



**PROPOSED RULE MAKING
(RCW 34.05.320)**

**CR-102 (7/22/01)
Do NOT use for expedited
rule making**

Agency: Energy Facility Site Evaluation Council (EFSEC)	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input checked="" type="checkbox"/> Expedited Rule Making -- Proposed notice was filed as WSR <u>04-05-058</u> ; or	<input type="checkbox"/> Continuance of WSR _____
<input checked="" type="checkbox"/> Proposal is exempt under RCW 34.05.310(4).	

(a) Title of rule: (Describe Subject) Chapter 463-39 WAC, General and Operating Permit Regulations for Air Pollution Sources

Purpose: Update EFSEC's air rules for energy facilities (chapter 463-39 WAC) to be consistent with Ecology's requirements for New Source Review (NSR), Prevention of Significant Deterioration (PSD), Air Operating permit (AOP), and Acid Rain permit programs for air emissions. Update EFSEC's adoption of federal News Source Performance Standards (NSPS). Clarify agency procedures for permit application form, source registration and penalties for consistency with Ecology regulations and state laws.

Other identifying information:

(b) Statutory authority for adoption: RCW 80.50.040(1) and (12)	Statute being implemented: Chapter 80.50 RCW
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(c) Summary: The main focus is to update adoption by reference, or adopt new sections of chapters 173-400 WAC; 173-401 WAC; 173-406 WAC and 173-460 WAC promulgated by the Department of Ecology to comply with the state and federal Clean Air Acts and the requirements of the State Implementation Plan (SIP). Changes to the language regarding the application form, source registration and penalties for permits issued under chapter 463-39 WAC are required for clarity.

Reasons supporting proposal: Consistency with federal requirements is necessary for EFSEC to retain and exercise its delegated authority from the U.S. Environmental Protection Agency to implement federal Clean Air Act programs and regulations for facilities under EFSEC jurisdiction. Updating the rules will also make the control of air emissions consistent with current state requirements.

(d) Name of Agency Personnel Responsible for:	Office Location	Telephone
1. Drafting.....Irina Makarow	Olympia	360-956-2047
2. Implementation.... Allen Fiksdal	Olympia	360-956-2152
3. Enforcement..... Mike Mills	Olympia	360-956-2151

(e) Name of proponent (person or organization): Energy Facility Site Evaluation Council

Private
 Public
 Governmental

(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters:

(g) Is rule necessary because of:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, ATTACH COPY OF TEXT Citation: Federal Clean Air Act
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

<p>(h) HEARING LOCATION: 925 Plum Street S.E., Building 4, Conference Room 308 Olympia, WA 98504-3172</p> <p>Date: <u>July 6, 2004</u> Time: <u>1:30 p.m.</u></p> <p>Assistance for persons with disabilities: Contact <u>Mariah Laamb</u> by <u>June 30, 2004</u></p> <p>TDD (360) <u>586-4224</u> or (360) <u>956-2121</u></p>	<p>Submit written comments to: Allen J. Fiksdal EFSEC P.O. Box 43172 Olympia, WA 98504-3172 FAX (360) 956-2158 By (date) July 6, 2004</p>
	<p>DATE OF INTENDED ADOPTION: August 3, 2004</p> <p align="center">CODE REVISER USE ONLY</p>
<p>NAME (TYPE OR PRINT) Allen J. Fiksdal</p>	
SIGNATURE	
TITLE EFSEC Manager	DATE

(j) Short explanation of rule, its purpose, and anticipated effects:

Chapter 463-39 WAC, General and Operating Permit Regulations for Air Pollution Sources, implements the standards and procedural requirements for review and issuance of air emission permits for facilities under EFSEC jurisdiction. Because EFSEC is delegated by the U.S. Environmental Protection Agency to issue certain federal permits, and because EFSEC is authorized by state statute to issue state permits for air pollution sources regulated under chapter 80.50 RCW, Chapter 463-39 adopts by reference, and implements both state and federal laws and rules regarding air emissions control.

Since the last amendments to chapter 463-39 WAC, both state and federal rules for air pollution sources have been updated and/or revised. WAC 463-39-005, which adopts state regulations for air pollution sources, was last amended in 1995; WAC 463-39-115, which adopts federal new source performance standards, was last amended in 1994. Both federal laws, and regulations, and consequently state regulations, have been modified since that time. Applicable sections of chapter 173-400 WAC, chapter 173-401 WAC, chapter 173-406 WAC and chapter 173-460 WAC are adopted by reference in EFSEC WAC 463-39-005, and have all been amended by Ecology since 1995. The purpose of the amendments to chapter 463-39 WAC is to maintain a permit program for air pollution sources that is consistent with the current state and federal requirements.

Other changes proposed in this expedited rulemaking are required to clarify existing language.

Does proposal change existing rules? YES NO

If yes, describe changes:

This action amends the following sections of Chapter 463-39 WAC:

WAC 463-39-005: Update adoption by reference of applicable sections of Ecology chapters 173-400 WAC, 173-401 WAC, 173-406 WAC and 173-460 WAC, as in effect on July 1, 2003;

WAC 463-39-030: Add the definition of "permitting agency" for consistency with Ecology chapter 173-400 WAC in effect on July 1, 2003;

WAC 463-39-090: Clarify that standard Ecology forms may be used for applications for air operating permits;

WAC 463-39-100: Clarify that sources subject to chapter 173-401 WAC (operating permit regulation) are not required to comply with the registration requirements of WAC 463-39-100;

WAC 463-39-105: Clarify that fees and costs are assessed by the council;

WAC 463-39-115: Update adoption by reference of federal new source performance standards, as in effect on July 1, 2003.

WAC 463-39-135: Clarify that persons in violation of chapter 463-39 WAC are subject to the provisions of both chapter 80.50 RCW and the state Clean Air Act, RCW 70.94.422;

WAC 463-39-170: Clarification for gender neutrality of councilmembers;

WAC 463-39-230: Editorial correction.

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by writing to:

telephoning: ()

faxing: ()

No. Explain why no statement was prepared

The proposed changes to Chapter 463-39 WAC are exempt from the requirement to prepare a small business economic impact statement because they are adopting federal requirements without material change, adopting rules of another Washington state agency without material change, and clarifying language of a rule without changing its effect. See RCW 19.85.025(3) and RCW 34.05.310(4) (c) and (d).

(l) Does RCW 34.05.328 apply to this rule adoption? Yes No

Please explain:

The proposed changes to Chapter 463-39 WAC are exempt from the requirements of RCW 34.05.328 because they are adopting federal requirements without material change, adopting rules of another Washington state agency without material change, and clarifying language of a rule without changing its effect. See RCW 34.05.328(5) (b)(iii) and (iv).