



Concise Explanatory Statement

Chapter 173-401 WAC

Operating Permit Regulation

Insignificant Emissions Units and Major
Source Definition Amendments

Prepared by:

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Air Quality Program

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Introduction and Background

Purpose of This Rule:

The purpose of this rule amendment is to change Chapter 173-401 (Operating Permits Regulation) of the Washington Administrative Code (WAC). This rule amendment contains a number of changes ranging from a typographical error correction to a policy change. The three most important revisions deal with Insignificant Emissions Units (IEUs), a change in the definition of “major source,” and the addition of the definitions of “continuous compliance” and “intermittent compliance.”

The results of the rule will be administrative and not environmental in nature.

Background on IEU Issue:

In 1990, Congress amended the federal Clean Air Act. One change was to create operating permits for industrial sources of air pollution (codified in Title 5 of the act). Prior to the creation of these permits, facility managers, regulators and the public had to look through many requirements to find those that applied to a certain facility. An operating permit brings all applicable requirements into one place and requires managers of the pollution source to certify that it complies with all of the applicable requirements. Further, the burden of proof for compliance changed from the regulating agencies to the sources.

In 1991, the Washington State Legislature updated the Washington Clean Air Act to make it consistent with the new federal program.

In the fall of 1993, Ecology developed Washington’s original operating permits regulation to comply with federal regulations (40 CFR part 70, or Title 5 of the federal Clean Air Act). At the same time, Ecology applied to the federal Environmental Protection Agency (EPA) for program approval. In November 1994, EPA granted Ecology and Washington’s seven local air quality agencies interim approval for the operating permits program. However, EPA also directed the state to correct several issues in order to be granted full approval for the program.

Ecology and the local air agencies made the changes requested by EPA, with the exception of the change related to “insignificant emission units.” Insignificant emission units (IEUs) are small, minor pollution sources at industrial facilities that are subject to the operating permit regulation. They include such things as bathroom vents, lubricating-oil storage tanks, recreational fireplaces, barbecues, plastic pipe welding, and wet sand-and-gravel screening. Ecology and local agencies disagreed with EPA about requiring IEUs to meet monitoring, record-keeping, and reporting (MRR) requirements of Title 5. Washington’s rule exempted IEUs from these requirements in order to focus on the larger sources of pollution, where the most important air quality gains can be made. Ecology and local agencies believed that subjecting the small, truly insignificant units and activities to the same level of rigorous MRR would place more attention than necessary on small emissions.

As a result of the disagreement with EPA about IEUs, business interests and Ecology sued EPA in the Ninth District Court of Appeals in the spring of 1995. The lawsuit had two main points. The first was that, since EPA's rules were silent on the issue of MRR for IEUs, Washington's approach should be acceptable to EPA. The second was that EPA was treating permitting authorities inconsistently by approving similar provisions in other states, while not approving the same kinds of provisions in Washington's program. In June 1996, the court ordered EPA to approve Washington's program with respect to IEUs. The issue then did not progress for a number of years.

On another front, EPA began revising the federal operating permit regulations. After a revision of this type takes place, states are required to revise their regulations to reflect the federal changes. As a consequence, many states in the nation were faced with the prospect of revising their programs twice in a short period of time -- once in response to issues raised in their interim approval process and then again when EPA finished the changes to its operating permit regulations. To address this problem, EPA extended existing interim approvals of state programs for up to five years. However, because federal law expressly prohibits extending interim approvals, EPA was sued over this issue in the fall of 2000. The resulting settlement agreement provided that EPA would take comment on all 50 states' operating permit programs, as well as those of the many local agencies across the nation.

Just one commenter addressed Washington's operating permit program. One of the comments was that Washington's rules on IEUs did not meet requirements of the federal regulations. EPA agreed with this comment and issued a notice of deficiency (NOD) on December 14, 2001. A notice of deficiency is the start of a process that could result in EPA taking over Washington's permit program and embargoing federal highway funds. An NOD is issued when EPA believes that a state is incorrectly administering the program or if the program is not set up properly in state rules.

Ecology and business interests initiated a compromise with EPA over the issue of IEUs, which led to an agreement on new language for Ecology's regulation. Ecology is proposing this new language in a revision to the operating permit regulation.

Background on the Definition of "Major Source:"

On November 27, 2001, EPA published a direct final rule that changed the definition of "major Source" for the purposes of the Air Operating Permit program (Federal Register, Volume 66, Number 228, pages 59161 – 59166). The reasons for the federal change can be read in the Federal Register and will not be reproduced here. They gave a deadline of one year for states to make changes to their programs in order to be consistent with the federal program.

Background on "Continuous" and "Intermittent Compliance:"

Under an Air Operating permit, sources are required to annually report their compliance status. The report must say if each emissions unit has been in continuous or intermittent compliance for the reporting period. There has been no consensus as to what these terms

mean. EPA has over the last several years given conflicting interpretations of how continuous compliance could be demonstrated. There is no federal definition of these terms in 40 CFR Part 70 (the federal rules for establishment of the state's Air Operating Permit program).

Recently EPA has created forms for use by sources that are subject to the federal Air Operating Permit program (40 CFR Part 71). The instructions for the compliance reporting form includes definitions of these terms for use by sources subject to the federal program. The proposed regulation used these definitions from the Part 71 program's forms.

If the EPA ever decides to define these terms in the federal Part 70 regulations, Ecology may have to change the Washington regulations to correspond with the federal rules.

Authority for this Rule:

Authority for this rule is chapters 70.94.161 and 70.94.510 of the Revised Code of Washington (RCW). Section 161 requires Ecology and the local air authorities to establish a program of renewable air operating permits. The rules established under this program are to be consistent with the federal program. Section 510 says that, "It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts . . ."

Scheduled Date of Adoption/Scheduled Effective Date of This Rule:

This rule is scheduled for adoption on September 12, 2002. It will become effective 31 days after the filing date.

Summary of Studies and Determinations

APA Determinations:

Prior to adopting a rule such as this certification rule, Ecology must make determinations under RCW34.05.328, the Administrative Procedures Act. Ecology has made the necessary determinations. They can be found in Appendix B of this document.

Summary of State Environmental Policy Act (SEPA)

Summary of Potential Environmental Consequences

Ecology closely evaluated the potential environmental impacts of the proposed rule as part of the State Environmental Policy Act determinations. Ecology completed the Environmental Checklist.

The rule amendment is not expected to have adverse environmental impacts on many of the elements contained in the checklist and the supplement. These elements include Housing, Aesthetics, Light and Glare, Recreation, Historic and Cultural Preservation, Public

Services, Plants, Animals, Energy & Natural Resources, Environmental Health, Land & Shoreline Use, Transportation Land, Water, Air and Utilities.

Determination of Nonsignificance

Following the evaluation of the potential environmental consequences, Ecology concluded that no impacts were expected and issued a Determination of Nonsignificance (DNS) on May 15, 2002. The comment period for the DNS ended June 21, 2002.

Ecology received no comments on the DNS. The DNS and the Environmental Checklist, are in Appendix C.

Summary of Economic Analyses

Summary of Small Business Economic Impact Analysis

Ecology conducted an analysis of the possible disproportionate impacts on small versus large businesses. An examination of the rule amendments indicated that no disproportionate impacts will occur. A copy of the analysis is included in Appendix B.

Cost/Benefit Analysis

A determination was made that the cost/benefit analysis is not required by the Administrative Procedures Act (Chapter 34.05 RCW).

Differences between the Proposed Rule and the Adopted Rule

Changes to the Proposed Rule:

There are some minor changes to the proposed version. The table below identifies these changes. A deletion from the text is shown as a strikethrough while additions are underlined.

Section	Text	Reason for Change
WAC 173-401-200(7)	"Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for upsets or malfunctions <u>unavoidable excess emissions or other operating conditions</u> during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.	The new language better defines those operating periods during which compliance is not required.

WAC 173-401-200(18)	“Intermittent compliance” means any form of compliance other than continuous compliance. <u>A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either that there are periods of non-compliance, or periods of time during which the monitoring required by the permit was not performed or recorded.</u>	The added language makes it clear that intermittent compliance is not always intermittent non-compliance.
WAC 173-401-200(19)(b)(xxvii)	All other stationary source categories, <u>which as of August 7, 1980 were being</u> regulated by a standard promulgated under section 111 or 112 of the FCAA;	In order to match the federal definition
173-401-500(7)(a)	(7) Completeness criteria. An application is complete when it contains the following information: (a) An application is complete when it contains <u>A</u> all of the data described in WAC 173-401-510(2), including the required information for each emission unit (other than insignificant emission units) at the facility, along with any necessary supporting data and calculations. The use of a standard application is not required if all of the data elements required in WAC 173-401-510(2) are provided;	Avoids duplicative text.
WAC 173-401-615(3)(b)	Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in each individual permit in relation to the degree and type of deviation likely to occur and the applicable requirement. For deviations which represent a potential threat to human health or safety, "prompt" means as soon as possible, but in no case later than twelve hours after the deviation is discovered. The source shall maintain a contemporaneous record of all deviations. Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered, or as part of routine emission monitoring reports, whichever is first.	The language was changed to add certainty to when the deviation report is due.

Summary of Public Involvement

Public Hearing Notices:

Ecology used several strategies to inform the public about this rule. The proposed rule was published in the Washington State Register May 15, 2002 . Legal notice of the hearing was published in the following newspapers on May 14, 2002: Bellingham Herald, Daily

Journal of Commerce, Morning News Tribune, the Olympian, Skagit Valley Herald, the Spokane Spokesman's Review, Tri-City Herald, Vancouver-Columbian, Wenatchee World, and the Yakima Herald Republic. A notice was placed in the Permit Register and mailed to all of its recipients, a list of about 500 persons.

Public Hearings:

Ecology conducted a public hearing on June 14, 2002 in the auditorium at the Department of Ecology, 300 Desmond Drive, Lacey, Washington. The hearing was held at 2:00 p.m.

Attendance at Public Hearings/Number of People Testifying:

Ecology recorded that a total of seven people attended the hearing. A total of two people testified.

Ecology received a total of 23 written and oral comments from eight individuals.

Written Comments Received

Ecology has recorded 18 written comments.

Summary of Comments and Agency Responses

- Both commenters (Peter Hildebrandt and Marsha Beery) at the hearing and one of the written comments (Llewellyn Matthews) supported the proposed language on Insignificant Emissions Units.

Ecology Response – Thank you for your comments. Ecology believes that the compromise language has benefits for all stakeholders.

- The majority of the rest of the comments were addressed at specific language changes. These comments and responses are below.
- Three comments were received about issues that were not addressed in the proposal and were therefore not eligible for consideration in this rule making. These comments may be addressed in future rule makings on this rule. The comments dealt with adding the definition of “credible evidence” to the rule and specifying if once per year reporting refers to a calendar year or a 365 day period. Also pointed out was the need to revise the audit procedures found in WAC 173-401-920.

Comments on Specific Language Changes

Comments on the definition of “Continuous Compliance”

- **Marsha Beery - Comment #2** – “Second comment is we would like to see the definition of continuous compliance revised. And we’d like that revised to mean and I’m going to read part of the definition that you already have and then we have an addition. So the meaning would be “collection of all monitoring data required

by the permit under the data collection frequency required by the permit with no deviations and no other information that indicates deviations except for upsets, malfunctions” and here’s where we’d like to see an addition “emergency shutdowns as described in WAC 173-401-645(1) or plant shutdowns; for example, repairs, maintenance.” And the rest of the definition would be as it currently is, which is during which compliance is not required, “monitoring data includes information from instrumental and non-instrumental forms of monitoring.” And the rationale for this change is that the requirement to monitor needs to be tied to emissions. As proposed the requirement to monitor is independent of emissions. The permittee should not be required to monitor any absence of emissions producing activities.

- **Matthew Cohen - Comment #2** – “AWB proposes one amendment to the definition of "continuous compliance." The proposed definition states that to certify continuous compliance all available data must show compliance "except for upsets or malfunctions during which compliance is not required." This language is not broad enough to cover the universe of circumstances during which a regulation or permit may waive compliance with an applicable requirement. For instance, WAC 173-400-107 excuses unavoidable excess emissions resulting from startup, shutdown and maintenance events. Federal NSPS and MACT standards excuse non-compliance during startup, shutdown and malfunctions. 40 CFR 60.8 and 63.6(f)(1). WAC 173-401-645 excuses non-compliance during an "emergency." Other applicable requirements waive compliance during specific circumstances defined in the permit or rule. Accordingly, AWB proposes that the first sentence of the "continuous compliance" definition be revised to read as follows:

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for ~~upsets or malfunctions~~ unavoidable excess emissions or other operating conditions during which compliance is not required.”

- **Scott Inloes - Comment #1** – “The addition of “whichever is first” to the last part of this regulation makes deviation reporting unclear. Kalama requests that whichever is first be dropped from the regulation.”

- **Wess Safford - Comment #2** – “The proposed definition of "continuous compliance" should not reference the collection of monitoring data. Current guidance from EPA Region 10 indicates that a source can legitimately certify continuous compliance with an applicable requirement for which monitoring data is incomplete or missing provided that there is no "credible evidence" to the contrary. In such cases, the source may not be able to certify continuous compliance with the affected monitoring or recordkeeping requirements, but such a determination does not affect compliance with the applicable emission limit or standard as the proposed definition implies. Clarification of this definition does not represent a substantive change in the proposed amendments, and could be incorporated as an administrative correction. SWCAA suggests that the proposed definition be reworded as follows:

"Continuous compliance" means uninterrupted compliance with an applicable requirement during a specified time period with no deviations except for upsets or malfunctions during which compliance is not required. Compliance determinations must consider all available credible evidence in addition to the compliance assurance/monitoring data specifically required by the terms and conditions of a permit."

Comments on the definition of “Intermittent Compliance”

- **Peter Hidlebrandt -Comment #2** - “Intermittent compliance does not mean intermittent non-compliance of an emission or operational standard.”
- **Matthew Cohen - Comment #1** – “The proposed definition of "continuous compliance" would bar a permittee from certifying continuous compliance under two circumstances: (1) where Title V monitoring data or other information held by the permittee reveals possible deviations and (2) where the permittee is unable to collect all of the monitoring data required by the permit, e.g. as a result of a CEM outage, a recording error or a contaminated sample.”

Ecology Response: Ecology agrees with this position and has modified the rule language to reflect this concern.

Comments on the definition of “Major Source”

- **Matthew Cohen - Comment #3** - “Ecology proposes to update the WAC 173-401 definition of "major source" to pick up an EPA amendment published at 66 Fed. Reg. 59161 (November 27, 2001). The EPA rulemaking made two textual changes to the definition of "major source." Ecology's proposal picks up only one of those changes.”
- **David Moore - Comment #1** - “I was reminded . . . that ever since we started the original drafting of Washington's operating permit rules, Ecology with its Advisory Committee . . . made a conscious decision to mirror federal operating permit language.”

Ecology Response: Ecology agrees that including both parts of the revised federal definition is the proper course.

Comments on the Reporting of Deviations

- **Marsha Beery - Comment #3** - “And the third comment is we would like to see WAC 173-401-615(3b) revised to state “other deviations” and here’s the addition we’d like to see ‘which are not considered prompt and are an emission unit limit shall be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever is first.’”
- **Joel Hebdon - Comment #4** - Revise WAC 173-401-615(3)(b) to state, ‘Other deviations, *which are not considered "prompt," and are an emission unit limit* shall be reported no later than thirty days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever is first.’”

Ecology Response - The limiting of reporting deviations, in 30 days or less, to only those deviations which involve emissions standards is would be a relaxation of the current regulation. The reason the language was proposed was merely to clarify the requirement. Ecology’s intention was not to relax reporting requirements.

- **David Ogrodnik - Comment #1** – “Actually, I wouldn’t mind if you deleted the proposed WHICHEVER IS FIRST language for the following reason:
For example, this month I submitted March 2002 CEMS/COMS data to PSCAA on April 30, 2002. If I had discovered a boiler emissions deviation on April 29th, that would leave me with only ****one**** day to identify the cause, the corrective action taken, and appropriate preventive measures -- and then incorporate this information into a deviation report for inclusion into my routine monthly emissions report. Depending on the nature of the deviation -- and who may/may not be available to answer my questions -- this might not be possible within the one-day time limit. Therefore, I would rather report the deviation the following month, as currently allowed.
Note: CEMS/COMS data is not due to be submitted to PSCAA until the 30th of the following month. Under the scenario above, I'd be reporting an emissions deviation for data that hadn't yet been reported to PSCAA. This seems odd to me.”
- **Wess Safford - Comment #4** – “SWCAA is aware that this sentence is being reworded in response to concerns expressed by EPA Region 10 that the current rule language does not ensure prompt reporting of deviations. To correct the perceived deficiency, Ecology has proposed to add the words "whichever is first" to the end of the sentence. This correction is problematic because it will change a source's reporting obligation depending on what time of the year a deviation occurs. Normally, a deviation report would be due thirty days after the end of the month during which the deviation was discovered. However, if a deviation occurred less than a month prior to a routine emission monitoring report, the deviation report would be due with the routine report rather than thirty days after the end of the month. The significant difference in reporting timeframes makes compliance unnecessarily difficult and confusing for sources. In some cases, the second timeframe may even be too short to allow a source to prepare a comprehensive deviation report.”

Ecology Response – Thank you for pointing out this problem. The rule has been changed to correct the problem.

Comments on the use of the Standard Application Form

- **Llewellyn Matthews - Comment #2** – “NWPPA supports the proposed rule revisions, particularly . . . that a complete permit application does not necessarily need to be made on a standardized form.”
- **Matthew Cohen - Comment #4** – “AWB proposes one wording change to avoid duplicative text.”
- **Joel Hebdon - Comment #3** - “The introduction of WAC 173-401-500(7) already identifies the following list so having the same statement that an application is complete in WAC 173-401-500(7)(a) is repetitive.”
- **Wess Safford - Comment #3** – “The inclusion of completeness criteria is inappropriate because the content requirements of a complete permit application are clearly identified in the first sentence of the same subsection”

Ecology Response: The rule has been changed to reflect the comments.

**APPENDIX A:
LIST OF COMMENTORS
AND
CORRESPONDING
COMMENT NUMBERS**

Peter Hildebrandt (representing several aluminum and petroleum refinery companies in the State of Washington)

PH-1 comment on IEUs

PH-2 comment on continuous and intermittent compliance

Marsha Beery (representing Fluor Daniels Hanford)

MB-1 comment on IEUs

MB-2 comment on continuous compliance

MB-3 comment on reporting of deviation

Scott Inloes (representing Noveon Kalama)

SI-1 comment on continuous compliance

Llewellyn Matthews (representing Northwest Pulp and Paper)

LM-1 comment on IEUs

LM-2 comment on standard application

LM-3 comment on support of AWB

Matthew Cohen (representing the Association of Washington Business)

MC-1 comment on intermittent compliance

MC-2 comment on continuous compliance

MC-3 comment on definition of major source

MC-4 comment on permit applications

Joel Hebdon (representing the federal Department of Energy)

JH-1 comment on continuous compliance

JH-2 comment on intermittent compliance

JH-3 comment on a complete application

JH-4 comment on reporting of deviations

JH-5 comment on once per year (365 days vs. calendar year)

David Moore (representing Boeing)

DM-1 comment on definition of major source

David M. Ogrodnik (representing the University of Washington)
DO-1 comment on reporting of deviations

Wess Safford (representing the Southwest Clean Air Agency)
WS-1 comment on definition of credible evidence
WS-2 comment on continuous compliance
WS-3 comment on standard application
WS-4 comment on deviation reporting
WS-5 comment on the annual audit provisions

APPENDIX B:
ADMINISTRATIVE PROCEDURES ACT
DETERMINATIONS

REGULATORY FAIRNESS ACT COMPLIANCE DOCUMENT

CHAPTER 173-401 WAC AMENDED

OPERATING PERMIT REGULATION

March 2002

INTRODUCTION

Chapter 19.85 RCW (the Regulatory Fairness Act) requires that rulemaking actions be examined for disproportionate impacts on small versus large businesses. If such impacts occur, they are to be mitigated to the extent feasible and legal under the stated objectives of the statute upon which the Chapter 173-401 WAC is based. An examination of the above referenced rule indicates that no disproportionate impacts will occur. The remainder of this document describes the analysis and the reasoning leading to that conclusion.

BACKGROUND

The purpose of this proposed rule amendment is to incorporate changes into state statute as a result of federal regulatory requirements.

The federal Environmental Protection Agency (EPA) issued a Notice of Deficiency (NOD) to the state of Washington on December 14, 2001. The NOD states that "pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Washington's (Washington or State) Clean Air Act title V operating permits program, which is administered by two State agencies and seven local air pollution control authorities. The notice of deficiency is based upon EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Washington's Title V program approval, but does not affect such withdrawal." The Department of Ecology (Ecology) is proposing to amend its Operating Permit regulation in Chapter 173-401 WAC to enact language agreed upon by Ecology and EPA to address the NOD and meet federal requirements.

Although many businesses or industries may occasionally be affected by the proposed rule revisions, it appears there will be no significant impacts to large or small businesses because of this rule change, except on a case-by-case basis for compliance issues.

ANALYSIS OF IMPACTS:

- a) Affected companies:

The direct impacts of this rulemaking proposal will fall upon the following for-profit companies of Washington State:

A & B ASPHALT
AFFORDABLE CUSTOM CABINETS
AGRIUM US INC
ALCOA INC
ALTEK INC APPLEWAY AVE
AMOCO FOAM PROD CO
ARCO PETROLEUM CHERRY POINT
AVISTA CORP
BAYLINER MARINE
BOEING
BOISE CASCADE LUMBER
BROOKLYN INDUSTRIAL COATINGS
BROOKS MANUFACTURING CO.
CANAM STEEL CORP SUNNYSIDE PLANT
CENTRAL PRE MIX CONCRETE CO
COLUMBIA LIGHTING
COLUMBIA PAINT & COATINGS
CONOCO INC
CSR ASSOCIATED BUTLER PIT
CXT INC PRECAST PLANT
DURAMETAL BRAKE CO
ENCOGEN NW COGENERATION PLANT
ERSHIGS INC
EXXON MOBILE SPOKANE TERMINAL
FIBER TECH INDUSTRIES
FIBREX CORPORATION
FORT JAMES CAMAS MILL
FRAMATOME ANP RICHLAND, INC
GENERAL CHEMICAL CORP.
GEORGIA PACIFIC CORP
GOLDENDALE ALUMINUM CO
GUNDERSON NW FINLEY SHOP
GUY BENNETT LUMBER
HONEYWELL ELECTRONIC MATERIALS
HUNTWOOD INDUSTRIES
IKO PACIFIC INC SUMAS
INLAND ASPHALT COMPANY
INLAND EMPIRE PAPER

INTALCO ALUMINUM CORP FERNDALE
JOHN I HAAS INC HOP PROCESSING PLANT
KAISER ALUMINUM
KIMBERLY CLARK CORP
KRIEG CONSTRUCTION INC
LAMB WESTON INC RICHLAND
LIGNOTECH USA INC
LONGVIEW ALUMINUM, L.L.C.
LONGVIEW FIBRE
LUMBERMENS BUILDING CENTER
MAAX HYDROSWIRL MFG CORP
MARCH POINT COGENERATION
MELCHER MFG CO INC
MERIDIAN AGGREGATES PACIFIC QUARRY
MILNE FRUIT PRODUCTS
MT BAKER PLYWOOD
MUTUAL MATERIALS MICA
NORTHWEST ALLOYS INC
NORTHWEST PIPELINE CORP MT VERNON
OESER COMPANY
PACIFIC GAS TRANSMISSION CO
PACIFIC NORTHWEST SUGAR
PENWEST FOODS COMPANY
PHILLIPS 66 CO FERNDALE REFINERY
POST POINT PLANT
PT TOWNSEND PAPER CORP
PUGET POWER WHITEHORN FERNDALE
PUGET SOUND REFINING CO
RELIANCE TRAILER CO LLC GEIGER BLVD
SANDVIK SPECIAL METALS CORP
SDS LUMBER CO BINGEN
SELECT FARMS LTD PAINT BOOTH
SHAMROCK PAVING INC
SHIELDS BAG & PRINTING CO
SIMPSON TACOMA KRAFT CO
SOLAR SYSTEM ATHLETIC RECONDITIONING
SONSHINE COLLISION SERVICES, INC
STIMSON LUMBER CO ARDEN
SUMAS COGENERATION CALPINE
TECNAL CORP 708
TENASKA FERNDALE COGENERATION

TESORO NORTHWEST CO
TESSENDERLO KERLEY INC
TEXACO NATURAL GAS, FERNDALE TERMINAL
TOSCO SPOKANE TERMINAL
TRAIL WAGONS INC R ST
TRANSTATE ASPHALT
TRAVIS PATTERN
TREE TOP INC PROSSER
TWIN CITY FOODS PROSSER 6TH ST
UNIMIN CORP.
UNITED COATINGS MANUFACTURING CO
VAAGEN BROTHERS LUMBER INC COLVILLE
VANALCO
VENCO PRODUCTS
WASTE TO ENERGY
WESTERN RECREATIONAL VEHICLES INC
WEYERHAEUSER PAPER CO
WHATCOM BUILDERS INC
WILDER CONSTRUCTION SINGER PIT

This list represents 68 different SIC numbers due to the wide range of permits under Chapter 173-401 WAC. This list shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.

ANALYSIS AND RESULTS:

The first part of this analysis addresses the NOD received by the state of Washington from the EPA, and published to the Federal Register on 01/02/02. The NOD states that Washington's insignificant emissions rules are not up to the EPA's standards and that Washington must comply with the federal rules or face losing both federal funding and the right to delegate the Title V program. This would put a burden on the state of Washington, businesses, and taxpayers that could easily exceed hundreds of millions of dollars per year.

The second part of this analysis, although not required for this small business impact statement, addresses the paperwork burden of complying with federal requirements.

PART ONE

A Small Business Economic Impact statement is not required, per **RCW 19.85.061**
Compliance with federal law: "Unless so requested by a majority vote of the joint administrative rules review committee under RCW 19.85.030, an agency is not required to comply with this chapter when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations. In lieu of the statement required

under RCW 19.85.030, the agency shall file a statement citing, with specificity, the federal statute or regulation with which the rule is being adopted to conform or comply, and describing the consequences to the state if the rule is not adopted."

EFFECTS OF NOTICE OF DEFICIENCY:

40 CFR Part 70 provides that EPA may withdraw a Part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of Part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1) goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the Federal Register. The EPA's deficiency document satisfies this requirement and constitutes a finding of program deficiency.

If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a federal Title V program.

Section 70.10(b)(3) provides that if a state has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the state has corrected the deficiencies identified in this document within 18 months after signature of this document. In addition, section 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within two years of the date of the finding.

PART TWO

HOURS AND COSTS REQUIRED TO COMPLETE THIS TASK.

A report was done by the EPA on FTE hours needed to complete the task of compliance from start to finish under the EPA's federal regulation section §71.5. The findings are as follows: The annual average burden on sources for the collection of information is approximately 269,000 hours per year, or 85 hours per source. The annual cost for the collection of information to respondents is \$2.7 million, assuming the part 71 program is in effect in 38 state and local jurisdictions. The annual average burden on state and local agencies as delegated agencies is \$3.9 million. The annual cost to the federal government is \$4.2 million (assuming part 71 programs are delegated), which is recovered from sources through permit fees. Thus the total annual cost to sources would be \$10.8 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes

the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Examples include records used to determine fee payment or compliance with applicable requirements.

40 CFR 71.5 provides that information needed to determine the applicability of, or to impose any applicable requirement, must not be omitted from the permit application. In addition, note that the definition of major source in neither § 71.2 nor § 71.5 exempts units eligible for insignificant treatment from major source applicability determinations. These provisions mean that there are limited situations when more information than generally required by this form for insignificant emissions units or emissions may need to be provided. For example, if you are already a major source before you consider the emissions of insignificant activities, then these emissions have **no** bearing on the determination of major source status, and therefore, may be left off the application. Currently, the state of Washington's portion of this requirement is to have a copy made of the application and send it to the EPA for review. The loss of delegation of authority reverses this process and may add as much as two month's additional process time.

The cost of compliance to small (or large) businesses can be calculated as: Total hours to complete the initial application process multiplied by average cost per hour equals total cost per source.

In the state of Washington, this computes to: 85 hours * (\$17.10¹+\$6.84²)=\$2,035/source. This is the company cost of the source emitter; it does not include any permit fees.

From the standpoint of the small business, this requirement is proportional to the size of the operation. The larger the company, the more sources there are, the more the expense.

DISCUSSION OF RESULTS

MITIGATION

The results presented here support a conclusion that the identifiable impacts of the proposed rule change upon small vs. large businesses are not disproportionate. Therefore, mitigation is not required.

CONCLUSION

As discussed in the previous section, a Small Business Economic Impact Statement is not required because of RCW 19.85.061. The cost of initial full compliance has been included at

¹ State of Washington average industrial wage

² The average overhead expense at 40% of average wage

approximately \$2,035 per new source directly to the emitter and as best as can be determined; no significant additional costs will be required by this rule change.

APPENDIX C:
SEPA DETERMINATIONS

WAC 197-11-960 Environmental checklist.

ENVIRONMENTAL CHECKLIST

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

Amendments to Chapter 173-401 WAC Operating Permits Regulation

2. Name of applicant: Air Quality Program, Department of Ecology

3. Address and phone number of applicant and contact person:

Tom Todd, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98516
(360) 407-7528

4. Date checklist prepared: 17 April 2002

5. Agency requesting checklist: Ecology

6. Proposed timing or schedule (including phasing, if applicable):

The rule amendment will be proposed in May 2002 and promulgated in or before September 2002

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

No plans at this time.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

No environmental site reports have been or will be prepared for this project.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

Does Not Apply

10. List any government approvals or permits that will be needed for your proposal, if known.

None

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The proposed revisions to Washington's Operating Permits program found in Chapter 173-401 WAC include:

- Permitting agencies may require Monitoring, Recordkeeping, and Reporting (MRR) for Insignificant Emissions Units (IEUs), at major sources of air pollution, if the permitting authority determines it is necessary to assure compliance with regulations.
- Definitions of "continuous compliance" and "intermittent compliance" will be added to the rule. These terms will make it clear what the compliance status is when sources submit their semi-annual (or more frequent) compliance reports.
- The proposed language clarifies what is considered a complete Operating Permit application. The current rule says that a copy of the standard form needs to be submitted, but many industries have found that the data from their facilities does not easily fit into the form. The proposed language states that complete information on all of the required data elements is sufficient for permit application.
- Reporting requirements for deviations from permitted standards are clarified. Currently, the rule says, "Other deviations shall be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports." We propose to add the words, "whichever is first."
- Since EPA has changed the definition of "Major Source," the proposed language will include a list of sources subject to the Operating Permit program. In addition, wording will be changed to bring Washington's definition in line with the new federal definition.
- The proposed language will make all parts of the rule consistent regarding timeframes for renewal applications.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

Throughout Washington State

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other

Does Not Apply

b. What is the steepest slope on the site (approximate percent slope)?

Does Not Apply

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

Does Not Apply

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

Does Not Apply

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

Does Not Apply

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

Does Not Apply

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

Does Not Apply

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

Does Not Apply

2. Air

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.

The proposal will not result in any additional emissions.

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

Does Not Apply

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

Does Not Apply

3. Water

a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

Does Not Apply

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

Does Not Apply

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

Does Not Apply

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

Does Not Apply

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

Does Not Apply

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

Does Not Apply

b. Ground:

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

Does Not Apply

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

Does Not Apply

- c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Does Not Apply

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

Does Not Apply

- d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

Does Not Apply

4. **Plants**

- a. Check or circle types of vegetation found on the site: **Does Not Apply**

_____ deciduous tree: alder, maple, aspen, other

_____ evergreen tree: fir, cedar, pine, other

_____ shrubs

_____ grass

_____ pasture

_____ crop or grain

_____ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other

_____ water plants: water lily, eelgrass, milfoil, other

_____ other types of vegetation

- b. What kind and amount of vegetation will be removed or altered?

Does Not Apply

- c. List threatened or endangered species known to be on or near the site.

Does Not Apply

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Does Not Apply

5. **Animals**

- a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

Does Not Apply

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other:

- b. List any threatened or endangered species known to be on or near the site.

Does Not Apply

- c. Is the site part of a migration route? If so, explain.

Does Not Apply

- d. Proposed measures to preserve or enhance wildlife, if any:

Does Not Apply

6. **Energy and natural resources**

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Does Not Apply

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

Does Not Apply

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

Does Not Apply

7. **Environmental health**

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

Does Not Apply

- 1) Describe special emergency services that might be required.

Does Not Apply

- 2) Proposed measures to reduce or control environmental health hazards, if any:

Does Not Apply

b. **Noise**

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Does Not Apply

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Does Not Apply

- 3) Proposed measures to reduce or control noise impacts, if any:

Does Not Apply

8. **Land and shoreline use**

- a. What is the current use of the site and adjacent properties?

Does Not Apply

- b. Has the site been used for agriculture? If so, describe.

Does Not Apply

- c. Describe any structures on the site.

Does Not Apply

- d. Will any structures be demolished? If so, what?

Does Not Apply

- e. What is the current zoning classification of the site?

Does Not Apply

- f. What is the current comprehensive plan designation of the site?

Does Not Apply

- g. If applicable, what is the current shoreline master program designation of the site?
Does Not Apply
 - h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
Does Not Apply
 - i. Approximately how many people would reside or work in the completed project?
Does Not Apply
 - j. Approximately how many people would the completed project displace?
Does Not Apply
 - k. Proposed measures to avoid or reduce displacement impacts, if any:
Does Not Apply
 - l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
Does Not Apply
9. **Housing**
- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
Does Not Apply
 - b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
Does Not Apply
 - c. Proposed measures to reduce or control housing impacts, if any:
Does Not Apply
10. **Aesthetics**
- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
Does Not Apply
 - b. What views in the immediate vicinity would be altered or obstructed?
Does Not Apply
 - c. Proposed measures to reduce or control aesthetic impacts, if any:
Does Not Apply
11. **Light and glare**
- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
Does Not Apply
 - b. Could light or glare from the finished project be a safety hazard or interfere with views?
Does Not Apply
 - c. What existing off-site sources of light or glare may affect your proposal?
Does Not Apply
 - d. Proposed measures to reduce or control light and glare impacts, if any:
Does Not Apply
12. **Recreation**
- a. What designated and informal recreational opportunities are in the immediate vicinity?
Does Not Apply
 - b. Would the proposed project displace any existing recreational uses? If so, describe.
Does Not Apply
 - c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:
Does Not Apply
13. **Historic and cultural preservation**

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

Does Not Apply

- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

Does Not Apply

- c. Proposed measures to reduce or control impacts, if any:

Does Not Apply

14. Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

Does Not Apply

- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

Does Not Apply

- c. How many parking spaces would the completed project have? How many would the project eliminate?

Does Not Apply

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

Does Not Apply

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

Does Not Apply

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

Does Not Apply

- g. Proposed measures to reduce or control transportation impacts, if any:

Does Not Apply

15. Public services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

Does Not Apply

- b. Proposed measures to reduce or control direct impacts on public services, if any.

Does Not Apply

16. Utilities

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

Does Not Apply

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Does Not Apply

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:

Date Submitted:

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The main portion of the proposal changes the Air Operating permit rule from not requiring Monitoring Recordkeeping and Reporting (MMR) from Insignificant Emissions Units to saying that it is possible for the agency to impose these requirement if need be. The actual emissions are not affected. The other provisions of the proposal include adding definitions of continuous compliance and intermittent compliance; updating the definition of "major source" to conform to a new federal definition of that term; reporting requirements for incidents of deviations from permit terms; clarification of what constitutes a complete application; and clarifying when a permit renewal application is due to be submitted. The only one of these rule changes likely to have any effect on the environment is the MMR for IEUs provision. It is conceivable that if a unit that has a history of violating a standard is required to have monitoring performed; then the unit would have more attention paid to it. That would probably decrease the incidence of exceeding the standard.

Proposed measures to avoid or reduce such increases are:

There should be no increases in emissions so no mitigation will be needed.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

There will be no likely effects on plants, animals, etc.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

No mitigation is needed.

3. How would the proposal be likely to deplete energy or natural resources?

No additional energy will be needed, no natural resources will be reduced or depleted.

Proposed measures to protect or conserve energy and natural resources are:

No mitigation is needed.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

No cultural or environmentally sensitive resources will be affected.

Proposed measures to protect such resources or to avoid or reduce impacts are:

No mitigation is needed.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

No shoreline or other land use will be affected.

Proposed measures to avoid or reduce shoreline and land use impacts are:

No mitigation is needed.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

There will be no additional utilities demand or transportation demand.

Proposed measures to reduce or respond to such demand(s) are:

No mitigation is needed.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

One of the reasons this rulemaking is being done is to bring Ecology rules into conformance with federal rules. The local air agency's use the state's rules, so once we change Ecology's rules, the locals will be updated as well.

WAC 197-11-970 Determination of nonsignificance (DNS).

DETERMINATION OF NONSIGNIFICANCE

Description of proposal:

The proposal is to change an existing Air Quality Rule. The proposed revisions to Washington's Operating Permits program found in Chapter 173-401 WAC include:

- Permitting agencies may require Monitoring, Recordkeeping, and Reporting (MRR) for Insignificant Emissions Units (IEUs), at major sources of air pollution, if the permitting authority determines it is necessary to assure compliance with regulations.
- Definitions of "continuous compliance" and "intermittent compliance" will be added to the rule. These terms will make it clear what the compliance status is when sources submit their semi-annual (or more frequent) compliance reports.
- The proposed language clarifies what is considered a complete Operating Permit application. The current rule says that a copy of the standard form needs to be submitted, but many industries have found that the data from their facilities does not easily fit into the form. The proposed language states that complete information on all of the required data elements is sufficient for permit application.
- Reporting requirements for deviations from permitted standards are clarified. Currently, the rule says, "Other deviations shall be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports." We propose to add the words, "whichever is first."
- Since EPA has changed the definition of "Major Source," the proposed language will include a list of sources subject to the Operating Permit program. In addition, wording will be changed to bring Washington's definition in line with the new federal definition.
- The proposed language will make all parts of the rule consistent regarding timeframes for renewal applications.

Proponent: Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600 (Contact Tom Todd 360-407-7528) _____

Location of proposal, including street address, if any: This is a non-project proposal that will apply statewide. _____

Lead agency: Department of Ecology _____

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS.

This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be postmarked by . . June 21, 2002

Responsible official: Mary Burg (Please Contact Tom Todd 360-407-7528) _____

Position/title: Program Manager _____ Phone. (360)
407-6880 _____

Address: Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600 _____

Date. _____ Signature _____

X There is no agency appeal.

APPENDIX D:

TESTIMONY

Operating Permits Public Meeting June 14, 2002

Ms. Beitel: It is now 2:33 p.m. on Friday on June 14th and this hearing is being held at the Department of Ecology, 300 Desmond Drive, Olympia, Washington. This hearing is on the rule revisions to Chapter 173-401, Operating Permit Program. Notice of the hearing was published in the May 15, 2002 State Register. Legal notice of the hearing was published in the following newspapers on May 14, 2002: Bellingham Herald, Daily Journal of Commerce, Morning News Tribune, the Olympian, Skagit Valley Herald, the Spokane Spokesman's Review, Tri-City Herald, Vancouver-Columbian, Wenatchee World, the Yakima Herald Republic. In addition, hearing notice describing the rule revisions were mailed to approximately 500 interested parties in the June 10, 2002, Operating Permit Register. Any testimony received at this hearing, along with any written comments received by the end of the comment period will be part of the official hearing record for this issue. Those offering testimony will receive a copy of the Concise Explanatory Statement prepared by Ecology in response to the public comments. If you would like to send Ecology written comments, please mail them to Tom Todd at the Department of Ecology by 5:00 p.m., July 22, 2002. They can also be faxed to (360) 407-7534 or you may email them to Tom Todd at ttod461@ecy.wa.gov. Two people have indicated that they would like to provide testimony and I will call their names in the order in which I received their cards. Please state your name, city and state of residence, the agency or organization, if any, that you're representing. We cannot answer any questions during the testimony, but questions may be asked for the record. If you do have questions not for the record, staff will be available after the hearing to talk with you. First one to comment is from Pete Hildebrandt.

Mr. Hildebrandt: My name is Pete Hildebrandt. I live in Olympia, Washington and am commenting today on behalf of the Western States Petroleum Association and also for aluminum companies that have facilities in Washington. It's really a pleasure to come here today and support what you're doing in terms of the IEUs. I appreciate the opportunity to do that. But I would for the record like to embellish a little bit on what Tom said as far as history goes. This has been a long process that started four or five years ago? A while back anyway. And it's been over "Insignificant Emission Units". We did not create that term. That is a term that's been used here. These are little units that can exist by the thousands on a major facility. They exist in the tens of thousands in society. They're all over. The argument was never over where these little things complied with rules. All of the rules follow the permit's requirement to comply. The only difficulty is whether you

can exempt them from the monitoring, the very rigid monitoring for the recordkeeping of Title V requirements. Controversy also focused only on those, the small percentage of those; never on the big facility, particularly ????. So all the rest of them weren't even a consideration in this. It's been clear from the beginning I think that because an IEU had to meet the requirements that was subject to enforcement and the permits say that too. Ecology initially very carefully crafted a rule to implement Title V and that rule did include keeping monitoring of ideas and perspective to their environmental significance and importance. EPA region X then decided that approach did not comply with the Title V rules. That started the process that consumed this huge amount of time, money and resources. And frankly, it made IEUs in front of the most insignificant issue in the areas of air quality management in this state. It was a classic case of putting process before profit, and putting regulation before environmental benefit. Nevertheless, it occurred. Yes, there was a court case. Yes, EPA lost it. Yes, they did not stop there. They decided that this should be changed throughout the country and they went ahead and got those changes made and as a part of that Washington received NOD requiring them to change their rule. Right now, Ecology with EPA assistance has proposed a revised rule. This meets EPA regulatory concerns. It keeps a reasonable perspective monitoring IEUs. And the Department has the authority to require additional monitoring, reporting, whatever needed. It's now time that we move on. That completes the process that has been going on for many years. We appreciate your patience and your diligence the Department has shown over the years in trying to maintain a reasonable, effective approach to the IEU issue. You've done a good job and you provide good solutions. Therefore, we are strongly urging you to adopt the revisions to 173-401 (530 c and e) as written. We also urge, although they're probably not here today, we urge that EPA adopt proposed additions and remove the NOD that was imposed on the good air quality management program. Now on the other hand, we have a few other revisions in this rule. And I'm not prepared to comment on the detail today and we will be submitting written comments before the deadline. We agree with your intent in having an affirmation for continuous intermittent compliance. We are not sure that that intent is carried through with the wording that you've used. That's why I ask the question I did earlier. Intermittent compliance does not mean intermittent non-compliance of an emission or operational standard. It could be lost at a single point of monitoring. There is no possibility of running a continuous emission monitoring continuously. Has to be calibrated and have down time so you're going to lose some data. Even a weekly inspection could easily miss a point or an item, maybe too far out, so you're going to have a lot of certification of intermittent compliance even though there are no deviations from the emission or operational standards. And the approach we're going to take in recommending changes to your wording is to try and clarify that. There's a few other minor wording revisions that we'll submit in the housekeeping category. I'm not prepared to address those right now, but we will submit them. Thank you.

Ms. Beitel: Our next person is Marsha Beery.

Ms. Beery: I'm Marsha Beery with Fluor Hanford and have a new office here in Olympia that the main headquarters offices in Richland. I want to thank Ecology for this opportunity to comment today. I'm here on behalf of the Department of Energy and the

other contractors of Hanford facility. And I have several comments to make. The first one is we support Ecology provisions on insignificant emission units and that's WAC 173-401 (530) and we do urge you to adopt these. We were involved in some of the early work with some of the other businesses in drafting that language. Second comment is we would like to see the definition of continuous compliance revised. And we'd like that revised to mean and I'm going to read part of the definition that you already have and then we have an addition. So the meaning would be "collection of all monitoring data required by the permit under the data collection frequency required by the permit with no deviations and no other information that indicates deviations except for upsets, malfunctions" and here's where we'd like to see an addition "emergency shutdowns as described in WAC 173-401-645(1) or plant shutdowns; for example, repairs, maintenance." And the rest of the definition would be as it currently is which is during which compliance is not required, "monitoring data includes information from instrumental and non-instrumental forms of monitoring." And the rationale for this change is that the requirement to monitor needs to be tied to emissions. As proposed the requirement to monitor is independent of emissions. The permittee should not be required to monitor any absence of emissions producing activities. And the third comment is we would like to see WAC 173-401-615(3b) revised to state "other deviations" and here's the addition we'd like to see "which are not considered prompt and are an emission unit limit shall be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever is first." And the rationale for this change is WAC 173-401-615(3a) requires reporting all deviations at least every six months. However, WAC 173-401-615(3b) should be clarified to cover both prompt deviation reporting as well as other deviations which should be reported more frequently than every six months, that are not prompt. But which deviations apply to more frequently than every six months is not stated. So basically if you have a deviation that is not prompt and is not associated with an emission limit, it would only be reported in a six-month report. The Department of Energy does have other comments in addition to these that they will be submitting in writing. And the comment two and three that I gave today are the ones that would have the most impact on our operations. So that's why I've gotten up and talked about these. I want to thank you for the opportunity.

Ms. Beitel: Thank you much. Those were the only two that I had for right now. I'd like to ask if anyone else who would like to make public comment today. No. Okay. Well let the record show that it is now 2:45 p.m. and we are concluding the public hearing part of our meeting today. Thank you.

APPENDIX E: WRITTEN COMMENTS

June 14, 2002

Mr. Tom Todd
Air Quality Program
Washington State Department of Ecology
P.O. Box 47775
Olympia, WA 98504-7775

RE: Comments on Proposed Amendments to Chapter WAC 173-401, "Operating Permits

Dear Mr. Todd,

Noveon Kalama, Inc. has reviewed the proposed amendments to Chapter 173-410 of the Washington Administrative Code (WAC) published in the Sate Register on May 15, 2002 (Register Notice WSR 02-10—031). Kalama would like to submit the following comments regarding WAC 173-401-615(3)(b). The addition of ***whichever is first*** to the last part of this regulation makes deviation reporting unclear. Kalama request that ***whichever is first*** be dropped from the regulation based on the follow.

Kalama submits a monthly report that includes any deviations. The month report consolidates all the issues during the prior month. The deviation reports are used to compile the semi-annual reports.

In addition to the monthly report various other reports are submitted to SWCAA and EPA within the month. This new language would require a deviation that occurred the day of a report be submitted to the agencies prior to all the information being available. This would then require the agency to request additional information and the source to respond to the request. This would require agencies to perform multiple reviews of a deviation unnecessarily using limited resources. The above language would cause confusion with incomplete information being submitted to the agencies. This would make a tracking nightmare to insure that all deviation would be submitted with the appropriate report.

Kalama hopes that WDOE would seriously consider the above comment. If you have any questions and/or comments regarding this matter, please feel free to call me at (360) 673-2550.

Sincerely,

Scott Inloes
Environmental Engineer

CC: GSC, Records Library

Association of Washington Business

Clint Lamoreaux
SWCAA
1308 NE 134th St.
Vancouver, WA 98685

June 20, 2002

Tom Todd
Air Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98516-7600

RE: WAC 173-401 AMENDMENTS, WSR 02-10-031
"INSIGNIFICANT EMISSION RULE" PROPOSED AMENDMENTS

Dear Mr. Todd:

Please accept this letter as the formal comments of Northwest Pulp and Paper Association on the proposed amendments to WAC 173-401 (published at WSR 02-10-031), also commonly referred to as the amendments to the "insignificant emission units rule," or "IEU rule."

NWPPA members have followed the federal-state debate and the ensuing process to resolve issues identified in EPA's Notice of Deficiency issued on January 2, 2002. NWPPA members appreciate Ecology's effort in defending the state rule while seeking satisfactory revisions which should now lead to the withdrawal of the Notice of Deficiency with respect to this issue.

NWPPA supports the proposed rule revisions, particularly:

- that permitting authorities may require monitoring, record-keeping and reporting (MRR) for IEUs if the permitting authority determines it is necessary to assure compliance with regulations.
- that a complete permit application does not necessarily need to be made on a standardized form.
- other miscellaneous changes (with the exception mentioned below).

NWPPA recognizes that Ecology's rule needs a definition of "continuous compliance" and "intermittent compliance."

While NWPPA supports Ecology's intent, we would prefer that Ecology incorporate the changes suggested by Matt Cohen on behalf of the Association of Washington Business (AWB).

Again, thank you for your efforts regarding this rule.

Sincerely,

A handwritten signature in black ink that reads "Llewellyn Matthews". The signature is written in a cursive style with a large initial 'L' and a long, sweeping underline.

Llewellyn Matthews
Executive Director

LM:sd

June 21, 2002

Matthew Cohen
mcohen@hewm.com
(206) 389-6024
Main (206) 447-0900
Fax (206) 447-0849

Mr. Tom Todd
Air Quality Program
Washington Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: WAC ch. 173-401 amendments, WSR 02-10-031

Dear Mr. Todd:

I am writing on behalf of the Association of Washington Business ("AWB") to comment on the proposed amendments to WAC ch. 173-401 that were published at WSR 02-10-031. AWB strongly supports Ecology's initiative to secure EPA approval of the Washington Insignificant Emissions Unit ("IEU") rules. AWB members believe that Ecology has done an excellent job of defending the Washington IEU provisions while revising them to the extent necessary to secure EPA withdrawal of the Notice of Deficiency issued on January 2, 2002. The proposed rules should be revised slightly, however, to conform with federal law and to provide more useful guidance to the regulated community.

A. Definition of "intermittent compliance"

Ecology proposes to amend WAC 173-401-200 to add definitions of "continuous compliance" and "intermittent compliance." These definitions would be used by permittees filing annual compliance certifications under WAC 173-401-630(5) to specify whether compliance was "continuous" or "intermittent." The proposed definition of "continuous compliance" would bar a permittee from certifying continuous compliance under two circumstances: (1) where Title V monitoring data or other information held by the permittee reveals possible deviations and (2) where the permittee is unable to collect all of the monitoring data required by the permit, e.g. as a result of a CEM outage, a recording error or a contaminated sample. AWB does not object to the proposal to define "continuous compliance" in this stringent manner, even though it would prevent a permittee from certifying continuous compliance even where all the information available to the permittee showed compliance. We believe it is critical, however, to add a sentence to the definition of "intermittent compliance" to clarify that "intermittent compliance" does not mean "intermittent non-compliance." EPA provided some guidance on the meaning of "intermittent compliance" in the preamble to the final CAM rule:

Mr. Tom Todd
June 21, 2002
Page 2

The Agency does not interpret a certification of intermittent compliance to necessarily mean that there are periods of noncompliance. Such a certification can mean that there are periods of time in which the source's compliance status is unknown.

62 Fed. Reg. 54937 (October 22, 1997) (copy enclosed). In a 2001 rulemaking EPA confirmed that this statement still reflects EPA's views on the subject. 66 Fed. Reg. 12874 (March 1, 2001) (copy enclosed). AWB requests that Ecology add the following language to the proposed definition of "intermittent compliance":

(18) "Intermittent compliance" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data and other information available to the permittee shows either that there are periods of non-compliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

This language, based on EPA's interpretive statement, would clarify that a certification of "intermittent compliance" does not mean that a source violated its emission limits some of the time. This clarification is important, given that the terms "intermittent" and "continuous" compliance are ambiguous, and the definition of "continuous compliance" that Ecology chose to adopt is the most stringent interpretation of the term, forcing sources to report "intermittent compliance" even when they have no reason to believe that they were out of compliance at any time during the reporting period.

B. Definition of "continuous compliance"

AWB proposes one amendment to the definition of "continuous compliance." The proposed definition states that to certify continuous compliance all available data must show compliance "except for upsets or malfunctions during which compliance is not required." This language is not broad enough to cover the universe of circumstances during which a regulation or permit may waive compliance with an applicable requirement. For instance, WAC 173-400-107 excuses unavoidable excess emissions resulting from startup, shutdown and maintenance events. Federal NSPS and MACT standards excuse non-compliance during startup, shutdown and malfunctions. 40 CFR 60.8 and 63.6(f)(1). WAC 173-401-645 excuses non-compliance during an "emergency." Other applicable requirements waive compliance during specific circumstances defined in the permit or rule. Accordingly, AWB proposes that the first sentence of the "continuous compliance" definition be revised to read as follows:

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, ~~except for upsets or malfunctions~~ unavoidable excess emissions or other operating conditions during which compliance is not required.

C. Definition of "Major Source"

Ecology proposes to update the WAC 173-401 definition of "major source" to pick up an EPA amendment published at 66 Fed. Reg. 59161 (November 27, 2001). The EPA rulemaking made two

textual changes to the definition of "major source." Ecology's proposal picks up only one of those changes. To keep WAC 173-401 consistent with 40 CFR Part 70, WAC 173-401-200(19)(b)(xxvii) should be revised to add the following words:

(xxvii) All other stationary source categories, which as of August 7, 1980 were being regulated by a standard promulgated under section 111 or 112 of the FCAA.

D. Title V Permit Applications

Ecology proposes several amendments to clarify procedures for renewing Title V permits. First, Ecology proposes to delete language in WAC 173-401-500 demanding that Title V permit applications must be filed on a standardized form. Experience has revealed that a standard form is not necessary and not easily adapted to the varying configurations of major sources around the state. Second, Ecology proposes to reconcile conflicting deadlines in WAC 173-401-710 and in WAC 173-401-500(2) for permitting authorities to send "renewal applications" to their Title V sources.

AWB supports both of these goals, and the language Ecology has chosen to achieve them. AWB proposes one wording change to avoid duplicative text. WAC 173-400-500(7)(a) should be revised as follows:

(7) Completeness criteria. An application is complete when it contains the following information:

(a) ~~An application is complete when it contains~~ [A]ll of the data described in WAC 173-401-510(2) ...

AWB appreciates the opportunity to comment on the proposed amendments to WAC ch. 173-401. Please call me at 206 389-6024 if I can answer any questions about these recommendations.

Very truly yours,



Matthew Cohen

cc: Grant Nelson
Dave Moore
Pete Hildebrandt



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

02-RCA-0389

JUN 13 2002

Mr. Tom Todd
Air Quality Program
Department of Ecology
P. O. Box 47600
Olympia, WA 98504

Dear Mr. Todd:

**COMMENTS ON PROPOSED CHANGES TO CHAPTER 173-401 WASHINGTON ADMINISTRATIVE
CODE OPERATING PERMITS REGULATION**

Enclosed please find reviewer comments from the U.S. Department of Energy, Richland Operations Office on the proposed changes to Chapter 173-401 of the Washington Administrative Code. Thank you for the opportunity to comment on these proposed changes. It is hoped that you will find our comments beneficial in drafting the final regulation. If you have any questions, please call Dennis W. Bowser, Environmental Management Division, on (509) 373-2566.

Sincerely,

A handwritten signature in cursive script that reads "Joel Hebdon".

Joel Hebdon, Director
Regulatory Compliance and Analysis Division

Enclosure

cc: w encl:

B. P. Atencio, PNNL
A. W. Conklin, WDOH
J. W. Donnelly, BHI
R. H. Engelmann, FHI
R. Gay, CTUIR
R. H. Gurske, FHI
R. Jim, YN
C. J. Kemp, CHG
R. J. Landon, BHI

C. L. Lawrence, WDOH
J. J. Luke, CHG
J. W. Schmidt, WDOH
D. Sobotta, NPT
O. S. Wang, Ecology
P. A. Weiher, JCI
J. G. Woolard, BHI
Environmental Portal, A3-01

March 2001

Comment 1

The definition of continuous compliance in the proposal WAC 173-401-200(7) “means collection of all monitoring data required by the permit under the data collection frequency required by the permit; with no deviations, and no other information that indicates deviations, except for upsets or malfunctions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.”

ACTION REQUESTED: Revise the continuous compliance definition to state, “means collection of all monitoring data required by the permit under the data collection frequency required by the permit; with no deviations, and no other information that indicates deviations, except for upsets, malfunctions, *emergency shutdowns as described in WAC 173-401-645(l), or planned shutdowns (e.g., repairs, maintenance)*, during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.”

The rationale for this change is that the requirement to monitor needs to be tied to emissions. As proposed, the requirement to monitor is independent of emissions. The Permittee should not be required to monitor in the absence of emission producing activities.

Comment 2

The definition of intermittent compliance in the proposal “means any form of compliance other than continuous compliance.”

ACTION REQUESTED: Revise the intermittent compliance definition to state, “means any form of compliance other than continuous compliance, *which may or may not indicate noncompliance.*”

This is based on an EPA guidance letter dated 12/22/1998 titled “Annual Compliance Certification Guidance.”

Comment 3

WAC 173-401-500(7)(a) proposal states, “An application is complete when it contains all of the data described in WAC 173-401-510(2), including the required information for each emission unit (other than insignificant emission units) at the facility, along with any necessary supporting data and calculations.”

ACTION REQUESTED: Revise this sentence to state, “All of the data described in WAC 173-401-510(2), including the required information for each emission unit (other than insignificant emission units) at the facility, along with any necessary supporting data and calculations.”

Enclosure

March 2001

The introduction of WAC 173-401-500(7) already identifies the following list so having the same statement that an application is complete in WAC 173-401-500(7)(a) is repetitive.

Comment 4

WAC 173-401-615(3)(b) proposal states, "Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever is first."

ACTION REQUESTED: Revise WAC 173-401-615(3)(b) to state, "Other deviations, *which are not considered "prompt," and are an emission unit limit* shall be reported no later than thirty days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever is first."

The rationale for this change is WAC 173-401-615(3)(a) requires reporting all deviations at least every 6 months. However, WAC 173-401-615(3)(b) should be clarified to cover both prompt deviation reporting as well as other deviations which should be reported more frequently than every six months but are not prompt. But, which deviations apply to more frequently than every six months is not stated. So basically if you have a deviation that is not prompt and is not associated with an emission limit it would only be reported in the six-month report.

Comment 5

While not part of this proposal, WAC 173-401-630(5)(a) states, "compliance certifications be submitted once per year." Does this mean each calendar year or once every 365 days?

ACTION REQUESTED: Revise WAC 173-401-630(5)(a) to state, "compliance certifications be submitted once per calendar year."

E-Mail communication

“Tom

I advised several members of the AWB Operating Permit community of our conversation yesterday. We're pleased that you're favorably disposed toward most of the suggestions we've provided, and I'm grateful for your continuing consideration.

I was reminded (and you may be contacted directly by some other anxious folks on this point) that ever since we started the original drafting of Washington's operating permit rules, Ecology with its Advisory Committee (including business, the public and other regulators) made a conscious decision to mirror federal operating permit language. This decision was deliberate and made with a fair amount of public consensus. It is the policy path we all have followed, with respect to operating permits, for nearly a decade. By not including the 1980 regulatory cutoff language in the federal definition of "major source," Ecology would unilaterally expand the universe of operating permits beyond the federal definition - a clear departure from that policy.

Maintaining uniformity in definitions and requirements is important. We need it because we need to know what the requirements are. The body of guidance and legal interpretations available for the federal rules provides some clarity as to what is required, both for the permitted community and the regulators. Wherever state rules deviate from the federal language this interpretive resource is lost, forcing regulators and the permitted community to devote limited resources to making our own.

Secondly, expanding the list of sources that would need to determine potential fugitive emissions in assessing whether they need an operating permit, imposes a considerable burden. It would impart more uncertainty, and possible challenge as well. Fugitive emissions are not easily determined. Potential fugitive emissions are even harder to reliably quantify. In the end, I doubt there will be any "new" Washington sources qualified as major, but a lot of sources will need to go through the exercise to make sure. I would expect that Ecology would not impose such cost, uncertainty and programmatic inconsistency without first considering the matter in a public forum. I'd be happy to participate in that forum, if needed.

Thanks again for your consideration.

David W. Moore
Environmental Regulatory Affairs
phone: (425) 865-6724
fax: (425) 865-6608
cellular: (425) 830-5464
david.w.moore@boeing.com”

E Mail Communication:

Actually, I wouldn't mind if you deleted the proposed WHICHEVER IS FIRST lanuage for the following reason:

For example, this month I submitted March 2002 CEMS/COMS data to PSCAA on April 30, 2002. If I had discovered a boiler emissions deviation on April 29th, that would leave me with only ****one**** day to indentify the cause, the corrective action taken, and appropriate preventive measures -- and then incorporate this info into a deviation report for inclusion into my routine monthly emissions report. Depending on the nature of the deviation -- and who may/may not be available to answer my questions -- this might not be possible within the one-day time limit. Therefore, I would rather report the deviation the following month, as currently allowed.

Note: CEMS/COMS data is not due to be submitted to PSCAA until the 30th of the following month. Under the scenario above, I'd be reporting an emissions deviation for data that hadn't yet been reported to PSCAA. This seems odd to me.

David M. Ogrodnik, P.E.
University of Washington
Sr. Facilities Engineer -- Environmental
Plant Operations Annex 6, Box 352165
Seattle, WA 98195-2165

Direct: (206) 221-4285
FAX: (206) 543-8420
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Southwest Clean Air Agency

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www.swcleanair.org

June 6, 2002

Tom Todd
Air Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98516-7600

Subject: Comments on Proposed Amendments to Chapter 173-401 WAC "Operating Permits"

Dear Mr. Todd:

The Southwest Clean Air Agency (SWCAA) has reviewed the proposed amendments to Chapter 173-401 Washington Administrative Code (WAC) published in the State Register on May 15, 2002 (Register Notice WSR 02-10-031). In response to the proposed amendments, SWCAA would like to submit to the Department of Ecology (Ecology) the following comments:

- 1) **WAC 173-401-200.** Consistent with the provisions of the Federal Clean Air Act and Title 40 Code of Federal Regulations, Part 70 (40 CFR 70), determinations of permit deviations, continuous or intermittent compliance status, or violations of emission limits are not limited to reference test methods or the testing and monitoring methods specified by underlying regulations. The source and the permitting authority must consider other credible evidence in making such determinations. Therefore, a definition of the term "credible evidence" should be added to WAC 173-401-200 due to its broad impact on a variety of compliance determinations. Addition of a definition does not represent a substantive change in the proposed amendments, and could be incorporated as an administrative correction. Consistent with language found in 40 CFR 51.212, 52.12, 52.30 and 60.11, SWCAA suggests the following definition:

"Credible evidence" means any credible evidence or information that indicates whether a source would have been in compliance with applicable emission limits or standards if the appropriate performance or compliance test procedures or methods had been performed. Such evidence and information includes, but is not limited to, engineering calculations, indirect estimates of emissions, continuous emission monitor (CEM) data, parametric monitoring data, expert testimony, and evidence admissible under the Federal Rules of Evidence.



- 2) **WAC 173-401-200(7)**. The proposed definition of "continuous compliance" should not reference the collection of monitoring data. Current guidance from EPA Region 10 indicates that a source can legitimately certify continuous compliance with an applicable requirement for which monitoring data is incomplete or missing provided that there is no "credible evidence" to the contrary. In such cases, the source may not be able to certify continuous compliance with the affected monitoring or recordkeeping requirements, but such a determination does not affect compliance with the applicable emission limit or standard as the proposed definition implies. Clarification of this definition does not represent a substantive change in the proposed amendments, and could be incorporated as an administrative correction. SWCAA suggests that the proposed definition be reworded as follows:

"Continuous compliance" means uninterrupted compliance with an applicable requirement during a specified time period with no deviations except for upsets or malfunctions during which compliance is not required. Compliance determinations must consider all available credible evidence in addition to the compliance assurance/monitoring data specifically required by the terms and conditions of a permit.

- 3) **WAC 173401-500(7)(a)**. The proposed sentence at the end of the subsection appears to be intended to specifically address the format requirements for a permit application (i.e., is a source required to use the "standard application form"). The inclusion of completeness criteria is inappropriate because the content requirements of a complete permit application are clearly identified in the first sentence of the same subsection. Changing the proposed sentence does not represent a substantive change in the proposed amendments, and could be incorporated as an administrative correction. SWCAA suggests that the last sentence be reworded as follows:

The use of a standard application form is not required.

- 4) **WAC 173-401-615(3)(b)**. The proposed amendments modify the timeframe for reporting permit deviations contained in WAC 173-401-615(3)(b). As currently written, all permit deviations that do not represent a potential threat to human health or safety are to be reported "...no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports." SWCAA is aware that this sentence is being reworded in response to concerns expressed by EPA Region 10 that the current rule language does not ensure prompt reporting of deviations. To correct the perceived deficiency, Ecology has proposed to add the words "whichever is first" to the end of the sentence. This correction is problematic because it will change a source's reporting obligation depending on what time of the year a deviation occurs. Normally, a deviation report would be due thirty days after the end of the month during which the deviation was discovered. However, if a deviation occurred less than a month prior to a routine emission monitoring report, the deviation report would be due with the routine report rather than thirty days after the end of the month. The significant difference in reporting timeframes makes compliance unnecessarily difficult and

confusing for sources. In some cases, the second timeframe may even be too short to allow a source to prepare a comprehensive deviation report.

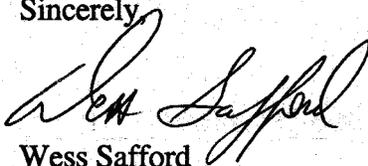
Specification of a single timeframe for reporting deviations would provide consistency making compliance assurance easier for both sources and permitting authorities. This change does not represent a substantive change in the proposed amendments, and could be incorporated as an administrative correction. The first timeframe cited above has the advantage of establishing a regular monthly reporting obligation and allowing sources sufficient time to collect the required information for each deviation report. Each permitting agency would still have the ability to impose more stringent requirements in individual permits if such measures are deemed appropriate. SWCAA suggests that the last sentence of WAC 173-401-615(3)(b) be reworded as follows:

Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered.

- 5) **WAC 173-401-920.** The annual audit of SWCAA's Title V program was recently completed. In the process of conducting that audit, the timeliness and appropriateness of the audit criteria contained in WAC 173-401-920 was discussed in detail. These criteria were written as part of the original program. Now that we have implemented the program many of these criteria are not relevant to the program as it exists today. Ecology should review and revise the requirements of this section, and incorporate the revisions into the proposed amendments.

If you have questions or wish to discuss the above comments, please call me at (360) 574-3058 extension 26.

Sincerely,



Wess Safford
Air Quality Engineer