

## WSR 24-03-093

PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF ECOLOGY

[Order 23-08—Filed January 18, 2024, 8:10 a.m.]

Subject of Possible Rule Making: The department of ecology (ecology) is considering amendments to two rules:

Chapter 173-400 WAC, General regulations for air pollution sources. This chapter establishes standards and rules to control and prevent pollution from air contaminant sources. The rule making will include updating references to an ecology technical manual used in source testing and certification.

Chapter 173-401 WAC, Operating permit regulation. This chapter establishes Washington's air operating permit program to comply with Title V of the Clean Air Act (CAA). Rule amendments to this chapter are needed to remain in alignment with federal regulations and fix an incorrect reference.

The rule making may also consider other amendments to both chapters to clarify language and improve regulatory requirements for air quality.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70A.15 RCW, Washington Clean Air Act.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: **Chapter 173-400 WAC, General regulations for air pollution sources:**

Amendments to this chapter are needed to incorporate and enforce an updated version of ecology's *Source Test Manual - Procedures for Compliance Testing*. The manual establishes requirements and procedures for industrial emitters, Washington clean air agencies, and other entities conducting testing and certification of stationary air pollution sources. The rule making will involve updating WAC 173-400-040, 173-400-050, 173-400-060, and 173-400-105 to reference the publication date of the new manual, as well as amending WAC 173-400-025 to reflect the new adoption date of the proposed rule.

Ecology staff have identified the most up-to-date, accurate, and safe source testing methods for inclusion in the new manual, which was last published in September 2004. The updated version will also be accessible and formatted for publication on ecology's website following rule adoption.

**Chapter 173-401 WAC, Operating permit regulation:**

In July 2023, the Environmental Protection Agency (EPA) finalized rule making to repeal the affirmative defense provisions in Title V of the CAA and directed state permitting authorities to make necessary changes to their operating permit programs. These provisions had allowed major air pollution sources to avoid liability in enforcement proceedings by demonstrating that violations of emissions limitations were caused by an "emergency." This rule making will repeal WAC 173-401-645, which establishes affirmative defense procedures in Washington, to align state rules with EPA's decision. In addition, it will correct an incorrect reference in WAC 173-401-925.

Together, these changes will correct outdated rule language and technical guidance, keep ecology's rules aligned with federal regulations and best scientific practices, and make documents more accessible to stakeholders and the public.

Process for Developing New Rule: Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Adam Saul, Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-742-7998, Washington relay service or TTY call 711 or 877-833-6341, email adam.saul@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-400-401-air-pollution-sources>.

Additional comments: Interested parties can stay informed about the rule making and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Ecology will conduct an environmental justice assessment in accordance with RCW 70A.02.060 as a part of this rule making.

January 18, 2024  
Kathy Taylor  
Air Quality Program Manager