

WSR 21-05-077
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed February 17, 2021, 11:20 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.04 Notice of Construction Fees.

Hearing Location(s): On March 25, 2021, at 8:45 a.m. The public hearing will be conducted using Zoom, <https://zoom.us/j/97039660428?pwd=am5GaExWVGwxemx2c0xjQUFmN2trZz09>, Meeting ID 970 3966 0428, Pass-code 522812, Call-in 253-215-8782.

Date of Intended Adoption: April 22, 2021.

Submit Written Comments to: Robert Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email robs@psccleanair.gov, fax 206-343-7522, by March 29, 2021.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email robs@psccleanair.gov, by March 18, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The notice of construction (NOC) program fees, like the other fee programs of the Puget Sound Clean Air Agency (agency) (registration, operating permits, and asbestos), are designed to recover the costs implementing and administering the program. The last significant changes to the NOC fee schedule in Regulation I, Section 6.04 were made in 2012. The current proposed changes are intended to adjust fees to keep the revenues in balance with the level of effort to complete the NOC review work. As costs have continued to rise over the past nine years, the agency has held off on fee increases, in part, in recognition of various challenges presented by economic conditions over the years. While the revenue and expenses for the NOC program have been roughly balanced for most of the past nine years, the increasing costs to the program and increasing level of effort for some types of work by the agency for certain NOC applications need to be addressed through a revised fee schedule to ensure the agency does not reach a deficit condition.

The proposed amendments to the NOC fee schedule include both cost increases for existing categories of applications as well as the addition of some new fee categories unique to certain types of applications which increase the level of effort to process those applications. The adjustments to existing fees group are linked to increasing operational costs and are expected in the approximately five to ten percent range which is consistent with previous fee increases.

Other proposed fees are based on recent experience that has shown the existing fees are inadequate. New categories have been added for work that is currently not charged to applicants. Examples include:

- Size tiers for composting applications.
- Fees when agency needs to compile emissions data that should have been submitted by applicant.
- Fee for changes only to recordkeeping or reporting requirements.
- Fee for responding to comments from public, based on the level of difficulty to respond (meaning complexity and/or number of comments received).
- Fee associated with changing an application that is already under review.

- Certain State Environmental Policy Act documents such as an environmental impact statement.

Various fee levels are proposed for these revised and new fee schedule elements, which are based on the agency's experience and estimates for the level of effort and costs necessary to complete that work.

Reasons Supporting Proposal: The long-standing financial policy of the board of directors is that NOC fees support the costs of the compliance programs. The proposed NOC review fee changes are necessary to maintain consistency with that policy, and this proposal to adjust the NOC review fees is expected to cover increasing program costs, based upon evaluation of the work needed to be performed by the agency for NOC review. The cost impact of these fee changes will vary depending on the contents and review work needed for specific NOC applications.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

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 violation by a nongovernment party; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

February 17, 2021
 Craig T. Kenworthy
 Executive Director

AMENDATORY SECTION

SECTION 6.04 NOTICE OF CONSTRUCTION FEES

(a) A Notice of Construction application is incomplete until the Agency has received all applicable fees as shown below:

Filing Fee (for each application, to be paid prior to any review).....	\$((1,150)) <u>1,550</u>
Coffee Roaster (less than 40 pounds/ batch or <u>18.14 kg/batch</u> , with thermal or <u>catalytic oxidizer</u>).	\$((600)) <u>650</u>
Hot Mix Asphalt Batch Plant.	\$((8,000)) <u>8,500</u>

Soil Thermal Desorption Unit. \$((5,000))
 5,250

Marijuana Production, Processing, or Extraction:

Production. \$1,500

Extraction or Processing. \$1,300

Combustion-Based Electric Generation Project:
 (combined heat input capacity)

10 - 100 million Btu/hr. \$((5,000))
 5,250

101 - 250 million Btu/hr. \$((10,000))
 10,500

((>)) More than 250 million Btu/hr. . \$((25,000))
 26,500

Composting Facility, new facility or increased capacity
at existing facility (annual waste acceptance capacity):

Less than 15,000 tons per year. \$((10,000))
 12,000

15,000 tons or more per year, but
less than 75,000 tons per year. \$25,000

75,000 or more tons per year \$50,000

Composting Facility, changes to existing
permit conditions with no increase in
capacity. \$6,000

Commercial Solid Waste Handling
Facility Other Than Composting \$((10,000))
Facilities 10,500

Landfill Gas System. \$((2,500))
 2,750

Refuse Burning Equipment: (rated charging capacity)

((≤)) Up to 12 tons per day. \$((5,000))
 5,250

((>)) More than 12 tons ((and ≤)) up \$((20,000))
to 250 tons per day. 21,000

((>)) More than 250 tons per day. . . \$((50,000))
 52,500

Modification of Existing Permit Conditions (excluding
Composting Facilities addressed above):

Exclusively related to reporting or
recordkeeping with no increase in
emissions and no changes to
materials processed, emissions unit,
or control device. \$650

Solely administrative changes as Filing fee
determined by the Control Officer. . only

Document Review to Determine the Notice of
Construction Permitting History of an Emissions Unit (if
determined necessary by Agency and not provided by
applicant):

Two or more previous Orders of
Approval. \$650

One previous Order of Approval. . . No
additional
fee

((Other (not listed above) for each)) Each
Piece of Equipment and Control
Equipment not included in any other \$((600))
category in this section, 6.04(a). 650

Additional Charges (for each application):

State Environmental Policy Act \$((800))
("SEPA") Threshold Determination. 900
 (MDNS, under Regulation I, Section
 2.07)

(DNS, under Regulation I, Section
 2.04) \$((4,000))
SEPA Threshold Determination. . . . 4,400

SEPA Environmental Impact
Statement (EIS), Supplemental EIS
or Addendum. \$25,000.

in addition to all costs incurred by
the Agency for the preparation of the
EIS, SEIS or Addendum (EIS or
SEIS under Regulation I, Section
2.08 and Addendum under WAC
197-11-630)

Document Collection to Support \$((800))
Conclusion that SEPA Requirements 900
were met by a Previous
Environmental Review (not provided
by applicant).
 (See WAC 197-11-600)

Document and/or Reference Collection and Review
to Develop Project or Facility Emissions Estimates
(if not provided in entirety by applicant and not
readily available to Agency) (See WAC 173-400-111
(1)(b) and 173-460-050(1)):

Development of facility-wide
inventory if needed to determine
applicability of Emissions
reporting program, the
Operating Permit program, or
the status as a major or area
source of hazardous air
pollutants. \$2,500

Development of project emissions
inventory from Safety Data Sheets. \$1,000

Other calculation of project emissions:

Novel source category not
previously permitted by Agency \$7,500

Higher complexity source
category (Commercial solid
waste handling facility,
commercial composting facility,
lumber kiln, landfill, wastewater
treatment plant, cement kiln,
glass manufacturer, asphalt
plant, gasoline terminal, oil
refinery, or oil re-refinery). . . . \$5,000

Lower complexity source
category (All other facility
types). \$1,500

Review of Engineering Source
Testing submitted in support of
application. \$1,000

<u>Review of Request to Treat Application, or Part of Application, as Confidential (fee applies regardless of the result of the Agency's review).</u>	\$1,000
Public Notice.	\$(700) 750
(under WAC 173-400-171)	((+) plus publication costs)
Public Hearing.	\$(2,000) 2,500
(under WAC 173-400-171)	((+) plus cost of
(under WAC 173-400-171)	<u>facility and equipment needed for the hearing, and</u> publication costs, if separate public notice)
 <u>Preparation of Agency Response to Comments Resulting from Public Notice and/or Public Hearing, based on level of difficulty as determined by Control Officer based upon factors including, but not limited to, substance of or numbers of comments received:</u>	
<u>Low Difficulty</u>	<u>No extra charge</u>
<u>Moderate Difficulty.</u>	<u>\$2,500</u>
<u>High Difficulty.</u>	<u>\$5,000</u>
NSPS or NESHAP.	\$(1,000) 1,050
(per subpart of 40 CFR Parts 60, 61, and 63)	
 <u>First Tier Review of Toxic Air Contaminants:</u>	
<u>Agency Review of Screening Dispersion Modeling Analysis (provided by applicant).</u>	<u>\$800</u>
<u>(under Regulation III, Section 2.07 (c)(1)(B))</u>	
<u>((Iterative)) Screening Dispersion Modeling Analysis performed by Agency (not provided by applicant).</u>	\$(1,000) 1,500
<u>(under Regulation III, Section 2.07 (c)(1)(B))</u>	
<u>Agency Review of Refined Dispersion Modeling ((Analysis Review)) (provided by applicant).</u>	\$(1,000) 1,500
<u>(under Regulation III, Section 2.07 (c)(1)(C))</u>	
<u>Refined Dispersion Modeling performed by Agency (not provided by applicant).</u>	<u>\$4,500</u>

(under Regulation III, Section 2.07 (c)(1)(C))

Major Source, Major Modification, or Emission Increases Greater than Prevention of Significant Deterioration (PSD) Thresholds.	\$5,000 (+ Ecology fees)
An Agency request for an Inapplicability Determination for PSD Program Requiring Written Applicability Determination from Ecology.	\$5,000 (+ Ecology fees)
Establishing Voluntary Limits on Emissions for Synthetic Minor Source Status, Concurrent with Notice of Construction Application Review.	\$((2,000)) <u>2,100</u>
(See WAC 173-400-091)	
Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see 40 CFR 63.2).	\$((2,500)) <u>3,000</u>
Tier II Air Toxics Review. (under WAC 173-400-090)	\$5,000 (+ Ecology fees)
<u>Review of Opacity/Grain Loading Correlation requested under Regulation I, Section 9.04(d).</u>	\$5,000

(b) A notification under Section 6.03 (b) (1) through Section 6.03 (b) (9) and 6.03 (b) (11) of this regulation is incomplete until the Agency has received a fee of \$200. An application processed as a Notice of Construction exemption under Section 6.03 (b) (10) requires payment of the Notice of Construction filing fee only. An application for coverage under a general order of approval issued by this Agency is not subject to the fees in Section 6.04(a) and instead requires payment of a \$500 fee, which is due prior to any review of the application.

(c) An application may be subject to and an applicant required to pay multiple fees as determined applicable by the Agency under Section 6.04(a). The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant as provided in RCW ((70.94.085)) 70A.15.1570, which shall cover costs incurred by the Agency separate from Section 6.04(a) fees.

(d) Additional Fee for Service - Second Incomplete Application
Upon receipt of a second incomplete Notice of Construction application from the same applicant for the same project, the Control Officer may cease review of the application and provide written notification of that determination. The Control Officer may resume review of the application if, within 30 days of the date of the notification describing the Agency's receipt of the second incomplete Notice of Construction application, the applicant has deposited \$1,000 with the Agency, and executed a fee-for-service agreement with the Agency that allows the Agency to recover the reasonable direct and indirect costs that arise from processing the Notice of Construction application, including the requirements of other relevant laws such as ((the Washington State Environmental Policy Act (SEPA))) SEPA.

The agreement shall require that the applicant assume full responsibility for paying the Agency for the costs incurred under the fee-for-service agreement. The Agency shall credit the \$1,000 deposit made by the applicant towards the costs required by a fee-for-service

agreement. The fee-for-service agreement may require the applicant to make progress payments during the application review period. The \$1,000 deposit referred to in this section and the costs provided for in a fee-for-service agreement are in addition to the fees required in Section 6.04(a).

If the applicant has not made a \$1,000 deposit and executed such a fee-for-service agreement within 30 days of the date of the notification from the Agency describing its receipt of a second incomplete application, the Agency may issue an Intent to Disapprove an Application.

The \$1,000 deposit required under this section is not refundable. In addition, any payments made to the Agency under a fee-for-service agreement are not refundable.

(e) Additional Fee - Revised Application

The Control Officer may assess an additional fee for processing a Notice of Construction application (~~(when a subsequent)~~) if an applicant submits a significantly revised application ((is submitted)) or submits information stating or demonstrating that the project which is the subject of the application has significantly changed after review by the Agency of the original ((application was determined to be complete)) project has begun and prior to the Agency issuing an Order of Approval or Intent to Disapprove an Application regarding the original application. The revision fee may be assessed if the changed information renders invalid or moot any of the review accomplished before the submission of the changes to the project. The revision fee shall be the ~~((amount))~~ sum of the individual fee items for work that ((was charged for the original Notice of Construction application, including the filing fee)) the Agency determines must be re-evaluated as a result of the changed information. The resulting total fee required by this Section is the fee for the original Notice of Construction application plus the revision fee.