

WSR 23-05-099

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 15, 2023, 9:56 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 23, 2023, at 8:45 a.m. The public hearing will be conducted using Zoom. Join Zoom meeting <https://us06web.zoom.us/j/84302316487?pwd=SStnN2lOWTJ6dEMxcU1JRtk2bU1QUT09>. Meeting ID 843 0231 6487, Passcode 312940, Call in 833-548-0282. The meeting can also be attended in person at the agency's office at 1904 3rd Avenue, Suite 105, Seattle, WA.

Date of Intended Adoption: April 27, 2023.

Submit Written Comments to: Betsy Wheelock, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email [RegUpdates@pscleanair.gov](mailto:RegUpdates@pscleanair.gov), fax 206-343-7522, by March 31, 2023.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-343-8800, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email [RegUpdates@pscleanair.gov](mailto:RegUpdates@pscleanair.gov), by March 17, 2023.

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 permit, and asbestos), are designed to recover the costs of implementing and administering the program. A significant change to the NOC fee schedule in Regulation I, Section 6.04 was made two years ago, recognizing the cumulative effects of inflation, along with changes to the complexity and variable nature of the applications received. Prior to the increase adopted in support of the fiscal year 2022 budget, the last across-the-board fee increases were made in 2012. The consumer price index increase is up 16 percent since the last NOC fee increase in 2021.

The current proposed changes are intended to further adjust fees to keep the revenues in balance with the level of effort to complete the compliance work associated with the NOC permit application review program. We continue to see pressure on the program financial status and need to balance the revenue and expenses now to avoid a deficit condition, which the program is approaching.

The proposed amendments to the NOC fee schedule are for four specific transaction fees that are included in the overall NOC fee structure. These proposed increases are for the following:

- NOC filing fee - \$3,000 (currently \$1,550).
- Notification filing fee - \$500 (currently \$200).
- Equipment review fee - \$1,000 (currently \$650).
- SEPA threshold determination of determination of nonsignificance - \$1,200 (currently \$900).

These have been identified in this proposal because they are frequent and common parts of the NOC review fee requirements. They will also balance the revenue and expenses for the NOC review work most directly. The actual fees that any NOC applicant will pay to complete the process depend on the details of the proposal. These proposed fee increases are estimated to add approximately \$14,000 per month in ad-

ditional revenue, depending on the level of application activity received by the agency. This would rebalance the revenue/expense balance the program is currently experiencing. The NOC program work varies with the application activity and the complexity of the applications received.

The agency also intends to clarify during this proposed fee adjustment that the NOC review fees in this section of the regulation, when in effect, will apply to any application at the agency at the time of billing.

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 does not appear to apply to local air agencies.

February 14, 2023  
Christine Cooley  
Executive Director

**SECTION 6.04 NOTICE OF CONSTRUCTION FEES** Adopted 10/10/73 (214) Revised 12/12/73 (218), 11/21/74 (285), 03/13/80 (461), 02/13/86 (597), 06/09/88 (621), 05/11/89 (643), 11/14/91 (710), 09/10/92 (734), 11/19/92 (738), 07/08/93 (756), 10/28/93 (765), 09/12/96 (839), 12/12/96 (842), 09/11/97 (856), 03/11/99 (880), 07/12/01 (944), 05/23/02 (969), 05/22/03 (992), 06/23/05 (1045), 03/23/06 (1064), 05/22/08 (1118), 09/22/11 (1221), 05/24/12 (1243), 04/22/21 (1429)

(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)..... ~~\$(1,550)~~ 3,000

Coffee Roaster (less than 40 pounds/batch or 18.14 kg/batch, with thermal or catalytic oxidizer) . . . . .	\$650
Hot Mix Asphalt Batch Plant. . . . .	\$8,500
Soil Thermal Desorption Unit. . . . .	\$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. . . . .	\$5,250
101 - 250 million Btu/hr. . . . .	\$10,500
More than 250 million Btu/hr. . . . .	\$26,500
Composting Facility, new facility or increased capacity at existing facility (annual waste acceptance capacity):	
Less than 15,000 tons per year. . . . .	\$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 Facilities. . . . .	\$10,500
Landfill Gas System. . . . .	\$2,750
Refuse Burning Equipment: (rated charging capacity)	
Up to 12 tons per day. . . . .	\$5,250
More than 12 tons up to 250 tons per day. . . . .	\$21,000
More than 250 tons per day. . . . .	\$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 determined by the Control Officer. . . . .	Filing fee 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
Each Piece of Equipment and Control Equipment not included in any other category in this section, 6.04(a). . . . .	\$(( <del>650</del> )) <u>1,000</u>
Additional Charges (for each application):	
State Environmental Policy Act ("SEPA") Threshold Determination. . . . .	\$(( <del>900</del> )) <u>1,200</u> (DNS, under Regulation I, Section 2.04)
SEPA Threshold Determination. . . . .	\$4,400 (MDNS, under Regulation I, Section 2.07)
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 Conclusion that SEPA Requirements were met by a Previous Environmental Review (not provided by applicant). . . . .	\$900 (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
Review of Request to Treat Application, or Part of Application, as Confidential (fee applies regardless of the result of the Agency's review). . . . .	\$1,000
Public Notice. . . . .	\$750
(under WAC 173-400-171)	(plus publication costs)
Public Hearing. . . . .	\$2,500
(under WAC 173-400-171)	(plus cost of facility and equipment needed for the hearing, and publication costs, if separate public notice)
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:	
Low Difficulty. . . . .	No extra charge
Moderate Difficulty. . . . .	\$2,500
High Difficulty. . . . .	\$5,000
NSPS or NESHAP. . . . .	\$1,050
	(per subpart of 40 CFR Parts 60, 61, and 63)
First Tier Review of Toxic Air Contaminants:	
Agency Review of Screening Dispersion Modeling Analysis (provided by applicant). . . . .	\$800 (under Regulation III, Section 2.07(c)(1)(B))
Screening Dispersion Modeling Analysis performed by Agency (not provided by applicant). . . . .	\$1,500 (under Regulation III, Section 2.07(c)(1)(B))
Agency Review of Refined Dispersion Modeling (provided by applicant). . . . .	\$1,500 (under Regulation III, Section 2.07(c)(1)(C))
Refined Dispersion Modeling performed by Agency (not provided by applicant). . . . .	\$4,500 (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. . . . .	\$2,100 (See WAC 173-400-091)
Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see 40 CFR 63.2). . . . .	\$3,000
Tier II Air Toxics Review. . . . .	\$5,000 (+ Ecology fees)
(under WAC 173-460-090)	
Review of Opacity/Grain Loading Correlation requested under Regulation I, Section 9.04(d). . . . .	\$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)) 500. 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 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 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 if an applicant submits a significantly revised application 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 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 sum of the individual fee items for work that 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.