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Submitted via Public Comment Form: <http://ac.ecology.commentinput.com/?id=rU53f>

Mr. Jean-Paul Huys
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

**Subject: Formal Comment on Rulemaking
Revising Chapters 173-455 and 173-400 WAC, Air Quality Fee Rule**

Dear Mr. Huys,

The J.R. Simplot Company (Simplot) owns and operates food processing plants, a cattle feedlot and various agricultural support operations in the State of Washington. We are writing in response to a Department of Ecology (Ecology) proposal to amend the General Regulations for Air Pollution Sources in the Washington Administrative Code (WAC 173-400 and 173-455). We understand that Ecology has proposed to increase the registration program air quality fees that generally apply to all non-major sources in counties without a local air authority.

Simplot understands that costs increase over time and we support Ecology's pursuit of increasing fees to support the registration program. Simplot appreciates that Ecology was receptive to concerns raised by the industry members of the stakeholder work group. Specifically, Ecology's proposal to implement the fee increase over a three-year period rather than a two-year period allows industry to better absorb the significant increases proposed. The proposal to classify sources into Tiers based on annual actual emissions of specific criteria pollutants and assign flat fee to each Tier rather than a "fee-per-ton" should allow for less variability in fees from year to year.

However, the proposed rule that Ecology has issued includes language that was not supported by the stakeholder group and new language that was not considered during the stakeholder meetings.

Removal of Fees from the WAC

Simplot strongly opposes removal of the registration fees from the WAC. By keeping the fees in the WAC, the regulated community is afforded legislative oversight for all registration fee increases. Although Ecology has outlined a process in the proposed rules for registration fee increases outside of rulemaking, if Ecology is moving towards removing fees from rule, a defined and consistent process for all fee adjustment should be



incorporated into a new rule for all fees. Removing the registration fees from the WAC without this process in place is premature.

Ecology is proposing to increase other fees in this action and proposes to keep those fee amounts in the rule. Therefore, removing the registration fees from the rule is inconsistent with Ecology's action on other fees.

PM10 Emission Factor for Feedlots

Simplot strongly opposes use of Ecology's cattle feedlot PM10 emission factor¹, particularly for use in registration Tier classification. Simplot, as well as the Washington Cattle Feeders Association (WCFA), has been vocal regarding the emission factor and continue to disagree with Ecology's position on use of the factor. Simplot understands that under the current proposal, the PM10 emission factor, and the associated control efficiencies recommended by Ecology will be used to determine Tier classification for cattle feedlots. Simplot understands that the WCFA and Ecology will be collaborating on appropriate control efficiency usage in emission calculations considering the passage of Substitute Senate Bill 5196, "Odor and Fugitive Dust-Cattle Feedlots-Exemption". Simplot looks forward to Ecology engaging with WCFA on this important topic, but in interim, recommends Ecology utilize the previously acceptable PM10 emission factor for registration Tier classification for all feedlots.

Synthetic Minor Source (SM80) Fees

Ecology has proposed that all synthetic minor sources, regardless of actual emissions, pay a flat fee. It is understandable that synthetic minor sources may require additional resources by Ecology staff due to the number and type of emission points, source testing, etc. However, under the current proposal, a synthetic minor source with actual emissions of less than 20 tons per year will pay six times more than a minor facility with an equivalent actual emission rate. A synthetic minor source shouldn't be classified into the smallest of Tiers, however, should be acknowledged in some way for limiting actual emissions. Under the current proposal, Ecology offers no incentive for a synthetic minor source to reduce actual emissions.

Lack of Clarity in Rule Language

Several changes were incorporated into the proposed rule by Ecology after the last stakeholder meeting. Unfortunately, without the benefit of discussing the intent and language with stakeholders, Ecology has proposed rule language that is unclear and in some cases inconsistent. Comments to the following sections and subsections are provided below:

¹ "Emission Factor Recommendations for Beef Feedlots." Christopher Hanlon-Meyer, Farren Herron-Thorpe, Jolaine Johnson, Matt Kadlec, Sally Otterson, Gary Palcisko, and Stephanie Summers. (undated)



- 173-455-036(2)
- 173-455-039(1)
- 173-455-040(4)(a)(iv)
- 173-400-102(4)
- 173-400-103(2)
- 173-400-105(1)

WAC 173-455-036. Fee Increases

Ecology deleted subsection (2) of this section and replaced it with language that is specific to registration program fees. It appears with this proposal, Ecology would have no mechanism to update any of the non-registration fees listed in the section. While likely unintentional, it illustrates that removal of registration fees from the rule at this time is premature, as unintended consequences are likely to unfold. The language for this section in the proposed rule was incorporated after the final stakeholder meeting, therefore stakeholders were not afforded the opportunity to provide this specific feedback during the rulemaking process.

WAC 173-455-039. Source Registration Tiers

Ecology has added "A source loses its registration status when a registration fee has not been paid [173-455-039(1)]." Registration status is not defined in the rules, therefore it is unclear what Ecology means with this statement. Ecology has also proposed to include language in WAC 173-455-040(7) stating, "Failure to pay all or part of a registration fee may result in an enforcement action." The consequences of non-compliance with applicable requirements are already addressed in WAC 173-400-230. Ecology should remove 173-455-039(1) from the proposed rule due to ambiguity.

WAC 173-455-040(4). Registration Fee Schedule for Year 2022 and Beyond

Prior to this version of the proposed rule, Ecology had consistently referred to a "workload analysis" as the mechanism for determining the revenue necessary to offset the cost of the fee-eligible activities in the registration program. In the proposed rule, Ecology has replaced "workload analysis" with "annual budget." Without a workload analysis, how will Ecology demonstrate all fee increases are for fee-eligible activities? The workload analysis presented to the stakeholder group demonstrated that not one Ecology employee spent all of their time on registration program fee-eligible activities. A workload analysis will provide the transparency needed for the process Ecology has proposed.

WAC 173-400-102. Scope of registration and reporting; WAC 173-400-103. Emission estimates; and WAC 173-400-105. Records, monitoring and reporting.

These sections were substantially updated from the most recent draft version presented to the stakeholder group. Each of these sections include emission inventories and



timelines. The proposed language makes the requirements for emission inventories confusing and timelines appear to conflict with one another.

Emission Inventories

WAC 173-400-102(1) states the "section applies to sources subject to WAC-173-400-100 [source classifications subject to registration program] located in a county without a local air pollution control authority." Subsection 400-102(3)(b) goes on to state that sources must submit an "emission inventory" and specifically lists items that "must" be included in the emission inventory report:

"An emissions inventory report must [emphasis added] include the information required by ecology, an order of approval, or regulatory order:

- (i) Emission sources;
- (ii) Types and amounts of raw materials and fuels used;
- (iii) Types, amounts and concentrations of air contaminants emitted;
- (iv) Data on emission units and control devices;
- (v) Data on emission points;
- (vi) Other information related to the registration program as requested by ecology."

173-400-103(1) again states the "section applies to a source subject to WAC 173-400-100 located in a county without a local air pollution control authority." Subsection 400-103(2)(a) provides the procedure for estimating emissions from a source and states, "

"An emissions inventory report may [emphasis added] include:

- (i) An estimate of actual emissions taking into account equipment;
- (ii) Operating conditions;
- (iii) Air pollution control measures;
- (iv) A flowchart of plant processes;
- (v) Operational parameters; and
- (vi) Specifications of air pollution control equipment."

Finally, 173-400-105(1) also provides for what the emission inventory must include. There is no applicability subsection within this section to clearly indicate whether or not it applies to the registration program, but the subsection has been edited to include language specific to the registration program, as shown below.

"Emission inventory. The owner and operator of an air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. Sources shall provide registration information in a manner prescribed by the permitting authority for the submittal of these inventories [emphasis added]. When the permitting



authority requests emission inventory information for a calendar year, the owner or operator shall submit the emissions inventory no later than April 1st after the end of the calendar year for which the emissions inventory was requested. The owner and operator shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. The owner or operator may base emission estimates used in the inventory on the most recent published EPA emission factors for a source category, or other information available to the owner and operator, whichever is the better estimate."

Why has Ecology provided three different sections to describe what must be, or may be, included in an emissions inventory for a source subject to the registration program? To further confuse the matter, 173-400-102(4)(a) states "Ecology will finalize an emissions inventory by April 30th of each year, or biennially." It is unclear if Ecology is preparing the emission inventory, or if Ecology is reviewing an emission inventory, or if it is a combination of each. Ecology should reconvene a workgroup regarding use of the term "emission inventory" in these sections to ensure source obligations are clearly defined. Without clearly defined requirements, sources may not understand their regulatory obligations.

Schedules and Timelines

Sections 173-400-102, -103, and -105 all contain schedules for various activities in the registration process regarding emission inventory timelines, fee increase timelines, tier placement evaluation, and emission inventory determinations by Ecology. The schedules for these activities are confusing and appear to conflict in some cases.

- 173-400-105
 - April 1 – Emission inventory due date; 105(1)

- 173-400-102
 - April 30 – Ecology finalizes an emission inventory; 102(4)(a)
 - May 31 – A source may request review of an Ecology emission inventory determination; 102(4)(b)
 - August 31 – Ecology will notify the source of ecology's decision (on review of emission inventory determination); 102(4)(c)

- 173-400-103
 - August 1 – Ecology will provide the owner or operator of the source an opportunity to review emission estimates prepared by ecology; 103(3)(a)
 - September 30 – The source must provide comments to Ecology to change tier placement for the upcoming year, or by October 1 or later to update a future emission inventory; 103(3)(d)(ii)(A)
 - December 1 – Ecology must make a final determination on the request to change a tier placement; 103(3)(d)(iii)(A)



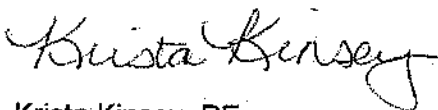
It is unclear what Ecology is finalizing on April 30 in accordance with 173-400-102(4)(a) versus what Ecology is providing to sources on August 1, in accordance with 173-400-103(3)(a). It is unclear why a source would need to provide a request on May 31 and September 30 to have Ecology reconsider emission estimates and/or tier placement.

Ecology has not included the date when the registration fee billing statement referenced in 173-455-040(7) will be submitted to the source. That subsection also stipulates fees are due within 90 days of receipt of the billing statement, and failing to pay part or all of the fee after the 91st day may result in a penalty that is three times the original fee amount and/or enforcement action. If the timeline in 400-103 is applied, and if the billing statement accompanies Ecology's submittal to sources on August 1, Ecology's final decision deadline is approximately 120 days after August 1. To avoid the risk of the penalties identified, that timeline would require a source to pay the fee before Ecology completes the review. The proposed rules do not appear to offer a mechanism to delay payment if the source has requested a review or change of the emission estimates or tier designation.

Ecology should reconvene a workgroup regarding the timelines for registration reporting, reconsideration of emissions estimates, reconsideration of tier placement, billing statement dates and fee due dates to clarify the obligations of Ecology and the regulated sources.

Thank you for your consideration of our comments. If you have any questions, or would like to discuss our comments and recommendations, please contact me at 208-780-7241.

Regards,



Krista Kinsey, PE
Environmental Engineering Manager

