

Sustainability & Climate Change Reporter



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UPDATE: Washington State Rule-Making Suspension Leaves Proposed Climate Change Regs Untouched

When is a one-year rule-making suspension ordered by a governor not a suspension? In the case of the Washington Department of Ecology's latest [announcement](#), it's when several exemptions allow continuation of most of the proposed regulations addressing climate change. In response to Gov. Christine Gregoire's executive order suspending all "non-critical" rule-making for one year, the agency is suspending seven proceedings -- including revisions to the rules implementing the state's mini-CERCLA statute, known as the Model Toxics Control Act, as well as dangerous waste regulations -- but 18 other Ecology rule-making proceedings, including several addressing greenhouse gas emissions, will not be affected by the governor's one-year hiatus.

Executive Order

On November 17, Washington Gov. Gregoire issued an [executive order \(PDF\)](#) to suspend all non-critical rule-making by state agencies due to the continuing recession and a need to re-focus scarce administrative resources. A set of [guidelines \(PDF\)](#) for determining what constitutes a "non-critical" rulemaking contained a number of exemptions for rules required by federal or state law; to maintain federally delegated or authorized programs; required by court order; necessary to manage budget shortfalls or generate revenue; necessary to protect public health, safety or welfare or to avoid immediate threats to natural resources; or beneficial to or requested by affected regulated entities, local governments or small businesses. Based on the scope of the exemptions, it appeared that few rule-making proceedings, particularly those by Ecology, would be halted by the order.

Ecology Response

In its November 30 [initial determination \(PDF\)](#) of the rules affected by the executive order, Ecology did not suspend the state's proposed greenhouse gas reporting rules, the revisions to the State Implementation Plan ("SIP") or updates to the operating permit regulations.

The reporting rules are required by state law to harmonize state regulations with federal greenhouse gas reporting requirements that start in 2012. Similarly, the SIP revisions are necessary to align the state's rules for regulating major air pollution sources with federal rules that now include greenhouse gas thresholds in permitting decisions beginning January 2011. Ecology also needs to update the operating permit regulations by January 2, 2011, so that hundreds of small greenhouse gas sources do not have to seek permits for emissions above 100 tons per year.

Updated Determinations

After a very short comment period, Ecology on December 8 issued [revisions \(PDF\)](#) to the suspension list, but did not suspend any of the proposed greenhouse gas emissions rules. In the revisions, the primary changes move proposed regulations for lower emissions vehicles from the "To Be Determined" category to "Continued," and diesel engine idling reduction rule-making shifts from "Delayed" to "To Be Determined."

The stated rationale for the change in the anticipated rule-making for lower emission vehicles is that technical updates are required to ensure consistency with the California clean car standards. Washington is one of several states that have opted to follow California's vehicle emissions standards that are more stringent than the federal government's and as California updates its rules, so must Washington state.

Moving the diesel engine idle reduction proposed rule-making to the "To Be Determined" category is based on new, more stringent federal air quality standards expected next year that could result in increased [non-attainment](#) designations for local governments. Rule changes by the feds regarding emissions of soot, dust and unburned fuel (known as PM 2.5 standards) and of ozone could create a situation where emissions from diesel engine idling pushes a city or county out of compliance (a/k/a non-attainment), which in turn could mean economic and environmental impacts for the jurisdiction. Whether the proposed diesel engine idle reduction rule moves to "Continued" status may depend on whether local governments see a need for a rule.

The bottom line is that it appears the Washington Governor's suspension order will have little affect on Ecology's climate change rule-making.

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