

## WSR 23-15-084

## PERMANENT RULES

## DEPARTMENT OF ECOLOGY

[Order 22-17—Filed July 18, 2023, 7:58 a.m., effective August 18, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the rule is to repeal chapter 173-442 WAC, Clean air rule (CAR). The rule is no longer necessary because its functions have been preempted and replaced by chapter 173-446 WAC, Climate Commitment Act (RCW 70A.65.200 (9) (c)).

CAR was a previous effort to address climate change. On August 13, 2015, Governor Inslee directed the department of ecology (ecology) to "develop and adopt a rule to place a binding cap on carbon pollution emissions" in Washington state. As a result, chapter 173-442 WAC, CAR was adopted in September 2016.

The rule was challenged in Thurston County superior court by a coalition of utility and industry groups, and the court invalidated CAR. Ecology appealed the decision to the Washington supreme court.

In January 2020, the Washington supreme court ruled that CAR was partially invalid because ecology lacked authority under the state Clean Air Act to adopt emission standards for transportation fuels and natural gas. The supreme court sent the case back to the lower court to consider other issues in the case.

In spring 2021, the Washington legislature passed the Climate Commitment Act, which explicitly provides ecology the authority to regulate transportation fuel providers. The Climate Commitment Act preempts the provisions of CAR and directs ecology to repeal CAR (RCW 70A.65.200 (9) (c)).

Given all these developments, the rule is no longer in effect and for these reasons, ecology has repealed CAR.

Citation of Rules Affected by this Order: Repealing chapter 173-442 WAC.

Statutory Authority for Adoption: Washington Clean Air Act, chapter 70A.15 RCW; Climate Commitment Act, chapter 70A.65 RCW.

Adopted under notice filed as WSR 23-07-131 on March 22, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 27.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 18, 2023.

Laura Watson  
Director

**OTS-4253.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-442-010	Scope.
WAC 173-442-020	Definitions.
WAC 173-442-030	Applicability.
WAC 173-442-040	Exemptions.
WAC 173-442-050	Baseline GHG emissions value for non-EITE covered parties.
WAC 173-442-060	GHG emission reduction pathway.
WAC 173-442-070	GHG emission reduction pathway and emission reduction requirement for EITE covered parties.
WAC 173-442-100	Emission reduction units.
WAC 173-442-110	Generating emission reduction units.
WAC 173-442-120	Recording emission reduction units.
WAC 173-442-130	Banking emission reduction units.
WAC 173-442-140	Exchanging emission reduction units.
WAC 173-442-150	Criteria for activities and programs generating emission reduction units.
WAC 173-442-160	Activities and programs recognized as generating emission reduction units.
WAC 173-442-170	Limitations on the use of allowances.
WAC 173-442-200	Demonstrating compliance.
WAC 173-442-210	Compliance report.
WAC 173-442-220	Verification.
WAC 173-442-230	Registry.
WAC 173-442-240	Reserve.
WAC 173-442-250	Compliance report and verification due date.
WAC 173-442-320	Program review.
WAC 173-442-330	Air operating permit.
WAC 173-442-340	Enforcement.
WAC 173-442-350	Confidentiality.
WAC 173-442-360	Addresses.
WAC 173-442-370	Severability.