



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Ecology AO # 05-19

- Permanent Rule
 Emergency Rule

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)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify)

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

- Yes No If Yes, explain:

Purpose: This rule revision involves an update of two WACs that regulate new or modified sources of air pollution emissions. The revision to chapter 173-460 WAC includes an update of the list of toxic air pollutants, recalculation of the acceptable source impact levels and small quantity emission rates to reflect current scientific findings, setting *de minimis* values for emissions of toxic air pollutants, and deleting out of date control technologies for best available control technologies. The revisions to WAC 173-400-110 consolidate the new source review process which has historically been divided between the two rules.

Citation of existing rules affected by this order:

Repealed:
 Amended: WAC 173-400-110 General Regulations for Air Pollution Sources
 Chapter 173-460 WAC Controls for New Sources of Toxic Air Pollutants
 Suspended:

Statutory authority for adoption: Washington Clean Air Act RCW 70.94.152

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-23-097 on November 19, 2008.

See Attachment "A" for changes from the proposed rule text.

Name: Linda Whitcher
 Address: Department of Ecology
 PO BOX 47600
 Olympia WA 98504-7600

phone (360) 407-6875
 fax (360) 407-7534
 e-mail liwh461@ecy.wa.gov

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: 5/20/09

NAME (TYPE OR PRINT)

Jay J. Manning

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: May 20, 2009

TIME: 11:55 AM

WSR 09-11-131

**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	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	<u>2</u>	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	<u>4</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>7</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A

Ecology made two changes to the proposed rule language that are more substantive than editing changes. Both these changes are in WAC 173-460-150.

Pursuant to RCW 34.05.340(c), changes that are more than editing changes require a brief description of the changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule.

The following are the changes from the proposed rule language and the principal reasons for these changes. More detailed descriptions of these changes can be found in Section II of the Concise Explanatory Statement and Responsiveness Summary for this rule revision.

Change to certain SQERs and *de minimis* levels: The Small Quantity Emission Rates (SQERs) and *de minimis* levels for the Acceptable Source Impact Levels (ASILs) with 24 hour averaging periods have been changed. The calculation used to determine both of these contained a mathematical error. When the raw one-hour concentration output was converted to a 24-hour averaging period one of the multiplication factors was inadvertently dropped from the formula. 92 toxic air pollutants were affected by this error. This error did not affect the ASILs. The appropriate SQERs and *de minimis* values (which are calculated as 1/20 of the SQERs) have been corrected in the final text.

Change to *de minimis* levels for criteria pollutants: The *de minimis* levels for the four criteria pollutants listed in WAC 173-460-150 are also changed. The four criteria pollutants, nitrogen dioxide (NO₂), sulfur dioxide (SO₂), carbon dioxide (CO), and lead (Pb) are regulated as criteria pollutants in WAC 173-400-110 and as toxic air pollutants in Chapter 173-460 WAC. To assure consistency between the two rules, Ecology applied the existing WAC 173-400-110(5) exemption levels for NO₂, CO, SO₂, and Pb to their corresponding toxic air pollutant *de minimis* levels.