in an application submitted in accordance with (c) of this subsection demonstrating that the business meets the ~~((conditions of (a)))~~ requirements of a small business as required under (a) (i) of this subsection. ~~((One of the following must sign the application:~~

~~(i) An authorized corporate officer in the case of a corporation;~~

~~(ii) An authorized partner in the case of a limited or general partnership; or~~

~~(iii) The proprietor in the case of a sole proprietorship.~~

~~(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.~~

~~(d))~~ (iii) For small businesses ~~((determined to be))~~ that ecology determines are eligible for a small business fee reduction under (a) (i) of this subsection, ecology shall reduce the RACT analysis/review and determination fee to the greater of:

~~((i))~~ (A) Fifty percent of the RACT analysis/review and determination fee; or

~~((ii) Two hundred fifty dollars.~~

~~(e) If due to special economic circumstances,))~~ (B) Three hundred twelve dollars.

(b) Extreme hardship reduction.

(i) If the fee assessed after a reduction ~~((determined))~~ granted under ~~((d))~~ (a) (iii) of this subsection imposes an extreme hardship

on a small business due to special economic circumstances, the small business may request an extreme hardship fee reduction.

(ii) To receive an extreme hardship reduction, the owner or operator of a small business must provide sufficient evidence to support a claim of ~~((an))~~ special economic circumstances and extreme hardship in an application submitted in accordance with (c) of this subsection.

~~((The factors which))~~ (iii) Ecology may consider the following factors in determining whether an owner or operator has demonstrated special economic circumstances and ~~((in setting the))~~ extreme hardship, and in determining the amount of the fee ~~((include))~~ reduction:

~~((i))~~ (A) Annual sales;

~~((ii))~~ (B) Labor force size;

~~((iii))~~ (C) Market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and

~~((iv))~~ (D) Average annual profits.

(c) Application for fee reduction.

(i) One of the following representatives of the small business must sign the application:

(A) An authorized corporate officer in the case of a corporation;

(B) An authorized partner in the case of a limited or general partnership; or

(C) The proprietor in the case of a sole proprietorship.

(ii) Ecology may request additional information as needed to verify the application information. If ecology determines the owner or operator has made false statements in the application, ecology may deny the fee reduction request and revoke any previously granted fee reductions for that business.

(d) In no case will ecology reduce a RACT analysis/review and determination fee to an amount below ~~((one hundred dollars))~~ \$125.

~~((7))~~ (6) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

~~((8))~~ (7) Fee payments. A source shall pay fees specified in subsection ~~((4))~~ (3)(a) of this section when the source submits a notice of construction application to ecology. Sources shall pay other fees specified in subsections (2) through ~~((7))~~ (6) of this section no later than ~~((thirty))~~ 30 days after receipt of an ecology billing statement. For fees specified in subsection ~~((5))~~ (4) of this section, ecology will mail a billing statement for one-half of the payment from each source when the source category rule-making effort is commenced as noted by publication of the CR-101 form in the *Washington State Register*. Ecology will mail a billing statement for the second half of the payment when the proposed rule is published in the *Washington State Register*. Ecology will not issue an order of approval or other action approving or identifying a source to be at RACT until the source has paid all fees. A source shall make all fees collected under this regulation payable to the Washington department of ecology.

~~((9))~~ (8) Dedicated account. Ecology shall deposit all control technology fees it collects from air operating permit program sources in the air operating permit account created under RCW 70.94.015. Ecology shall deposit all control technology fees collected from nonair chapter 173-401 WAC program sources in the air pollution control account.

~~((10))~~ (9) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of

source-specific determinations under subsections (2) through ~~((4))~~ (3) of this section, ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection ~~((5))~~ (4) of this section, ecology shall track time and expenditures on a source-category basis.

~~((11))~~ (10) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-455-100, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-100, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-100, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

WAC 173-455-120 New source review and other air permitting fees.

(1) General requirements.

(a) The fees in this section apply to:

(i) Permit applications received on or after ~~((July 1, 2011))~~ (effective date of adopted rule).

(ii) Requests for ecology review of other actions covered by this section received by ecology on or after ~~((July 1, 2011))~~ (effective date of adopted rule).

(b) Components of permitting fees. Permit fees include initial fees and may include an additional hourly fee. The initial fee covers up to the number of review hours specified ~~((in))~~ for each fee in this section.

(c) A project may be subject to multiple fees set forth in this section. For example, a project may be subject to both minor and major new source review permit fees and second or third tier review. In addition a project may be subject to fees under WAC 173-455-050 and 173-455-100.

(d) An applicant must submit initial fees with ~~((an))~~ the associated permit application, notice, or request. An application, notice or request is incomplete until initial fees have been paid.

(i) For purposes of WAC 173-400-111 (1) ~~(e)~~, ~~((initial))~~ application fees are considered ~~((application))~~ initial fees under this section.

(ii) If ecology determines a project is complex after an applicant ~~((submitted))~~ paid the basic project initial fee, then the application is incomplete until the applicant ~~((pays))~~ has paid the initial complex project fee.

(iii) If ecology determines that a higher initial fee is due after an applicant submitted an application or request, the application or request is considered incomplete until the applicant ~~((pays))~~ has paid the ~~((new))~~ higher initial fee.

(e) If the initial fee paid by an applicant does not cover the cost of processing the application, notice, or request, then ecology ~~((shall))~~ must assess ~~((a))~~ an additional fee based on the actual

costs for review in excess of the hours specified (~~in each~~) for the initial fee. The (~~assessed~~) additional fee must be assessed at a rate of (~~ninety-five dollars~~) \$119 per hour of ecology staff time expended, or the rate established under WAC 173-455-031.

(f) Ecology cannot finalize an action covered under this section until all fees (~~are~~) have been paid. (WAC 173-400-111 (3) (i).)

(g) (~~An applicant must pay fees that are due~~) For fees assessed by invoice from ecology, the applicant must pay fees that are due within (~~thirty~~) 30 days from the date of the invoice. Ecology will cease processing all applications for which the required fees have not been received within (~~thirty~~) 30 days of an invoice.

(h) At the time of filing a permit application, notice, or request, an applicant must pay all delinquent air quality fees associated with the facility (~~(. This is)~~) in addition to the fees required by this section. Delinquent fees may include, but are not limited to, registration fees, civil penalties (~~(awarded to)~~) issued by ecology, or other outstanding fees due under this section.

(i) All fees collected under this (~~rule~~) section must be made payable to the department of ecology.

(j) Fees assessed under this section apply without regard to whether ecology approves or denies (~~(a)~~) the underlying permit application, notice, or request.

Permit fees.

Minor new source review.

(2) Fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase. (WAC (~~173-400-110 and~~) 173-400-110(3).)

(a) (~~Basic project: One thousand five hundred dollars plus an hourly rate of ninety-five dollars after sixteen hours.~~

~~This fee covers up to sixteen hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above sixteen hours.~~

(b) ~~Complex project: Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

(i) ~~This fee covers up to one hundred six hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred six hours.~~

(ii) ~~An application)~~ Table 1 lists the 2023 fees for review of an application for a new source or for the modification of an existing source with an emissions increase.

Table 1: 2023 Fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase (WAC 173-400-110(3))

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|------------------------|--|--|
| <u>Basic Project</u> | <u>\$1,904.00 for up to 16 hours of review</u> | <u>\$119.00 per hour starting at 17 hours</u> |
| <u>Complex Project</u> | <u>\$12,614.00 for up to 106 hours of review</u> | <u>\$119.00 per hour starting at 107 hours</u> |

(b) A project is considered complex if the emissions associated with the application include at least one pollutant for which emissions increases are greater than the levels in (~~the following table:~~) Table 2.

Table 2: Emission Threshold Table

(WAC 173-400-030)

| ((Air Contaminant)) Pollutant | Annual Emission Rate |
|---|---|
| Carbon monoxide | 100 tons per year |
| Nitrogen oxides | 40 tons per year |
| Sulfur dioxide | 40 tons per year |
| Particulate matter (PM) | 25 tons per year of PM emissions |
| | 15 tons per year of PM ₁₀ emissions |
| | 10 tons per year of PM _{2.5} emissions |
| Volatile organic compounds | 40 tons per year |
| Fluorides | 3 tons per year |
| Lead | 0.6 tons per year |
| Sulfuric acid mist | 7 tons per year |
| Hydrogen sulfide (H ₂ S) | 10 tons per year |
| Total reduced sulfur (including H ₂ S) | 10 tons per year |
| Reduced sulfur compounds (including H ₂ S) | 10 tons per year |

~~((iii))~~ (c) Ecology may also determine that a project is complex based on consideration of factors that include, but are not limited to:

- ~~((A))~~ (i) Number and complexity of emission units;
- ~~((B))~~ (ii) Volume of emissions, including toxicity of emissions;
- ~~((C))~~ (iii) Amount and complexity of modeling; or
- ~~((D))~~ (iv) Number and kind of applicable state and federal requirements.

(d) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(3) Fees for review of a requested change to an existing order of approval. (WAC 173-400-111 (7) and (8).)

(a) Ecology will not charge a fee for correcting a mistake by ecology in a permit.

(b) "Administrative or simple change" (~~Two hundred dollars plus an hourly rate of ninety-five dollars after three hours.~~)

~~(i) This fee covers up to three hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above three hours.~~

~~(ii) An administrative or simple change means:~~

~~(A)) means:~~

~~(i) An action not subject to a mandatory public comment period ((in)) under WAC 173-400-171; and~~

~~((B)) (ii) The ((reissued)) modified approval order requires one hour or less of engineering evaluation by ecology and ((ne)) does not authorize physical modification of equipment; and~~

~~((C)) (iii) Changes in permit conditions are based on actual operating conditions and review of the operating conditions requires one hour or less of engineering evaluation by ecology and the~~

~~((change))~~ modification does not cause a change in allowable emissions.

(c) Complex changes: ~~((Eight hundred seventy-five dollars plus an hourly rate of ninety-five dollars after ten hours.~~

~~(i) This fee covers up to ten hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above ten hours.~~

~~(ii))~~ (i) This fee ((excludes)) does not apply to an administrative or simple change ((and changes to)) or to the modification of an existing permit that results in an emissions increase.

~~((iii))~~ (ii) Examples of complex changes include, but are not limited to:

(A) Changes requiring more than one hour of engineering review by ecology;

(B) Consolidation of permits not allowed under simple change;

(C) Request for review of ~~((a permit))~~ whether a proposed action ((that)) is exempt from new source review under WAC 173-400-110(5) (Table 110(5) emission-based exemption levels); or

(D) Changes requiring mandatory public comment under WAC 173-400-171(3).

~~(d) ((The fee for a permit modification (as defined in WAC 173-400-030) is located in subsection (2)(a) or (b) of this section.~~

~~(4) Request to extend approval to construct or modify a stationary source issued under minor new source review that is set to expire (WAC 173-400-111(7)): One hundred dollars.~~

~~An applicant may request an eighteen-month extension of an approval to construct.~~

~~(5))~~ Table 3 lists the 2023 fees for review of a requested change to an existing order of approval.

Table 3: 2023 Fees for review of a requested change to an existing order of approval (WAC 173-400-111 (7) and (8))

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|--|--|---|
| <u>Correcting a mistake by ecology in a permit</u> | <u>No fee</u> | <u>No fee</u> |
| <u>Administrative or simple change</u> | <u>\$357.00 for up to 3 hours of review</u> | <u>\$119.00 per hour starting at 4 hours</u> |
| <u>Complex change</u> | <u>\$1,190.00 for up to 10 hours of review</u> | <u>\$119.00 per hour starting at 11 hours</u> |
| <u>Permit extension request (WAC 173-400-111(7))</u> | <u>\$119.00</u> | <u>Not applicable</u> |

(e) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(4) Fees for review of an application for coverage under a general order of approval (WAC 173-400-560).

~~(a) ((Category A general order.~~

~~(i) SEPA review complete: Five hundred dollars.~~

~~(ii) SEPA review required: Seven hundred eighty-five dollars.~~

~~(iii))~~ Category A consists of the following general order of approval, including any subsequent updating or replacement:

~~((A))~~ (i) Concrete batch plants (No. 08-AQG-002);

~~((B) Rich burn, spark ignition, gaseous fossil fuel-powered emergency electrical generators (No. 06-AQG-005);~~

~~(C))~~ (ii) Perchloroethylene dry cleaners using less than 2100 gallons per year (No. 06-AQG-003);

~~((D))~~ (iii) Stationary and portable rock crushers (No. 11AQ-GO-001);

~~((E))~~ (iv) Small water heaters and steam generating boilers (No. 08-AQ-G003); and

~~((F))~~ (v) Automobile body repair and refinishing shops (No. 08-AQG-001).

(b) ~~(Category B general order.~~

~~(i) SEPA review complete: Eight hundred seventy five dollars.~~

~~(ii) SEPA review required: One thousand one hundred sixty dollars.~~

~~(iii))~~ Category B includes a general order of approval developed on or after January 1, 2011. Category B covers, but is not limited to, the following general order of approval, including any subsequent updating or replacement:

~~((A))~~ (i) Portable and stationary asphalt plants (No. ~~(10AQ-GO-01 [10AQ-GO-01])~~ 10AQ-GO-01); and

~~((B))~~ (ii) Dairy manure anaerobic digesters (No. 12AQ-GO-01).

~~((6))~~ (c) Table 4 lists the 2023 fees for Category A and B reviews of applications for coverage under a general order of approval.

Table 4: 2023 Fees for review of an application for coverage under a general order of approval (WAC 173-400-560)

| <u>Type of source seeking coverage under a general order of approval</u> | <u>SEPA review complete</u> | <u>SEPA review required</u> |
|---|------------------------------------|------------------------------------|
| <u>Portable and stationary concrete batch plants (No. 08-AQG-002)</u> | <u>\$625.00</u> | <u>\$981.00</u> |
| <u>Perchloroethylene dry cleaners using less than 2,100 gallons per year (No. 06-AQG-003)</u> | <u>\$625.00</u> | <u>\$981.00</u> |
| <u>Stationary and portable rock crushers (No. 11AQ-GO-001)</u> | <u>\$625.00</u> | <u>\$981.00</u> |
| <u>Small water heaters and steam generating boilers (No. 08-AQ-G003)</u> | <u>\$625.00</u> | <u>\$981.00</u> |
| <u>Automobile body repair and refinishing shops (No. 08-AQG-001)</u> | <u>\$625.00</u> | <u>\$981.00</u> |
| <u>Portable and stationary asphalt plants (No. 10AQ-GO-01)</u> | <u>\$1,093.00</u> | <u>\$1,450.00</u> |
| <u>Dairy manure anaerobic digesters (No. 12AQ-GO-01)</u> | <u>\$1,093.00</u> | <u>\$1,450.00</u> |
| <u>Any other source seeking coverage under a general order of approval</u> | <u>\$1,093.00</u> | <u>\$1,450.00</u> |

(d) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(5) Fees for review of a relocation ((ef)) notice for a portable source in ecology's jurisdiction under WAC 173-400-036 ((, 173-400-110 or 173-400-560.

~~(a) This fee applies to a portable source who intends to relocate in ecology's jurisdiction with an approval order from another permitting authority.~~

~~(i) SEPA review complete: One hundred fifty dollars.~~

~~(ii) SEPA review required: Four hundred thirty-five dollars.~~

~~(b) This fee applies to a portable source who intends to relocate in ecology's jurisdiction and has operated under an ecology issued approval order or is approved for coverage under an ecology issued general order of approval.~~

~~(i) SEPA review complete: No fee.~~

~~(ii) SEPA review required: Two hundred eighty-five dollars.~~

~~(7))~~ (a) Table 5 lists the 2023 fees for review of a relocation notice for a portable source.

Table 5: 2023 Fees for review of a relocation notice for a portable source (WAC 173-400-036)

| <u>Action</u> | <u>SEPA Review Complete</u> | <u>SEPA Review Required</u> |
|--|-----------------------------|-----------------------------|
| <u>Portable source has approval order issued by a clean air agency</u> | <u>\$187.00</u> | <u>\$543.00</u> |
| <u>Portable source has approval order issued by ecology</u> | <u>No fee</u> | <u>\$365.00</u> |

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

~~(6) Fees for review of a request to establish a voluntary emission limit (WAC 173-400-091) (: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.~~

~~(a) This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours).~~

~~((b))~~ (a) This fee applies to a regulatory order issued under WAC 173-400-091 that places a limit on emissions.

(i) This fee applies to the review of a request to establish the emission limit in a stand-alone regulatory order.

(ii) This fee does not apply when an emission limit is included as a condition in an approval order for a notice of construction application.

~~((8))~~ (b) Table 6 lists the 2023 fees to establish a voluntary emission limit.

Table 6: 2023 Fees for review of a request to establish a voluntary emission limit (WAC 173-400-091)

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|--|---|--|
| <u>Review of request to establish a voluntary emission limit (WAC 173-400-091)</u> | <u>\$714.00 for up to 6 hours of review</u> | <u>\$119.00 per hour starting at 7 hours</u> |

(c) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

~~(7) Fees for review of a request to replace or substantially alter control technology (: Refer to WAC 173-455-100(4) for fee schedule) without an increase in emissions (RCW 70A.15.2220).~~

(a) Table 7 lists the 2023 fees for review of a request to replace or substantially alter control technology without an increase in emissions.

Table 7: 2023 Fees for review of a request to replace or substantially alter control technology without an increase in emissions (RCW 70A.15.2220)

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|--|-----------------------|--------------------------|
| <u>Review notice of construction application</u> | <u>No initial fee</u> | <u>\$119.00 per hour</u> |
| <u>Review RACT analysis and determination for affected emission unit</u> | <u>No initial fee</u> | <u>\$119.00 per hour</u> |

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

Major new source review preapplication and permit fees.

~~((9) Request for a written prevention of significant deterioration applicability determination (WAC 173-400-720) or preapplication assistance: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.~~

~~This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.~~

~~(10)) (8) Fees for review of a prevention of significant deterioration (PSD) determination (WAC 173-400-720 ((and)), 173-400-730, and 173-400-750).~~

~~((a) PSD permit application: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.~~

~~This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.~~

~~(b) PSD permit application where greenhouse gases are the sole PSD pollutant being reviewed: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.~~

~~(11) Revision to a prevention of significant deterioration permit (WAC 173-400-750).~~

~~(a) Administrative revision as defined in WAC 173-400-750(3): One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.~~

~~This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.~~

~~(b) All other revisions (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.~~

~~(c) The fee for a major modification of a PSD permit (as defined in WAC 173-400-720) is located in subsection (10)(a) of this section.~~

~~(12) Request to extend the following major source approvals that are set to expire: Five hundred dollars. This provision applies to each of the following:~~

~~(a) PSD permit, including a major modification;~~

~~(b) PSD permit revision;~~

~~(c) Approval order for major source nonattainment area permitting; and~~

~~(d) A change to an approval order for major source nonattainment area permitting.~~

~~(13)) (a) Table 8 lists the 2023 fees for the review of a request for prevention of significant deterioration (PSD) determination.~~

Table 8: 2023 Fees for review of a request for prevention of significant deterioration (PSD) determination

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|---|--|--|
| <u>Written PSD applicability determination (WAC 173-400-720)</u> | <u>\$4,760.00 for up to 40 hours of review</u> | <u>\$119.00 per hour starting at 41 hours</u> |
| <u>Preapplication assistance beyond the application assistance meeting ecology provides</u> | <u>\$714.00 for up to 6 hours of review</u> | <u>\$119.00 per hour starting at 7 hours</u> |
| <u>PSD permit application - New (WAC 173-400-720 and 173-400-730)</u> | <u>\$18,802.00 for up to 158 hours of review</u> | <u>\$119.00 per hour starting at 159 hours</u> |
| <u>PSD permit application - Limited to greenhouse gases</u> | <u>\$9,401.00 for up to 79 hours of review</u> | <u>\$119.00 per hour starting at 80 hours</u> |
| <u>PSD permit revision - Administrative (as defined in WAC 173-400-750(3))</u> | <u>\$2,380.00 for up to 20 hours of review</u> | <u>\$119.00 per hour starting at 21 hours</u> |
| <u>PSD permit revisions - Revision not administrative or major modification</u> | <u>\$4,760.00 for up to 40 hours of review</u> | <u>\$119.00 per hour starting at 41 hours</u> |
| <u>PSD permit revision - Major modification (WAC 173-400-720)</u> | <u>\$18,802.00 for up to 158 hours of review</u> | <u>\$119.00 per hour starting at 159 hours</u> |
| <u>Permit extension request (WAC 173-400-730(5))</u> | <u>\$625.00</u> | <u>No hourly fee</u> |

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(9) Fees for nonattainment area major new source review.

((a) A notice of construction application subject to WAC 173-400-830: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) Change to an approval order issued under WAC 173-400-830:

(i) Request to change permit conditions under WAC 173-400-111(8) that is not subject to mandatory public comment in WAC 173-400-171: One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

(ii) All other permit changes (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(iii) The fee for a major modification (as defined in WAC 173-400-810) of an approval order is located in subsection (13)(a) of this section.

(14)) (a) Table 9 lists the 2023 fees for nonattainment area major new source review.

Table 9: 2023 Fees for nonattainment area major new source review

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|---|--|--|
| <u>Notice of construction application (WAC 173-400-830)</u> | <u>\$18,802.00 for up to 158 hours of review</u> | <u>\$119.00 per hour starting at 159 hours</u> |

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|---|--|--|
| <u>Change in permit conditions - Major modifications for an order issued under WAC 173-400-830</u> | <u>\$18,802.00 for up to 158 hours of review</u> | <u>\$119.00 per hour starting at 159 hours</u> |
| <u>Change in permit conditions under WAC 173-400-111(8) - Action not subject to mandatory public comment under WAC 173-400-171(3)</u> | <u>\$2,380.00 for up to 20 hours of review</u> | <u>\$119.00 per hour starting at 21 hours</u> |
| <u>Changes in permit conditions - All other changes</u> | <u>\$9,401.00 for up to 79 hours of review</u> | <u>\$119.00 per hour starting at 80 hours</u> |
| <u>Permit extension request (WAC 173-400-111(7))</u> | <u>\$625.00</u> | <u>No hourly fee</u> |

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(10) Fees for review of plant-wide applicability limits (WAC 173-400-720).

~~((a) Request to establish new plant-wide applicability limits: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.~~

~~This fee covers up to one hundred fifty-eight hours of staff time to review the request and establish a plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above one hundred fifty-eight hours.~~

~~(b) All other requests, such as increase or renew plant-wide applicability limits; or process an expired plant-wide applicability limit: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers up to seventy-nine hours of staff time to increase, renew or process a retired plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above seventy-nine hours.)~~ (a) Table 10 lists the 2023 fees for review of requests to establish plant-wide applicability limits.

Table 10: 2023 Fees for review of plant-wide applicability limits (WAC 173-400-720)

| <u>Action</u> | <u>Initial Fee</u> | <u>Hourly Rate</u> |
|---|--|--|
| <u>Plant-wide applicability limits - Establish new limits</u> | <u>\$18,802.00 for up to 158 hours of review</u> | <u>\$119.00 per hour starting at 159 hours</u> |
| <u>Plant-wide applicability limits - All other requests</u> | <u>\$9,401.00 for up to 79 hours of review</u> | <u>\$119.00 per hour starting at 80 hours</u> |

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

Other fees.

~~((15) Second tier review (WAC 173-460-090): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

~~(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.~~

~~(b) A second tier petition that becomes subject to third tier review during the course of evaluation continues as a second tier peti-~~

tion for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed one hundred six hours.

~~(16) Third tier review (WAC 173-460-100): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

~~(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and third tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.~~

~~(b) This fee does not apply to a second tier petition that becomes a third tier petition.~~

~~(17) Ecology may enter into a written cost reimbursement agreement with an applicant as provided in RCW 70.94.085. Ecology will be reimbursed at a rate of ninety-five dollars per hour.~~

~~(18) Small business)) (11) Table 11 lists the 2023 fees for all other permitting actions, including second and third tier reviews.~~

(a) A second tier petition (WAC 173-460-090) that becomes subject to third tier review during the course of evaluation continues as a second tier petition for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed 85 hours.

(b) The fee listed in Table 11 for third tier review (WAC 173-460-100) does not apply to a second tier petition that becomes a third tier petition under (a) of this subsection.

Table 11: Other fees for 2023

| Action | Initial Fee | Hourly Rate |
|--|--|---|
| <u>Second tier review (WAC 173-460-090)</u> | <u>\$9,996.00 for up to 84 hours of review</u> | <u>\$119.00 per hour starting at 85 hours</u> |
| <u>Third tier review (WAC 173-460-100)</u> | <u>\$9,996.00 for up to 84 hours of review</u> | <u>\$119.00 per hour starting at 85 hours</u> |
| <u>Cost reimbursement agreement as provided in RCW 70A.15.1570</u> | <u>No initial fee</u> | <u>\$119.00 per hour</u> |
| <u>Review of a request for a variance under WAC 173-400-180</u> | <u>No initial fee</u> | <u>\$119.00 per hour</u> |
| <u>Review of a notification of intent to operate under WAC 173-400-035</u> | <u>No initial fee</u> | <u>\$119.00 per hour</u> |
| <u>Hourly rate for other permitting actions</u> | <u>No initial fee</u> | <u>\$119.00 per hour</u> |

(c) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(12) Fee reductions for small businesses. ((The new source review)) Ecology may reduce the permitting fees identified in subsections (2) through ((+7)) (6) of this section ((may be reduced)) for a small business as provided in this subsection.

(a) Small business reduction.

(i) To qualify for ((the)) a small business ((new source review)) permitting fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020.

((In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

~~(b-)) (ii) To receive a small business fee reduction, the owner or operator of a small business must include sufficient information in ~~(the)~~ an application submitted in accordance with (c) of this section, demonstrating that the ~~((conditions of))~~ business meets the requirements of a small business as required under subsection (1)(a) of this ~~((subsection have been met. The application must be signed:~~~~

~~(i) By an authorized corporate officer in the case of a corporation;~~

~~(ii) By an authorized partner in the case of a limited or general partnership; or~~

~~(iii) By the proprietor in the case of a sole proprietorship.~~

~~(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.~~

~~(d-)) section.~~

~~(iii) For small businesses ~~((determined to be))~~ that ecology determines are eligible for a small business fee reduction under (a)(ii) of this subsection, ~~((the new source review fee))~~ ecology shall ~~((be reduced))~~ reduce the permitting fee to the greater of:~~

~~((i-)) (A) Fifty percent of the ~~((new source review))~~ permitting fee; or~~

~~((ii) Two hundred fifty)) (B) Three hundred twelve dollars.~~

~~((e) If, due to special economic circumstances,)) (b) Extreme hardship reduction.~~

~~(i) If the fee assessed after a reduction ~~((determined))~~ granted under ~~((d-))~~ (a)(iii) of this subsection imposes an extreme hardship on a small business due to special economic circumstances, the small business may request an extreme hardship fee reduction.~~

~~(ii) To receive an extreme hardship reduction, the owner or operator of a small business must provide sufficient evidence to support a claim of ~~((an))~~ special economic circumstances and extreme hardship in an application submitted in accordance with (c) of this subsection.~~

~~((The factors which)) (iii) Ecology may consider the following factors in determining whether an owner or operator has demonstrated special economic circumstances and ~~((in setting the))~~ extreme hardship, and in determining the amount of the fee ~~((include))~~ reduction:~~

~~(A) Annual sales;~~

~~(B) Labor force size;~~

~~(C) Market conditions which affect the owner's or operator's ability to pass the cost of the ~~((new source review))~~ permitting fees through to customers; and~~

~~(D) Average annual profits. ~~((In no case will a new source review fee be reduced below one hundred dollars))~~~~

~~(c) Application for fee reduction.~~

~~(i) One of the following representatives of the small business must sign the application:~~

~~(A) An authorized corporate officer in the case of a corporation;~~

~~(B) An authorized partner in the case of a limited or general partnership; or~~

~~(C) The proprietor in the case of a sole proprietorship.~~

~~(ii) Ecology may request additional information as needed to verify the application information. If ecology determines the owner or operator has made false statements in the application, ecology may deny the fee reduction request and revoke any previously granted fee reductions for that business.~~

~~(d) In no case will ecology reduce a permitting fee below \$125.~~

~~((19))~~ (13) Fee reductions for pollution prevention initiatives. Ecology may reduce the permitting fees ~~((defined))~~ identified in subsections (2) through ~~((7))~~ (6) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

~~((20))~~ (14) Tracking revenues, time, and expenditures. Ecology must track revenues from the fees collected under this subsection on a source-specific basis.

~~((21) Periodic review. To ensure that fees cover the cost of processing the actions in this section, ecology shall review and update this section as necessary.))~~

[Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-120, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.152 and 2011 c 5 § 301(28). WSR 11-12-077 (Order 10-04), § 173-455-120, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-120, filed 5/3/07, effective 6/3/07.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|-----------------|---------------------------------------|
| WAC 173-455-130 | Air pollution standards variance fee. |
| WAC 173-455-140 | Nonroad engine permit fee. |