

WSR 21-20-016
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY

[Order 21-08—Filed September 23, 2021, 3:23 p.m.]

Subject of Possible Rule Making: This rule making will consider updates to chapter 173-455 WAC in WAC 173-455-038, 173-455-050, 173-455-100, 173-455-120, 173-455-130, and 173-455-140. Other sections of this chapter may be added to support these revisions, if necessary.

Ecology is considering an update to the permitting fee structure to:

- Achieve full cost recovery for permit issuance.
- Establish a process to revise future new source review (NSR) fees.

Specifically, this rule making will consider the following changes:

- Update the hourly fee rate to reflect the new 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 fee.
 - WAC 173-455-130 Air pollution standards variance fee.
 - WAC 173-455-140 Nonroad engine permit fee.
- WAC 173-455-038: Update to add greenhouse gas reporting fee, found in chapter 173-441 WAC, Reporting of emissions of greenhouse gases.
- WAC 173-455-100:
 - Relocate fee established by RCW 70A.15.2220 for replacement or substantial alteration of control technology to the permit fee section to improve usability.
 - Evaluate whether a flat fee or an updated hourly rate is the appropriate fee for these reviews.
- Update rule language to improve the readability and clarity.
- Update outdated references to chapter 70.94 RCW throughout the rule to chapter 70A.15 RCW.

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: Updates are needed to achieve full cost recovery for permit issuance and to establish a process to revise future NSR fees.

Existing permit fees fund approximately 70 percent of our cost of issuing a NSR permit. The current fees were established based on the hourly rate of an Environmental Engineer 5 (EE5) in 2012.

We are looking to develop a process for establishing the hourly rate so that we are able to make adjustments to ensure the agency fully recovers costs associated with issuing NSR air quality permits. Industry has communicated with ecology that they prefer incremental increases rather than infrequent significant fee increases.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Ecology is also including staff from the solid waste program (industrial section) and nuclear waste program in our rule-making process, as these programs issue air quality permits that are subject to NSR fees. We are also coordinating with our regional offices to ensure successful implementation.

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 Jacob Berkey, Department of Ecology, Air Quality Program, P.O. Box 46700, Olympia, WA 98504-7600, phone 360-972-5147, for Washington relay service or TTY 711 or 877-833-6341, email jacob.berkey@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-455>.

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.

September 22, 2021
Kathy Taylor
Air Quality Program Manager