



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO#10-05

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: The Department of Ecology is amending chapter 173-430, Agricultural Burning:

This rule adopts the fees as determined by the Agricultural Burning Practices and Research Task Force (Task Force) based on the new fee structure established in RCW 70.94.6528. For pile burning, the rule changes fees to a per ton basis from a per acre fee. For field burning, the rule increases the fee. Field burning fees remain on a per acre basis. Additionally, it adopts a process for adjusting the fees within the caps in the future. Finally, this rule making includes some minor changes for consistency with the authorizing statute and the findings in the Rasmussen v. Ecology court case.

The legislature authorizes ongoing agricultural burning fee increases until the fee reaches the \$3.75 cap per acre for field burning and \$1.00 per ton for pile burning. According to statute, the Task Force determines fees within these caps.

SSB 6556 (2010) introduced a per-ton fee for pile burns to replace the per-acre fee. The volume of piled material burned exceeds the volume of crop residue from a field of the same size. So, this fee structure provides a closer link to the amount of the fee and the quantity of material burned. *Rasmussen v. Ecology* requires Ecology to remove language it found as outside of Ecology's regulatory authority.

Citation of existing rules affected by this order:

Repealed: None
Amended: Chapter 173-430 WAC
Suspended: None

Statutory authority for adoption: Chapter 70 Laws 2010(Substitute Senate bill 6556) authorizes ongoing fee increases until the fee reaches the cap. RCW 70.94.6528

Other authority : *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology, Docket # 22989-1-III*

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 10-15-071 on July 16, 2010 (date).

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted:

11/10/10

NAME (TYPE OR PRINT) Ted Sturdevant

SIGNATURE

TITLE Director, Department of Ecology

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 10, 2010

TIME: 11:31 AM

WSR 10-23-049

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>2</u>	Amended	<u>1</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>1</u>	Amended	<u>10</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>