As required by

the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANTORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-400 WAC,
General Regulation for Air Pollution Sources

12/29/04

Publication Number: 04-02-026

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RESPONSIVENESS SUMMARY
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CHAPTER 173-400 WAC,
General Regulation for Air Pollution Sources

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Air Quality Program

12/29/04

Publication Number: 04-02-026

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CONCISE EXPLANATORY STATEMENT

I. Introduction

The purpose of the rule is to update the state rule to conform to recent federal regulatory changes with respect to New Source Review (NSR) and to fix problems found with our existing rules. The overall goal is to create a state program that will gain federal approval.

The major issues that we worked on were:

1. Incorporation and modification (as necessary to create a workable NSR program) of federal Major Source NSR rules promulgated on December 31, 2002, in the Federal Register,
2. Public notice and Internet notice of Minor NSR actions,
3. Changes to the several definitions,
4. Creation of a process whereby the permitting authorities can write general permits for air pollution sources.
5. Updated the fees that are charged for NSR. This was last done in 1993.
6. Changes to the Excess Emissions portion of the rule.
7. Changes to the Temporary Source portion of the rule, and
8. Cleanup of several minor mistakes such as typos.

Several of the changes were identified by EPA as SIP deficiencies. The incorporation of the federal Major Source NSR program, also known as Prevention of Significant Deterioration or PSD, is needed to continue the running of that program by Ecology. The fee update was done since there was a legislative opportunity to do so at this time without triggering the limits imposed by the Initiatives. And General Permit procedures were created in order to streamline the permitting process for some of the smaller source categories.

The effective date is 31 days after the rule is filed with the Code Reviser.

II. Describe Differences between Proposed and Final Rule

- Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):
  The added and delete text is found in Appendix 4, at the end of this document.
  Each Response to a comment includes a decision on whether or not to accept the comment. The rationale is also included.

III. Summarize Comments

- Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. You must indicate how the final rule reflects agency consideration of the comments or why it fails to do so (RCW 34.05.325(6)(a)(iii)):

    - The comments and responses are organized in a section by section fashion. The first part of the Comments and Responses section starts with the 030, Definitions, section of the rule and progress to the 750, Revisions to PSD permits. Each response includes decision Ecology made as to whether to accept the suggestion or not, and the rationale for doing so. Each Comment and Response is numbered by the section of the rule it refers to and then the number of the comment in that section. For example Comment #030-6 is the sixth comment about rule section 030. Each comment also has the name of the commenter attached to it.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

List or describe:

- *workshop dates and locations, if any*
  Immediately preceding each hearing, in the same location, Ecology held a workshop and explained the rule and provided an opportunity for questions.
- *hearing dates and locations*
  Two hearings were conducted:
  Olympia – Ecology HQ Building, 300 Desmond Drive, Lacey, WA 98516

  Hearing Date: November 9, 2004, Time: 1:30 PM

  Spokane – Ecology Eastern Regional Office, 4601 N. Monroe Street, Suite 202, Spokane, WA 99205

  Hearing Date: November 10, 2004, Time: 1:30 PM
- *mass mailing pieces (i.e., FOCUS sheet, news releases)*
  The attached Hearing Notice was e-mailed to over 500 people.
- *advertisements and/or newspaper announcements*

  A Hearing Notice was published in Daily Journal of Commerce on October 8, 2004 and October 22, 2004. No copy has yet been provided for the files from the Daily Journal of Commerce

  A Hearing Notice was also published in the Spokane Spokesman-Review, also on October 8, 2004 and October 22, 2004. A copy of the notice is enclosed in Appendix 3.

V. Appendices

Appendix 1: Copies of all written comments received.

Appendix 2: List of individuals (name, organizational affiliation, address) providing oral comments at hearings and corresponding comment numbers for indexing

Appendix 3: Copies of all public notices regarding rule (i.e., FOCUS sheets, news releases, legal notices and advertisements, handouts and flyers, WSR notices)

Appendix 4: Copy of the final rule text showing revisions being made.

Comments and Responses

Comments about section 030 of the proposal

Comment #030-1

The Association of Washington Business (AWB) made the following comment:

((~~(33)~~)) (34) **"Federal land manager"** means the secretary of the department with authority over federal lands in the United States.* ~~This includes, but is not limited to, the U.S. Department of the Interior - National Park Service, the U.S. Department of the Interior - U.S. Fish and Wildlife Service, the U.S. Department of Agriculture - Forest Service, and/or the U.S. Department of the Interior - Bureau of Land Management.~~

AWB recommends that Ecology use the EPA definition (40 CFR 51.165(a)(1)(xlii) and 52.21(b)(24)) of a term used only in EPA major NSR permitting programs. The additional verbiage does not capture the full universe of potential FLMs, and it may be incorrectly construed to require notification of FLMs who have no stake in a particular permitting action.

(Double strikeout indicates that the suggestion was to delete indicated text.)

Response #030-1

The federal definition is: "Federal Land Manager means, with respect to any lands in the United States, the Secretary of the department with authority over such lands." Both camps, Ecology and AWB, are attempting to clarify. The proposed Ecology language suggests that more explanation is better. AWB suggests that the explanation is incomplete and will lead to confusion. These two ways of clarification reflect a difference in style. Ecology chooses to retain the last sentence.

Comments #030-2

AWB's comment -

((~~(34)~~)) (35) **"Federally enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and ((~~61~~)) 63, requirements established within the Washington SIP, requirements within any permit or order* established under 40 CFR 52.21 or under a SIP approved new source review regulation, ((~~including operating permits issued under chapter 173-401 WAC and expressly requires adherence to any permit issued under these programs~~)) and emissions limitation orders issued under WAC 173-400-091.

See 40 CFR 52.21(b)(17) (definition of "federally enforceable").

(Highlighting indicates that the comment suggested adding the highlighted text.)

Comments #030--3

The Environmental Protection Agency (EPA) made the following comment -

Federally Enforceable: There appears to be a typo in the definition. Should the definition read *" . . . requirements within any approval established under 40 CFR 52.21 . .."*?

Response #030-2 and -3

Both EPA and AWB pointed out the same typo, that there was a word or words missing in the proposal. Ecology can choose to add the words "permit, approval and/or order." All would convey the idea of what was meant. Ecology will use the words "approval or order."

Comment #030-4

AWB's comment -

((~~(48)~~)) (47) **"Modification"** means any physical change in, or change in the method of operation of, a **stationary source** that increases the amount of any **air contaminant** emitted by such **source** or that results in the **emissions** of any **air contaminant** not previously emitted. The term modification shall be construed consistent with the definition~~s~~* of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

See RCW 70.94.030(14).

Response #030-4

Chapter 70.94 RCW says, "'Modification' means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section."

AWB has pointed out a small typo. The rule definition and the RCW definition differ only by the letter 's.' Thank you for pointing out this small error Ecology will fix the mistake.

Comment #030-5

AWB's comment -

((~~(55)~~)) (53) **"New Source Performance Standards (NSPS)"** means the federal rules identified as standards of performance in 40 CFR Part 60* ~~as adopted in WAC 173-400-115~~.

The attempt to limit the NSPS to rules adopted in WAC 173-400-115 will get Ecology into trouble. WAC ch. 173-401 requires Ecology to treat all NSPS as Title V applicable requirements, yet ch. 173-401 contains no definition of New Source Performance Standards, and WAC 173-401-200 incorporates by reference the definitions contained in ch. WAC 173-400 of terms not defined in ch. 173-401. The limitation to rules "adopted in WAC 173-400-115" serves no purpose, and should be deleted.

Comment #030-6

EPA's comment -

New Source Performance Standards (NSPS): Ecology proposes to revise this definition to mean "the federal rules in 40 CFR Part 60 as adopted in WAC 173-400-115." This proposed change is confusing because Ecology has not made the same change to the definition of "National Emission Standard for Hazardous Air Pollutants" or "National Emission Standard for Hazardous Air Pollutants for Source Categories." Further confusion is caused by the fact that several regulations that refer to NSPS, refer to a source subject to "a new source performance standard, 40 CFR Part 60." See WAC 173-400-100(c); 173-400-110(2)(b)(i). Note that if Ecology does intend that all references to the NSPS in its rules to refer only to those NSPS incorporated by reference in WAC 173-400-115, it will be even more important that Ecology frequently updates its incorporation by reference of the federal NSPS standards so that Ecology maintains its authority to implement SIP requirements. It will also require more frequent SIP revisions.

Response #030-5 and -6

Both AWB and EPA suggest that we leave out the reference to the adopted NSPS as they appear in section 115. Ecology agrees with this construction.

Comment #030-7

EPA's comment -

Nonroad engine: The new paragraph (c) should be deleted. This paragraph does nothing to define the term, but rather tells the reader what permit program applies to nonroad and stationary engines. Therefore, we recommend either adding the language in new paragraph (c) as an "editorial note" to the definition of nonroad engine (rather than including the language in the definition itself) or adding this clarifying language within the permitting rules themselves (i.e., WAC 173-400-035).

Response #030-7

All of the revisions that were proposed for section -035 have been abandoned, due to Ecology's inability to reconcile the comments. Therefore, this definition will not be changed from the current rule at this time.

Comment #030-8

AWB's comment -

(((~~(71)~~))) (69) **"Portable source"** means a stationary source* ~~or source~~ consisting of one or more emission units that is portable or transportable for the purpose of being operated at multiple locations. Portable sources include, but are not limited to, rock crushers, asphalt plants, and concrete mixing plants, skid or truck mounted package boilers or other stationary sources brought to a specific site for a limited period of time.

The term "portable source" is used exclusively in the proposed WAC 173-400-035, which subjects portable sources to NSR. RCW 70.94.152 limits NSR to "proposed new sources," defined in RCW 70.94.030 as "construction or modification of a **stationary source** . . ." The

term "source" has no place in NSR permitting. Ecology has recognized that fact by defining "source" for major NSR purposes to mean "stationary source." See WAC 173-400-710. The addition of the term "source" to the definition of a "portable source" does not increase the universe of regulated projects, but it will cause needless confusion. AWB recommends its deletion from the definition of "portable source."

Response #030-8

All of the revisions that were proposed for section -035 have been abandoned, due to Ecology's inability to reconcile the comments. This issue will be considered again in Phase 2. Therefore this definition (Portable source) will not be included in the rule at this time.

Comment #030-9

EPA's comment -

Potential to Emit: In the definition of potential to emit, Ecology proposes that "secondary emissions" be defined in the same manner as in 40 CFR 52.21, the rules for the federal PSD program, rather than citing to the definition for the SIP-approved Part D NSR program, (40 CFR 51.165(a)(1)(viii)). We do not understand the reason for the reference to the federal PSD program.

In any event, citing to either is confusing because EPA's current definition of "secondary emissions" has been partially vacated by a court decision with respect to marine vessel emissions and an older version of the rules is in effect. (See John Calcagni's January 8, 1990 letter, *"Clarifications on Secondary Emissions as Defined in the Code of Federal Regulations"*). It is therefore unclear what Ecology is intending by its citation to a federal definition that has been partially vacated. Therefore, we recommend that Ecology define the term "secondary emissions" in the definition of "potential to emit," rather than citing to a federal definition. The following language would be consistent with the court decision (see also Phase I – ECY RTC~2compare comments):

> "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:
>
> > (A) Emissions from ships or trains located at the new or modified major stationary source; and
> >
> > (B) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

Response #030-9

Ecology believes that is important that we say that secondary emissions do not count in the determination of potential to emit. But EPA has pointed out that the definition in 40 CFR 52.21 is not the correct definition due to a vacating of this portion of the rule in a federal court case. We should be referring to the correct definition that is in common use. Therefore we will add the definition of secondary emissions as provided by EPA.

Comment #030-10

EPA's comment -

Prevention of Significant Deterioration (PSD): We believe there is a typo. Should the reference to WAC 173-400-750 be to WAC 173-400-700 to 750?

Response #030-10

Thank you for pointing out the typo. Ecology will correct the error.

Comment #030-11

EPA made the comment below -

Source: Ecology is proposing to delete the second sentence, which describes when activities are considered ancillary to the production of a single product or functionally related groups of products. EPA believes this second sentence is a useful clarification and should remain part of the definition because the meaning of "ancillary" in this context is not, to our knowledge, defined elsewhere in state or federal law.

Response #030-11

The proposal said, "~~(78)~~)) (76) **"Source"** means all of the **emissions unit(s)** including quantifiable **fugitive emissions**, that are located on one or more contiguous or adjacent properties, and are under the control of the same **person** or **persons** under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. ((~~Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended~~."

The last sentence is not part of the definition of source in the state law, RCW 70.94.030(21). We have chosen to make the two definitions the same. We recognize that the second sentence is a useful clarification and will make certain that this point is covered in training of our staff and the staff of the local permitting authorities.

Comment #030-12

AWB's comment -

(((~~(85)~~))) (83) **"Stationary internal combustion engine"** or **"stationary engine"** is any internal combustion engine that does not meet the criteria to be classified as a nonroad engine or a mobile source. A stationary engine ~~is also~~ includes any engine that is bolted or permanently installed at a fixed location to provide mechanical power to operate other equipment (such as compressors or pump) or generate electricity on an emergency, intermittent, or continuous basis. Stationary internal combustion engines are subject to the NOC process and criteria in WAC 173-400-110.

Comment #030-13

EPA made the comment below -

Stationary Internal Combustion Engine or Stationary Engine: Although the first sentence states that a stationary internal combustion engine is any engine that is not classified as a nonroad engine or a mobile source, the second sentence greatly expands what can be characterized as a stationary internal combustion engine, by stating that it is any engine that is bolted or installed in a fixed location. In other words, the second sentence of this definition could include nonroad engines as stationary engines and thus stationary sources. As such, the second sentence must be deleted in order for EPA to be able to approve this definition. As discussed above, the CAA prohibits states from regulating nonroad engines as stationary sources.

Response #030-12 and -13

All of the revisions that were proposed for section -035 have been abandoned, due to Ecology's inability to reconcile the comments. This includes additional definitions beyond what is now in the regulation. This issue will be considered again in Phase 2. This proposed definition will not be finalized at this time.

Comment #030-14

AWB made the comment below -

(86) Temporary Source* ~~(86) **"Temporary source"** is a source of emissions (such as a nonroad engine) which is operated at a particular site for a limited period of time. A temporary source may or may not be a stationary source or a source as defined in subsections (78) and (84) of this section, respectively.~~

The definition of "temporary source" is impossibly broad. It includes any organism or device that emits air pollutants and which operates at some location "for a limited period of time." The language of the definition confirms that the term encompasses more than just a stationary source or source, as those terms are defined in WAC 173-400-030, but the definition supplies no useful criteria to identify what is NOT a temporary source. If Ecology's intent is to subject cows, forklifts and marine vessels to a permitting process, AWB strongly questions the need to regulate so broadly. If the intent is to regulate a more narrow subset of equipment, the definition needs to be refined to provide meaningful guidance to the regulated community. AWB recommends that a definition of "temporary source" be developed during the Phase II rulemaking, in connection with discussions over the scope and content of the "Portable and Temporary Sources Rule."

Response #030-14

All of the revisions that were proposed for section -035 have been abandoned, due to Ecology's inability to reconcile the comments. This includes additional definitions beyond what is now in the regulation. This issue will be considered again in Phase 2. This definition will not be finalized at this time.

Comment #030-15

EPA made the comment below -

Temporary Source: There appears to be a couple of typos. Should the references to the subsections be to (76) and (82) rather than (78) and (84)?

Response #030-15

All of the revisions that were proposed for section -035 have been abandoned, due to Ecology's inability to reconcile the comments. This includes additional definitions beyond what is now in the regulation. This issue will be considered again in Phase 2. This definition will not be finalized at this time.

Comment #030-16

EPA made the comment below -

Total Reduced Sulfur (TRS): The specific method, as well as any alternatives, should be stated in the rule. We can not approve language that allows *"or equivalent method."* It would be acceptable if it were written as *"EPA approved equivalent method."* Note that while there are no TRS limits in the SIP that would be impacted by this definition, when Ecology submits its section 111(d) plan for kraft pulp mills, it may need to address this issue.

Response #030-16

This issue can be addressed at a later date without current effect. Ecology will consider revising the term in the next Phase of rule making.

Comment #030-17

suggested the comment below:

1a. WHAT: Washington Administrative Code (WAC) 173-400-030(16), (33), and (44)

1b. WHY: In the definition section, the existing text and lists for "Class I area", "Federal Class I area," and "Mandatory Class I Federal area" are very similar. The only notable differences are that Washington State has, via a previous amendment, added the Spokane Indian Reservation under the state's expanded definition for Class I Area (i.e., definition 16). Compared to (16), the only text difference in the (33) citation appears to be the reclassification option under definition (33). Therefore, the need for the three Class I area definitions and listings is questioned.

1c. PROPOSED FIX: Could Ecology combine these three terms into a single definition of

Class I area; with notation of the differences discussed above, including the State's expanded list, and Ecology's interpretation regarding modifiers (e.g., Mandatory and Federal) to this term, as used under WAC 173-400.

Response #030-17

While we agree that it would be best if all 3 terms were consistent in use and definition, unfortunately this can not be the case.
In the federal Clean Air Act, there are 2 types of Class I areas created, mandatory and other. Mandatory Federal Class I areas are those specified as Class I by the CAA on August 7, 1977, and include the following areas in existence on that date:

- international parks;
- national wilderness areas (including certain national wildlife refuges, national monuments and national seashores) which exceed 5,000 acres in size;
- national memorial parks which exceed 5,000 acres in size; and
- national parks which exceed 6,000 acres in size.

Mandatory Federal Class I areas, may not be reclassified to Class II or III.

The States and Indian governing bodies have the authority to designate additional Class I areas. These Class I areas are not "mandatory" and may be reclassified if the State or Indian governing body chooses. States may reclassify either State or Federal lands as Class I, while Indian governing bodies may reclassify only lands within the exterior boundaries of their respective reservations. Any Federal lands a State reclassifies are considered Federal Class I areas. Because these areas are not mandatory Federal Class II areas, these areas may be again reclassified at some later date. In addition, there are some federal lands which can only be designated as Class I or Class II.

State or Indian lands reclassified as Class I are considered non-Federal Class I areas (aka Class I areas).

For example, if the Department of Energy were to request the state that it redesignate the Hanford Reservation as a Class I area, and Ecology agreed, and after following the procedural requirements for redesignation, were to request formal EPA designation of the reservation as a Class I area, that would create a federal Class I area, but not a Mandatory Class I area. If at a later date, Ecology were to decide to proceed with redesignation of the reservation as a Class II area, such a redesignation is permitted to occur since the area is not a mandatory Class I area.

As another example, if the Washington Department of Natural Resources were to request that Ecology designate the Capital Forest (a large area of state forestland near Olympia, WA) as Class I, and after the procedural requirements are met and EPA redesignates the area as Class I, that would be a state Class I area, not a federal (the land is not managed or owned by a federal agency) or mandatory (it's not on the listing of areas designated by the federal Clean Air Act) Class I area. Again, this state Class I area could be redesignated as Class II again in the future.

Comment #030-18

Fluor Hanford suggested the comment below:

2a. WHAT: WAC 173-400-030(83)

2b. WHY: Using this definition as an example, it contains the term "*mobile source*," used in conjunction with the term "*nonroad engine*," with regard to not meeting applicability. Please provide clarification text (at least in the responsiveness summary, but preferably in the final rule text) on Ecology's distinction or the intended relationship between the definitions for "*mobile source*," "*portable source*," and "*temporary sources*" that function as a "*nonroad engine*" and those sources that "*may or may not be a stationary source*" nor "*stationary internal combustion engine*."

2c. PROPOSED FIX: To minimize confusion regarding applicability determinations, it is recommended that "*temporary*" be a time-dependent definition only. The most confusing portion of these definitions is Ecology's use of "*may or may not*"; it is recommended that Ecology remove this clause. In addition, common elements of the definition for "*portable*" and "*mobile*" sources could be combined. A clearer distinction is needed in tying these two terms to the long-standing definition of nonroad engine to avoid confusion during applicability determinations.

Response #030-18

The proposed fix is logical and practical from the view of the commenter. Unfortunately the comment does not reflect the complex interactions of the state new source review program requirements and the federal exemptions for mobile sources (motor vehicles) and nonroad engines from stationary source permitting programs. It is the nature of the interactions between the federal rules on internal combustion engines and state new source permitting requirements that leads to the confusion. We were attempting to reduce the confusion level and were unsuccessful.

Due to the nature and extent of comments received on our proposed revisions to section 035, we will be removing the definitions for portable source and temporary source from the final rule.

Comments about section 035 of the proposal

Comment #035-1

AWB made the following comment:

WAC 173-400-035 Portable and temporary sources. (1) ((For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable

emission standards. A temporary or portable source that is considered a major stationary source within the meaning of WAC 173-400-113 must also comply with the requirements in WAC 173-400-141.

For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location providing that the owner(s) or operator(s) notifies **ecology** or the **authority** of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable **ecology** or the **authority** to determine that the operation will comply with the **emission standards** for a **new source**, and will not cause a violation of applicable **ambient air quality standards** and, if in a **nonattainment area**, will not interfere with scheduled attainment of **ambient standards**. The permission to operate shall be for a limited period of time (one year or less) and **ecology** or the **authority** may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable **emission standards**. A temporary or portable source that is considered a **major stationary source** within the meaning of WAC 173-400-113 must also comply with the requirements in WAC 173-400-141.

~~(2)))~~ The owner or operator of a portable source or temporary source must:

~~(a) Except for nonroad engines, file a notice of construction application and obtain an order of approval prior to operating in a permitting authority's jurisdiction;~~

~~(b) If the temporary source is composed of only nonroad engines, file a notice of intent to operate and receive an order prior to operating in a permitting authority's jurisdiction; and~~

~~(c) Have a valid order of approval or order and follow the terms of the order of approval or order, during all periods of operation; and~~

~~(d) Comply with all order of approval or order conditions; and~~

~~(e) Register with the permitting authority as an air pollution source; and~~

~~(f) Notify the permitting authority.~~

~~(2) The permitting authority:~~

~~(a) Prior to issuing an order of approval or order, must find that the portable source or temporary source, and any associated nonroad engines, will not cause a violation of applicable ambient air quality standards, and if located in a nonattainment area will not interfere with scheduled attainment of ambient standards; and~~

~~(b) May set conditions related to the use and operation of nonroad engines, with an aggregate of greater than 300 horsepower, in the order as long as the conditions conform with the criteria in 40 CFR Part 89, Appendix A to Subpart A; and~~

~~(c) Shall condition the order of approval or order to limit operation of the portable source or temporary source at any particular location to one year or less; and~~

~~(d) May condition the order of approval or order to require notification to the permitting authority prior to each relocation of the portable source or temporary source; and~~

~~(e) May respond to relocation notifications by issuing site specific operating conditions.~~

~~(3) Public involvement.~~

~~(a) Orders and orders of approval issued under this section are subject to public notice under WAC 173-400-171.~~

~~(b) The permitting authority may provide public notice and/or comment period for relocation notifications and site specific conditions.~~

~~(4)~~ This section applies statewide ~~except where an authority has its own rule regulating such sources.~~

AWB proposes to retain the current portable source rule, pending a careful review of what types of portable and temporary sources require a permiting process, and what that process should entail. The proposed WAC 173-400-035 contains too many rough spots and unforeseen impacts to proceed with adoption in this rulemaking. For instance, Subsection (1), the applicability provision, does not clearly articulate which sources require which type of permit. Paragraph (1)(b) discusses temporary sources "composed of only nonroad engines," but it does not appear to cover a source that includes nonroad engines as well as other emission units. Subsection (1) also does not reveal whether the rule is intended to apply to marine vessels.

Paragraph (1)(e) requires the owner/operator of a portable or temporary source to "register with the permitting authority as an air pollution source;" but it does not say whether this must happen once, every time that the equipment moves, or every time that it moves into the jurisdiction of a new permitting authority.

Paragraph (1)(f) requires the owner/operator to "Notify the permitting authority," but it does not describe the content of the notice, or when notice is expected.

Paragraph (3)(a) requires a public involvement process based on WAC 173-400-171 every time that a portable or temporary source changes locations. WAC 173-400-171 does not by its terms apply to WAC 173-400-035 orders. Setting aside this drafting issue, the WAC 173-400-171 process is too elaborate and time consuming for each relocation of a device like a portable asphalt plant. Moreover, unplanned outages at an industrial plant often require the temporary importation of equipment such as portable air compressors, cranes and truck mounted welding machines. These units are required to make repairs and to maintain production. The need to employ this equipment often cannot be foreseen in advance. The rule as written would lead to unplanned production losses at critical infrastructure facilities such as refineries and power plants. The rule must give the permitting authority discretion to authorize the use of temporary equipment needed to maintain production without a public comment period.

Subsection (4) states that WAC 173-400-035 applies statewide "except where an authority has its own rule regulating such sources." It may be the case, however, that an authority regulates portable or temporary sources under a regulatory scheme that looks nothing like WAC 173-400-035. The NWAPA rules, for instance, do not regulate portable or temporary sources by name, but appear to subject those devices to standard NWAPA minor NSR rules. In that context does the authority have "its own rule regulating such sources"? It might be preferable to allow each local air authority to decide what rules to employ for sources in that authority's territory.

The portable and temporary source rule needs careful thinking and discussion before it is ready

for adoption. AWB recommends that Ecology defer this rule and the supporting definitions of "portable source" and "temporary source" to the Phase II rulemaking.

Response #035-1

Due to the nature, diversity and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language at this time. We will re-address this issue in Phase 2.

Comment #035-2

The Boeing Company commented:

1. *Changes to Section 400-035 should not be included in Phase 1 of this rulemaking*

While we recognize that it may be desirable to amend Section 400-035, it is unclear what problems with the existing rule are being addressed in this proposal. One aspect that is clear is that the draft changes add yet another process to an already complex and difficult to follow rule. Further, it provides a potential mechanism for portable sources to evade technology requirements under the formal NSR requirements in Section 400-110. Finally, this proposal imposes a significant and unwarranted burden on numerous but environmentally insignificant small sources by requiring applications or notifications be made to the permitting agencies, even though no corresponding agency approvals will be forthcoming.

In order to provide meaningful suggestions to better this rule, we need to understand what the purpose of the change is. Several suggestions have been heard in the Stakeholder Committee regarding why the rule should be amended, but a clear intent has not been established or agreed to by that body. Further, the justification for the intended changes has not been established. We need to know what it is we're trying to accomplish and why, before we amend the rule.

It has been alleged that a wide range of sources exist which are not subject to the requirements of Section 400-110, but must, in the public interest, be regulated. These sources have neither been identified to the Stakeholder Group, nor has the environmental benefit of the proposed rule change been demonstrated. Because the intent is unresolved, and the environmental improvement is, as yet, undocumented, we believe it is premature to add further complication to the General Regulations. We recommend changes in Section 400-035 not be made at this time. We look forward to crafting changes, if needed, once the targets are established and justified.

Response #035-2

Due to the nature, diversity and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language at this time. We will re-address this issue in Phase 2.

Comment #035-3

The EPA commented:

WAC 173-400-035 Portable and Temporary Sources

Subsection (1): The CAA and EPA regulations specifically address the need for permits for portable stationary sources in section 504(e), 40 CFR 51.165(i)(1)(iii), and 40 CFR 52.21(i)(1)(viii) and clearly indicate that such sources must demonstrate compliance with PSD increments. EPA is concerned that WAC 173-400-035 is not sufficiently clear that a portable major stationary source must also comply with WAC 173-400-720 through 750. We therefore recommend that Ecology add a provision that was in a previous draft, such as:

> *"Comply with the requirements of WAC 173-400-720 - 750 if the source is considered a major stationary source within the meaning of WAC 174-400-720; and,"*

In addition, as currently written, all portable and temporary stationary sources, regardless of size, must obtain an "Order of Approval." We question whether Ecology really intended that the de minimis cutoffs not apply to portable and temporary stationary sources. If Ecology does intend to use the de minimis cutoffs in WAC 173-400-110(4) and (5), we recommend the following revision to subsection (1): *"The owner or operator of a portable source or temporary source, not otherwise exempt under WAC 173-400-110 (4) and (5), must:"*

Note that the requirement in WAC 173-400-035 that portable and temporary sources must apply for an order of approval under WAC 173-400-110 does not appear, in and of itself, to exempt portable and temporary stationary sources under the de minimis cutoffs in WAC 173-400-110(4) and (5). This is because WAC 173-400-110(2)(a)(ii) exempts sources regulated under WAC 173-400-035.

Subsection (1)(f): This subsection requires the applicant to "notify the permitting authority" but does not specify what the owner or operator is required to notify the permitting authority of and when such notice is required. This provision needs to better specify what such notification must contain and when it is required.

Subsection (2)(d): This provision states that the permitting authority "*may* condition the order of approval or the order to require notification to the permitting authority prior to each relocation." In a previous draft language of this rule, the requirement to notify the permitting authority of the relocation was a requirement. In order for the permitting authority to track relocation of a portable/temporary source and therefore, be able to issue site specific operating conditions, the *"may condition"* should be changed to *"shall condition*." In addition, it is unclear how this provision relates to the notification provision of (1)(f) above.

Response #035-3

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the current time.

In response to the EPA's comment about subsection (2)(d) it has been and continues to be the intent of Ecology that a temporary source must obtain a Notice of Construction, the first time it is located in Washington, in order to insure that BACT and other requirements to which are applicable are complied with.

Comment -035-4

Fluor Hanford

3a. WHAT: WAC 173-400-035

3b. WHY: This section still needs a lot of work to make it clear and understandable because of the huge number of potentially applicable sources it addresses. As currently written, this section can be simplified into three basic steps: (1) owners or operators responsibilities, (2) Ecology or the permitting authority responsibilities, and (3) subsequent actions required under the public involvement process. Under (1), all sources either prepare a notice of construction (NOC) (which unnecessarily parallels WAC 173-400-110) or prepare a notice of intent (NOI) (which also parallels WAC 173-400-110).

All options require a formal transmittal of information to the permitting authority; as such, a NOC and NOI start to look very similar. Under paragraph (2), upon receipt of the NOC or NOI, an order of approval or order is issued. At that stage in the proposed process, the only semblance to a de minimus is in the statement that "*Ecology may set conditions related to the use and operation of nonroad engines, with an aggregate of greater than 300 horsepower*." It is unclear whether this statement would establish that Ecology may not set conditions for those units with an aggregate under 300 horsepower.

Introduction of the term "*aggregate*" raises further questions; for example, it could be assumed that a remote project requiring five 75 horsepower electrical lighting generators is additive to an aggregate of greater than 300 horsepower, even if only one or two operated at a time. In addition, the current proposal requiring an order for all these actions would burden the public involvement process with many small actions, and would not allow an operator to commence until that process is completed.

3c. PROPOSED FIX: It is assumed that Ecology intends to exempt a large majority of the thousands of small engines used by home owners, farmers/ranchers, and industry and/or those available at rental stores. Under that assumption, added expansion of the categorical exemptions from new source review under WAC 173-400-110(4) may also serve as a clarification of Ecology's intent for portable/temporary units. Addition of several categories, including horsepower and unit-type exemptions (e.g., internal combustion powered compressors, generators, lawn/yard maintenance equipment, etc.) under WAC 173-400-110(4) would greatly assist applicability/inapplicability determinations. It is further suggested that the 300 horsepower threshold be increased to at least 500 rated horsepower for consistency with WAC 173-400-100(2)(j) and we suggest adding categorical size exemptions (i.e., IEUs) consistent with the list under the Operating Permit Regulation WAC 173-401.

Response #035-4

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the time being.

Comment #035-5

Northwest Pulp and Paper Association
WAC 173-400-035 Portable and Temporary Sources

General Comments

Considering that WAC 173-400-110 already exists to address New Source Review (NSR), WAC 173-400-035 appears to do nothing more than require relocation notifications and approvals for non-road engines that would be otherwise exempt from NSR. If this is the intent, it should be rewritten to clarify the requirements for these two items only.

The use of the term "portable" does not appear to have any bearing on how the rule is applied or implemented. If this section is to be used as a one year provision for sources, just title it "Temporary Sources" and drop all references to portable.

Delete any requirements that use the term "may" as these are really not requirements. For examples see (2)(d) and (3)(b)

Line Specific Comments

The definition of "temporary source" has incorrect references to citations (78) and (84).

(1)(b) Requiring an approval process for ALL non-road engines is unreasonable and too restrictive. NWAPA Section 301, which EPA has indicated is SIP approvable, allows these engines to operate for up to 90 days per calendar year before a formal approval process is required.

(1)(e) This registration requirement is not needed because registration obligations are addressed in WAC 173-400-102 which uses potential to emit (PTE) as a basis for registration.

(1)(f) This notification requirement needs to specify how and when. Is it a written notice and should it be made in advance of the specified action that requires notification? If this requirement is advance notice, then it should specify the timeframe for this notice.

(2)(d) The one year limit needs to be more specific. Is this a 12-month rolling period or perhaps a calendar year?

(2)(e) This notification requirement needs to specify how and when. Is it a written notice and should it be made in advance of the specified action that requires notification. If this requirement is advance notice, then it should specify the timeframe for this notice.

Response #035-5

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the time being.

Comment #035-6

Pacific Merchant Shipping Association (PMSA) commented:

I am writing on behalf of the Pacific Merchant Shipping Association (PMSA) to comment on the proposed WAC ch. 173-400 amendments published at WSR 04-20-105. PMSA membership

includes the major vessel and marine terminal operators serving West Coast ports.

PMSA supports the comments submitted by the Western States Petroleum Association and the Association of Washington Business specifically as they pertain to portable and temporary source definitions and applicability.

In reading the economic analysis and background information on this proposed rule-making it appears there is no intent for applicability to sources such as cars, trucks, aircraft, bulldozers, forklifts, ships, and trains. This has not been made clear in the language. We understand that this rule-making effort was primarily crafted to address EPA concerns about Washington's authority to regulate air emissions from temporary electric power generating resources. The rule as proposed is far broader in scope, and has the potential to impact many other operations in ways not yet disclosed or discussed to our knowledge.

Although the intent not to include these sources seems clear, we request that any potential confusion be clarified in the language or that Ecology defer the portable/temporary source rules to Phase II of the NSR rulemaking scheduled for 2005.

Response #035-5

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the time being.

Comment #035-7

Stoel Rives commented:
I. Exclusive Nonroad Engine Sources

The proposed WAC 173-400-0350) appears to distinguish between sources that are exclusively nonroad engines and those that include nonroad engines along with other temporary sources. I should note that the rule is not clear as to whether it would be appropriate (or even mandatory) in the case of a mixed source to get an Order for the nonroad engines and then separately obtain an Order of Approval for the remaining sources. As part of clarifying this question, we suggest that Ecology revise the language to allow sources made up of nonroad engines and associated safety and pollution control equipment to proceed under the Order pathway. We have worked with temporary sources that were comprised almost entirely of nonroad engines, but that chose to utilize freestanding control devices that have been considered separate stationary sources. For example, with an oil and gas drilling operation it is environmentally preferable to route any encountered gas into an incinerator. This reduces emissions and odors and enhances workplace safety. However, IIWAC i73-400-035(i)(a) were to require a separate notice of construction application for the freestanding incinerator, there would be a serious disincentive to use this type of device. That would not be environmentally beneficial. Therefore, we suggest that WAC 173-400-035(1)(b) be revised as follows:

> (b) If the temporary source is composed of only nonroad engines and associated pollution control and safety equipment file a notice of intent to operate and receive an order prior to operating in a permitting authority's jurisdiction;

We believe this edit will preserve the intent of the rule while not creating a disincentive to use appropriate control and safety equipment.

2. Ambient Air Quality Standards

The current rules for portable and temporary sources require that a temporary source demonstrate compliance with ambient air quality standards. Ecology has interpreted this requirement to include a demonstration of compliance with the Chapter 173-460 acceptable source impact levels (ASILs). For diesel combustion equipment this has presented significant problems as the ASIL for nitric oxide is low and compliance is demonstrated based upon a 24-hour average. The very nature of temporary sources is that they typically locate at a site for a short period of time, operate intensively for that short period and then disappear never to be seen at that location again. The ASILs, on the other hand, assume 24 hour a day exposure for decades. By means of example, the ASIL for nitric oxide (the predominant TAP emitted by diesel fired equipment) was derived by taking the workplace TLV and dividing it by 300 per WAC 173-460-1 10(2)(b). We understand that the factor of 300 was derived by taking the 8-hour TLV and dividing it by 3 to convert it to a 24 hour value, dividing it by 10 to build in a buffer and dividing by 10 again to reflect the risks inherent in long term exposure. As a result, the NO ASIL is dramatically over-conservative for the purpose of evaluating a source that will be present on-site for less than a year. Although a permanent source might find it possible to proceed to a second tier analysis, this option is not practical for a temporary source due to its short term nature.

We suggest that Ecology address the need to consider the duration of the temporary activity in the revised temporary source rule. A temporary or portable source should not be assessed against the same short term ambient concentration as a source that will be active for generations. Therefore, we suggest that Ecology either specify that temporary sources are not required to demonstrate compliance with Chapter 173-460 or that temporary sources are compliant with ASILs if ambient impacts attributable to the temporary source are less than 10 times the permanent source ASIL values. Correcting the ASILs by a factor of 10 for temporary sources will still ensure that conservative values are applied, but will also recognize that, by law, a temporary source cannot emit in the permitted location for longer than one year.

Based on these concerns, we suggest that WAC 173-400-035(2)(a) as noted below:

> (a) Prior to issuing an order of approval or order, must find that the portable source or temporary source, and any associated nonroad engines, will not cause a violation of applicable ambient air quality standards in WAC 174-470 through 173-481, and if located in a nonattainment area will not interfere with scheduled attainment of ambient standards;

Alternatively,

> (a) Prior to issuing an order of approval or order, must find that the portable source or temporary source, and any associated nonroad engines, will not cause a violation of applicable ambient air quality standards in <u>WAC 174-470 through 173-481, will not cause ambient impacts in excess of ten times the ASILs identified in WAC 173-460</u>, and if located in a nonattainment area will not interfere with scheduled attainment of ambient standards;

Response #035-7

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the time being.

Comment #035-8

The Puget Sound Clean Air Agency made the following comments:

Comment 1 – WAC 173-400-035

Issue – The proposed language in this section of the rule appears inconsistent with the underlying statutory provisions.

Discussion

RCW 70.94.152 provides the statutory authority for new source review and the proposed WAC 173-400-035 appears to be inconsistent with RCW 70.94.152. First, the proposed WAC 173-400-035 does not provide any deadline for notifying applicants that their applications are complete (or specifying all additional information necessary to complete them) and no deadline for approval or denial of a complete application.

Second, and more problematic is the fact the proposed language does not clearly require BACT and does not expressly state that a permit may be conditioned to assure compliance with all applicable rules and regulations adopted under chapter 70.94 RCW. Regardless of whether a non-road engine is actually subject to 40 CFR Part 89, any conditions of approval must conform with the criteria in 40 CFR Part 89, Appendix A to Subpart A.

Third, the proposed WAC 173-400-035 is unclear about whether all the provisions in WAC 173-400 and WAC 173-460 apply to permits issued under WAC 173-400-035. The proposed rule is also unclear about how permitting authorities are to address applications involving portable and temporary sources with non-road engines.

Fourth, the proposed definitions of '*portable source*' and '*temporary source*' are quite broad. A portable source is defined as "*a stationary source or source consisting of one or more emission units that is portable or transportable for the purpose of being operated at multiple locations…" A temporary source is defined as "a source of emissions (such as a non-road engine) which is operated at a particular site for a limited period of time*." Many of these sources are subject to 40 CFR Part 60; some are even major stationary sources. Because we are quite concerned about the potential for circumvention of the permitting process for new (stationary) sources, if WAC 173-400-035 is adopted as proposed, we do not intend to adopt it by reference.

An additional concern about the proposed WAC 173-400-035 provisions is the confusion surrounding the subsequent process following notification by a source of an anticipated relocation. It is not clear from language if the site-specific operating conditions which the permitting authority may issue in response to the notification would be a modification of the conditions included in the original Order of Approval. If they are included with a modified Order of Approval, do they have the same enforceability as the original Order of Approval and would these additional conditions be subject to appeal provisions in the same manner as the

original Order of Approval? Since this proposed regulation is not directly linked to WAC 173-400-110 for process, the procedures are not clearly understood.

Recommendation

We strongly recommend that Ecology repeal WAC 173-400-035 in its entirety (along with associated references in other parts of WAC 173-400) and move the one provision regarding permitting of non-road engines subject to 40 CFR Part 89 to a more appropriate locations within this chapter (e.g. WAC 173-400-112 and WAC 173-400-113).

Also, we believe that portable and temporary sources should be permitted using either the standard new source review procedures or the proposed general Order of Approval process under WAC 173-400-560. Thus, we recommend amendment of the definition in WAC 173-400-030(82) to allow for new source review of non-road engines.

Comment 2 – WAC 173-400-035(4)

Issue – Areas for rule applicability need clarification.

Discussion

The proposed language in WAC 173-400-035(4) could be misinterpreted to apply where the local permitting authority treats temporary and portable sources a stationary sources (i.e. different from the proposed approach). Since most of the local agencies have already addressed EPA Region 10 comments on these associated issues in their own rulemaking efforts in a different way, it would be desirable to avoid any implication that differing programs must be evaluated against this approach.

Recommendation

Amend WAC 173-400-035(4) as follows: "*This section shall apply only where there is no local permitting authority or where the local permitting authority has adopted this section by reference*."

Response #035-8

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the time being.

Comment #035-9

The Western States Petroleum Association commented:

WSPA member companies operate refineries and terminals that receive and ship products and raw materials by water. We are very concerned about the breadth of the proposed "portable and temporary source rule" in WAC 173-400-035, coupled with the definition of "temporary source" in WAC 173-400-030. We understand that this proposal was crafted to address EPA concerns about Washington's authority to regulate air emissions from temporary electric power generating resources. The rule as proposed is far broader in scope, and has the potential to impact marine operations in ways not yet disclosed or discussed. WSP A strongly endorses AWB's recommendation that the amendment of WAC 173-400-035 and the adoption of a new "temporary source" definition be deferred until Phase II of the rulemaking, so that

stakeholders can work with Ecology to figure out which operations the rule should cover, and what it should require of those operations.

In the event that Ecology rejects the preceding recommendation and proceeds with the adoption of WAC 173-400-035, WSPA urges that subsection (3)(a) be amended to read as follows: "Orders and orders of approval issued under this section are subject to public notice under WAC 173-400-171, except where a permitting authority determines that immediate authorization to operate a temporary or portable source is necessary to protect health or safety, prevent damage to equipment or to maintain the production of an essential product or service." Unplanned outages at a refinery often require the temporary importation of equipment such as portable air compressors, cranes and truck mounted welding machines. These units are required to make repairs and to maintain production. The need to employ this equipment usually cannot be foreseen in advance. The rule should not deprive the permitting authority of the discretion to promptly authorize the use of temporary equipment needed to maintain production at a refinery or an electric generating plant, without a 30 day public comment period.

Response #035-9

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal. We will retain the current language for the time being.

Comments about section 040 of the proposal

Comment #040-1

Fluor Hanford suggested the comment below:

4a. WHAT: WAC 173-400-040(5)

4b. WHY: Clarification is requested regarding the term "safety" with respect to Ecology's jurisdiction and intent for compliance with this general standard condition. Specifically, the phrase "…detrimental to the health, **safety**, or welfare of any person…." and its applicability to emission limits at the point of emission (e.g., worker safety) versus demonstration of no impact to the ambient air (i.e., environment).

4c. PROPOSED FIX: Request for Ecology clarification and/or distinction between requirements governed under the Occupational Safety & Health Administration (OSHA) versus those regulated pursuant to the federal and state Clean Air Act. Those regulated under OSHA should be eliminated.

Response #040-1

The part of the proposal in question states, "(5) **Emissions detrimental to persons or property.** No person shall cause or ((~~permit~~)) allow the **emission** of any **air contaminant** from any **source** if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business."

The authority for this regulation derives from Chapter 70.94 RCW, The Washington Clean Air Act. Nowhere in this law is there authority to regulate worker safety. Further the legislature added the following text at RCW 70.94.230:

> "That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer-employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority." (emphasis added)

The inclusion of the underlined text shows that the intent of the legislature was to regulate the ambient air, and not to regulate, through the Washington Clean Air Act, workplace safety issues. The statutory language is particularly clear in that it says, ". . .without limitation statutes, rules or regulations . . ." It is clear that worker safety is not under the purview of the Air Quality Program. Ecology's Air Quality Program considers the ambient air to be that air that is available to the public. Therefore the property boundary or other place where the public has access is the start of the ambient air. Since this is the clear intent of the legislature, Ecology's Air Quality Program has interpreted the statutory language above and has decided to continue to focus on the ambient air and to use the word *"safety"* in a context that does not include industrial health and safety concerns. The legislature has assigned responsibilities for those concerns elsewhere.

Comments on section 050 of the proposal

Comment #050-1

From EPA -

WAC 173-400-050 Emission Standards for Combustion and Incineration Units A copy of the "Source Test Manual - Procedures For Compliance Testing" will need to be submitted at the time of the official SIP submittal.

Response #050-1

Ecology will submit a copy of the Source Test Manual with the SIP submittal.

Comment #050-2

From EPA -

In subsection (3), the exception provision is a director's discretion provision and is, therefore, not approvable as part of the SIP. Note that this exception provision was not approved in the current SIP approved version of WAC 173-400-050, state effective March 22, 1991.

Response #050-2

Ecology does not intend to submit the -050(3) section for SIP approval.

Comments on section 070 of the proposal

Comment #070-1

AWB suggested the comment below:

(6) **Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to ~~, and~~ WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) must meet all ~~as~~ applicable provisions of those sections.*

The purpose of the proposed edits is to clarify that this rule applies CISWI standards only to those wood waste burners to which the CISWI standards apply by their own terms. Ecology's proposed language supports that conclusion, but our intent is to remove any ambiguity.

Response #070-1

The proposed edits make clear our intent to notify wood waste burners that there are specific requirements that apply to them. It is not the intent to require the application of these requirements beyond their self contained applicabilities. We have made the suggested edits.

Comments on section 075 of the proposal

Comment #075-1

AWB suggested the comment below:

(6) **Maximum achievable control technology (MACT) standards.** MACT standards are officially known as **National Emission Standards for Hazardous Air Pollutants for Source Categories**.

(a) Adopt by reference.

40 CFR Part 63 and Appendices in effect on ((~~May 15, 2002~~)) October 1, 2004, is adopted by reference ~~(except for subparts C and E, which are nondelegable responsibilities of EPA)~~.* Exceptions are listed in (((~~5~~))) (6)(b) of this section.

The redlined language duplicates subsection (6)(b), which exempts Subparts C and E from adoption by reference.

Response #075-1

Thank you for pointing out the duplication; it has been removed.

Comment #075-2

Elena Guilfoil commented:

"WAC 173-400-075(6)(a) …

The following list of subparts to 40 CFR 63 which are shown as blank or reserved as of the date listed above, is provided for informational purposes only: Subparts K, P, V, Z, FF, NN, ZZ, AAA,BBB, FFF, KKK, SSS, WWW, YYY, ZZZ, BBBB, DDDD, DDDDD, OOOOO."

Subpart DDD was mistakenly included on the proposed WAC list. Subpart DDDD, Plywood Composite Wood Product MACT, was adopted on July 30, 2004. Refer to 69 FR 4611.

The complete list also needs to include: LLLL and NNNNN.

I respectfully submit the following substitution to this proposed paragraph:

The following list is provided for informational purposes only: These subparts to 40 CFR Part 63 are shown as blank or reserved on the adoption date listed above: Subparts K, P, V, Z, FF, NN, ZZ, AAA, BBB, FFF, KKK, SSS, WWW, YYY, ZZZ, BBBB, LLLL, DDDDD, NNNNN, and OOOOO.

Response #075-2

Your re-write of these sentences does add clarity and we thank you for the double check of the 40 CFR 63 subparts that were adopted by EPA prior to 1 October 2004. The corrections have been made.

Comments on section 100 of the proposal

Comment #100-1

AWB has made the following suggestion:

- (d) Any stationary **source** that includes~~, or~~ an emissions unit* subject to a **National Emission Standard for Hazardous Air Pollutants (NESHAP)** under 40 CFR Part 61, other than:

The proposed edits carry forward Ecology's edits to the preceding paragraph. Like Part 60, the standards in Part 61 apply to "a stationary source subject to that standard . . ." 40 CFR 61.05(a).

Response #100-1

Thank you for again pointing out this issue. The change has been made.

Comment #100-2

Pacific Northwest National Laboratory (Battelle) made the suggestion below:

WAC 173-400-100 Source Classifications

Issue:	Paragraph (1)(d)(ii) exempts from registration sources subject to a

	NEASHAP that only emit radionuclides that are required to obtain a WDOH license, and that are also subject to 40 CFR 61 subpart s H and/or I.
Basis:	It is unclear what "only emit radionuclides" is meant to infer. This could be read to mean that a source that emits only radionuclides could be exempt from registration, but if it also emitted an unregulated amount of VOC, that it would not be exempt.
Suggestions:	We believe the intent here is to require registration of sources subject to a NEASHAP, but to recognize that there is no need for sources subject to WAC 246-247 and subparts H and/or I to register with Ecology, because they are regulated by the WDOH and EPA. Therefore we suggest the following wording: "Sources or emission units emitting radionuclides, which are required to obtain a license under WAC 246-247, and are subject to 40 CFR 61 subparts H and/or I and that are not subject to any other part of 40 CFR 61, or any other parts of this section."

Response #100-2

The commenter is correct that the intent is to exempt from Ecology's regulation sources that would be regulated solely because they emit radionuclides. Ecology sees no reason why there should be another layer of regulation when no criteria pollutants, or only criteria pollutants at a de minimus level, should be regulated by Ecology. These radionuclides sources are already regulated by the Washington Department of Health and EPA.

However Ecology believes that there is an Ecology role if the source is subject to other previously established federal or state requirements. Therefore the text above will be amended to reflect that the exemption would not apply if the source is subject to any parts of 40 CFR 60, 61, 62 or 63, or if the source is subject the terms of an historical Notice of Construction limitation.

Comments on section 105 of the proposal

Comment #105-1

AWB suggested the comment below:

(1) **Emission** inventory. The owner(s) or operator(s) of any **air contaminant source** shall submit an inventory of **emissions** from the **source** each year. The inventory ((~~may~~)) will include **stack** and fugitive **emissions** of **particulate matter**, **PM-10**, PM-2.5 (upon publication by EPA of emission factors for PM-2.5 emissions from source categories),* sulfur dioxide, oxides of nitrogen, carbon monoxide, **total reduced sulfur** compounds **(TRS)**, fluorides, lead, VOCs, ammonia, and other contaminants((~~, and~~)).Emissions estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or on other information available to the owner(s)/operator(s).** The format for the submittal of these

inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted (((~~(when required)~~))) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported **emissions**, consistent with the averaging times for the applicable standards.

*It is unfair and unrealistic to expect operators to accurately estimate PM 2.5 emissions until EPA publishes emission factors and source test methods to measure this new pollutant.

**As Ecology broadens the scope of the obligation to submit emission inventories, it is critical that the rule leave no doubt that an emissions estimate reported in an inventory is only a best estimate, and that a facility owner may rely on EPA emission factors where no better information is available.

Response #105-1

The comment on using the EPA provided emissions factors does not recognize that there are many PM-2.5 emissions factors already in AP-42. For those source categories for which there are not already published factors sources should use other factors to the best of their ability. Other sources of emissions factors include industry trade group publications and academic research. As always the source should use the best available methods for estimating emissions for the emissions inventory.

For these reasons the comment will not change Ecology's proposal with respect to PM2.5 emissions. We will add the following sentence "Emissions estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s) which ever is the better estimate."

Comment #105-2

The EPA suggested the comment below:

173-400-105(5): We recommend that the introductory paragraph direct the reader to the exceptions to applicability in subsection (g), such as *"Except as otherwise provided in subsection (g), owners and operators of the following sources . . ."*

Response #105-2

The difference between Ecology's proposed language and EPA's suggestion is stylistic in nature. Both say the same thing. Ecology chooses to retain the language of the proposal.

Comment #105-3

The EPA suggested the comment below:

In subsection (g), we understand that the intent of the revisions to this subsection is to ensure that equipment subject to continuous emissions monitoring requirements under federal law not be subject to different continuous emissions monitoring requirements under state law. If this is

the case, should this provision state:

> *"This subsection (5) does not apply to any equipment subject to continuous emissions monitoring requirements imposed by . . ."*

Response #105-3

Thank you for the proposed language change. Ecology will adopt this suggestion as it is reflective of the intent.

Comment #105-4

The EPA suggested the comment below:

In subsection (h), it is unclear the provision is intended to apply only to monitoring required under WAC 173-400-105(5) or whether it is intended to apply to all monitoring required under WAC Chapter 173-400. The heading to WAC 173-400-105(5)(h) (monitoring system malfunctions) suggests that it was intended to apply only to monitoring systems required by WAC 173-400-105(5). The reference to "this chapter" in WAC 173-400-105(5)(h), however, makes this unclear. If the reference to "this chapter" is not changed to "this section," subsection (5)(h) must ensure that it does not relieve any person of the responsibility to comply with any requirement of 40 CFR parts 60, 61, 62 or 63 or a permitting authority's adoption by reference of such federal standards. Note that the exemption in subsection (5)(g) does not fix the reference to "this chapter" in subsection (5)(h).

In addition, as previously stated, EPA does not believe that subsection (5)(h) contains sufficient criteria for determining when monitoring should be excused. In addition, the reference to the determination being made by "permitting authority" could be interpreted to mean that the permitting authority's determination that the criteria are met is binding on EPA. We suggest the following language:

> (h) Monitoring system malfunctions. A source is temporarily exempted from the monitoring and reporting requirements of this subsection (5) during periods of monitoring system malfunctions provided the source owner(s) or operator(s) demonstrates that the malfunction was not a result of inadequate design, operation or maintenance or any other reasonably preventable condition, and that any necessary repairs to the monitoring system are conducted as expeditiously as practicable.

Another option would be to use the language from the CAM rule, 40 CFR 64.7(c) so as to minimize duplicative, conflicting requirements on these WAC 173-400-105(5) sources that will likely be subject to CAM.

Response #105-4

Ecology understands that EPA does not agree with the language in this section. The suggestions made, were not part of the proposal. As such, the scope of these changes is not allowed by the Washington Administrative Procedures Act. We will propose to discuss this in Phase 2.

Comment #105-5

Fluor Hanford suggested

5a. WHAT: WAC 173-400-105

5b. WHY: The proposed rule amendments have offered additional clarification in this section by removing phrases like "may include" and "when required." The context of the introduction paragraph, however, continues to state that "a source shall upon notification (by Ecology);" which creates confusion compared to the paragraph (1) statement "source shall submit an inventory……format for the submittal of these inventories will be specified by the permitting authority or Ecology."

5c. PROPOSED FIX: Since introduction paragraphs are not intended to provide additional requirements (only clarifications) for a source to maintain records, the requirement should only be specified under paragraphs (1) through (8). The current language is similar to paragraph (1), so a reader may incorrectly assume the introduction text regarding records only applies to paragraph (1). We suggest that Ecology use the first text only to explain applicability criteria for a source; then, if applicable, actions in submitting the annual inventory would be provided in paragraph (1).

Response #105-5

Ecology agrees that this section is confusing. This section (105) has grown over the last 20+ years to include differing subjects. Ecology will propose address this problem in the second phase of rule making.

Comments on section 107 of the proposal

Comment #107-1

From the AWB:

The proposed amendments to WAC 173-400-107 are harmful to the regulated community, unnecessary to protect the environment, and fail to satisfy the procedural requirements of the Administrative Procedure Act, RCW ch. 34.05.

The amendments are harmful to the regulated community because they impose new procedural burdens on the owner or operator of a source seeking to claim the unavoidable excess emissions defense in WAC 173-400-107. The amendments would condition the availability of the defense on the owner's ability to produce a "written contemporaneous record" displaying information that may or may not be available to the owner in a time frame deemed to be "contemporaneous." The amendments would add a new paperwork requirement to a rule that has been on the books for more than a decade, that is familiar to the regulated community, and that has been administered judiciously by Ecology and the air permitting authorities. The amendments are not necessary to comply with the federal Clean Air Act. Indeed, WAC 173-400-107 was approved into the Washington SIP in 1995 following a careful review by EPA. In recent months EPA Region 10 managers have questioned whether WAC 173-400-107 meets Clinton administration

EPA guidance governing the approval of SIP "upset" rules, but Washington has no occasion to seek SIP approval of WAC 173-400-107.

The amendments are unnecessary to protect the environment because no one has suggested that WAC 173-400-107 is working poorly, that its provisions have been abused, or that any action to compel compliance with the Washington or Federal Clean Air Acts has been inhibited or curtailed by the availability of the defense.

The amendments violate the procedural requirements of the Administrative Procedure Act in two respects. First, the amendments to WAC 173-400-107 fall outside the "Subject of possible rule making" published in Ecology's CR-101 in August 2003. The CR-101 describes the subject of this rulemaking as "updating the Department of Ecology's New Source Review Regulation provisions in Chapter 173-400 WAC." RCW 34.05.310 directs agencies to publicize the purpose and scope of a rule before the rulemaking proceeding commences, so that interested parties may address the scope of the rulemaking. Ecology met this requirement for its amendments to the NSR rules, but not for WAC 173-400-107.

The proposed rule also constitutes a "significant legislative rule" within the meaning of RCW 34.05.328. Ecology recognized this fact in the CR-102, and offered for public review a cost-benefit analysis on the proposed rule, but that analysis does not include the required determination for WAC 173-400-107 that the probable benefits of the rule exceed the probable costs. Nor did Ecology include the analysis required by RCW 34.05.328(h). That provision requires Ecology to determine, for any rule that differs from a federal regulation applicable to the same activity, that the difference is necessary to satisfy a state statute or necessary to achieve the objectives published in the CR-101. The applicable federal regulation here is 40 CFR 52.2497, the Washington SIP, which includes the current version of WAC 173-400-107.

For all of these reasons, Ecology should not adopt any of the proposed amendments to WAC 173-400-107. AWB bases this recommendation not only on the concerns noted above, but also on EPA's failure to clarify that the proposed amendments would resolve EPA's reservations about WAC 173-400-107. Until EPA provides that assurance the adoption of any amendments would be a foolhardy exercise in negotiation by rulemaking.

Response #107-1

Ecology disagrees with the AWB on whether or not the proposed revisions are harmful to the regulated community. But due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-2

The Boeing Company commented:

Boeing recognizes that the current Section 400-107 is somewhat ambiguous and subject to varying interpretations. Therefore Boeing supports two of the clarifications offered in the proposed rule. The first is that excess emission reporting and recordkeeping procedures for air

operating permit sources are properly handled under Chapter WAC 173-401-615(3), rather than under Section 400-107. This clarification avoids the confusion that could arise when one attempts to apply both the general provisions of Section 400-107 and the specific provisions of 401-615(3) to sources holding an AOP. If the proposed amendments to this section go forward, we suggest an additional minor wording adjustment in furtherance of this approach. Just as with the reporting of excess emissions, WAC 401-615(3) already covers the ground of requiring "contemporaneous records" of such events at AOP sources.

> *(d)* ***For non-chapter 173-401 WAC sources,*** , ~~A~~ **a** written contemporaneous record of all excess emissions shall be kept***, which .*** ~~***The record***~~ shall include the estimated quantity of emissions released, the probable cause of such excess emissions and any corrective actions or preventive measures taken.

Second, Boeing supports the clarifications that the timing of reporting obligations under Section 400-107 is triggered by the discovery of an excess emissions event, rather than its occurrence. This change avoids misinterpreting the regulation to require reporting of events which are not known to the source.

Other proposed changes are more problematic. For non-operating permit sources, the new rule language would mandate written reports to the permitting agency, and demand written, contemporaneous records for all excess emissions, even if the excess emissions pose no threat to human health and safety, and even where the source is not seeking penalty relief. The permitting agency would have no discretion in receiving these reports or requiring the records.

Response #107-2

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-3

Boeing fully supports the legitimate need for reporting of emissions that jeopardize public health or safety or the environment. We have long supported the regulators' efforts to focus sources' attention on the compliance status of their operations, through specific permit and rule provisions tailored to particular operations in question. On the other hand, we have serious reservations about any requirement to require all "excess emissions" to be reported regardless of nature of the exceedance or its potential impact. Blanket requirements eliminate agency flexibility in administering their programs, and therefore must be carefully considered as to impact and cost before being promulgated. This proposal would constitute a significant, costly and unwieldy requirement for both sources and regulators. We believe an approach that allows the agencies to specify the circumstances under which recordkeeping and reporting of such excess emission events will be required most effectively directs public and private resources to efficiently maintaining environmental quality.

Ecology has stated publicly its intent to maintain "one rule" applicability and avoid multiple vintages of requirements inside and outside of the State Implementation Plan. The current Section 400-107 is federally enforceable and should not be replaced without assurance the new

language will be promptly approved by EPA. We cannot afford to have different state-only and federal requirements applicable. Therefore, if Ecology is unable to get EPA's and the regulated community's buy-in as to the acceptability of such further revisions, we respectfully suggest that the proposed revisions to Section 400-107 be withdrawn and that the stakeholder process continue.

Response #107-3

Ecology agrees that creating a rule that is not adoptable into the SIP is not an acceptable outcome. That is one of the reasons that Ecology has withdrawn the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-4

The EPA had these comments:

EPA appreciates the many changes that Washington has proposed to make to WAC 173-400-107. For example, Ecology has clarified that the affirmative defense provides an excuse from penalties, but not from an action for injunctive relief; added a requirement to keep a contemporaneous record of excess emissions as a condition of relief; and clarified the contents of the written report a source must file as a condition of relief.

EPA continues to believe, however, that additional revisions are needed for WAC 173-400-107 to meet CAA requirements. EPA's interpretation of the CAA for state excess emission provisions is set forth in the Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999) (EPA's Excess Emissions Policy). Our remaining concerns with WAC 173-400-107 are as follows:

1. An affirmative defense to a penalty action is not appropriate where a single source or small group of sources has the potential to cause an exceedance of the NAAQS or PSD increments. See EPA's Excess Emissions Policy, pp. 2-3, Attachment pp. 3 and 5. Several states that have recently revised their excess emission rules to address this issue have added language stating that the affirmative defense is not available if the excess emissions caused or contributed to an exceedance of the NAAQS or PSD increments. See Arizona, AAR R18-2-310(B)(7) and (C)(1)(f); Maricopa County, MCESD R140-401.7 and -402.1(f); Michigan, MDEQ R 336.1916(2); Texas, TCEQ 101.222(b)(11). Washington should add similar language as a criterion for obtaining the affirmative defense.

Response #107-4

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-5

EPA continued to comment:

2. An affirmative defense for excess emissions due to certain unavoidable events cannot extend to state law provisions that derive from federally promulgated performance standards or emission limits, such as NSPS or NESHAP standards. This would also apply to PSD permits issued by EPA.

Response #107-5

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-6

EPA also commented:

3. WAC 173-400-107(4) provides an affirmative defense to a penalty action for excess emissions during startup and shutdown if certain conditions are met. Our understanding is that Washington believes this provision is consistent with CAA requirements for such startup and shutdown provisions, as discussed in EPA's Excess Emissions Policy. See EPA's Excess Emissions Policy, Attachment p. 6. After carefully reviewing subparagraph (4), however, we continue to believe that subparagraph (4) does not contain the following elements necessary to meet the requirements of the CAA:

    a. The periods of excess emissions that occurred during startup and shutdown were short and infrequent.

    b. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance.

    c. At all times the facility was operated in a manner consistent with good practices for minimizing emissions.

    d. The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.

    e. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality (not just that you minimized emissions).

    f. All emission monitoring systems were kept in operation if at all possible.

See EPA's Excess Emissions Policy, Attachment p. 6.

Response #107-6

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-7

EPA had the following concern:

4.WAC 173-400-107(5) provides an affirmative defense for excess emissions due to scheduled maintenance provided certain criteria are met. This is inappropriate under the CAA because sources should be able to schedule maintenance that might otherwise lead to excess emissions to coincide with maintenance of production equipment or other facility shutdowns. Note, for example, that although emission limits in the New Source Performance Standards generally do not apply during startup, shutdown, or malfunction, 40 CFR 60.8(c) and 40 CFR 60.11(c), the exception does not extend to scheduled maintenance. The incentive to use appropriate scheduling/practices to avoid excess emissions during scheduled maintenance should not be diminished by providing an affirmative defense. In this regard, you should note that EPA's 1999 Excess Emissions Policy does not discuss allowing an affirmative defense for excess emissions during maintenance activities. This omission was intentional and based on our interpretation of the CAA that any excess emissions during maintenance activities should be addressed only through the exercise of enforcement discretion and not through the provision of an affirmative defense to penalties. For additional discussion of how we view maintenance activities, see the April 27, 1977 (42 FR 21472) and November 8, 1977 (42 FR 58171) Federal Register notices.

Note, however, that although EPA believes that providing an affirmative defense for excess emissions during scheduled maintenance is not consistent with the CAA, EPA does believe that a state can provide, consistent with the CAA, that excess emissions due to a malfunction that occurs during scheduled maintenance can be subject to the same affirmative defense that applies for excess emissions during malfunctions. For example, Arizona's SIP-approved excess emissions provision states:

> *"If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B)."*

See Arizona Administrative Code, R18-2-310(D).

Response #107-7

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-8

EPA commented on the following point:

5. WAC 173-400-107(6) provides an affirmative defense to a penalty action for excess emissions due to a malfunction if certain conditions are met. Our understanding is that Washington believes this provision is consistent with CAA requirements for such malfunction provisions, as discussed in EPA's Excess Emissions Policy. See EPA's Excess Emissions Policy, Attachment pp. 3-4. After carefully reviewing subparagraph (6), we continue to believe that subparagraph (6) does not contain the following elements necessary to meet the requirements of the CAA:

    a. The excess emissions were caused by a sudden, unavoidable breakdown of technology.

b. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned for.

c. To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions.

d. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.

e. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

f. All emission monitoring systems were kept in operation if at all possible.

See EPA's Excess Emissions Policy, Attachment pp. 3-4.

Response #107-8

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-9

EPA commented:

6.EPA's position is that a State or local authority's decision that the criteria for obtaining the affirmative defense from penalty are met is not binding on EPA or citizens because such an approach would be inconsistent with the regulatory scheme established in title I of the CAA. See 1999 Excess Emission Policy, pg. 3, Attachment pg. 2. EPA does not believe that either the current WAC 173-400-107 or with the proposed revisions to WAC 173-400-107 can be interpreted to mean that a State or local authority's decision that the criteria for the affirmative defense are met is binding on EPA or citizens. EPA's understanding is that Washington is in agreement with EPA on this issue. It would be better if WAC 173-400-107 were revised to make this explicit. In the absence of explicit language, EPA will request a letter from Washington confirming this interpretation and EPA intends to make clear in any SIP action that a State or local's determination on whether the affirmative defense is met is not binding on EPA or citizens.

Response #107-9

Ecology believes that there is nothing in the rule to suggest that the federal law is being supplanted by the State. In any case, the state does not have the legal authority to reduce any rights that are granted under federal law. But, due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-10

The Flour Hanford Company said:

6a. WHAT: WAC 173-400-107

6b. WHY: Ecology's added text under paragraph (3)(a) clarifies well the actions required for a WAC 173-401 source, as specified in a source's operating permit, for reporting and/or recording an excess emission. The tie between a WAC 173-401 source and the requirements for documentation transmittal so far as "*unavoidabl*e" emissions is unclear. The WAC 173-401-615(3) process referenced would only cover the reporting/recording obligation as part of the semi-annual deviations report, so it remains unclear regarding the documentation process for WAC 173-401 sources' excess emissions determined to be "*unavoidable*."

6c. PROPOSED FIX: Provide text defining the process for identifying "*unavoidable*" under paragraph (6) for WAC 173-401 sources subject to an air operating permit.

Response #107-10

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-11

The Pacific Northwest National Laboratory (Battelle) commented:

WAC 173-400-107 Excess Emission

The proposed excess emission reporting requirements are for an affirmative defense to an action for penalties for emissions in excess of an emission standard or limitation. These provisions are generally only used by large sources (those sources now in the operating permit program) that exceed an emission standard or limitation. These provisions are now covered in WAC 173-401 for these sources. It is recommended that this provision in WAC 173-400-107 be deleted.

If Ecology determines that they must retain this provision, we recommend that WAC 173-400-107 (3) be changed to read, "Reporting and recording of excess emissions for which the unavoidable excess emission defense is sought…" This will eliminate confusion for the registered sources that generally do not use this provision.

Response #107-11

Ecology believes that the continued existence of the rule is important for smaller sources. The fact that many of these sources may not avail themselves of this defense, in our opinion is insufficient reason to deny all of the sources of the potential defense. But due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-12

The Northwest Pulp and Paper Association commented:

Comment 2: Ecology should only update the excess emission rule if it is clear that EPA will approve it.

In addition to the federally mandated reforms, Ecology is proposing to revise the excess emission rule at WAC 173-400-107 to meet some EPA requirements. This is one of several items EPA X has identified for improvement, but which do not relate to the federal reforms. Ecology is proposing to address most of the items suggested by EPA X in Phase II of the effort to reform the state NSR/PSD program.

Unless Ecology is certain that EPA X will approve the proposed changes to WAC 173-400-107, Ecology should not proceed with these revisions. Should Ecology adopt changes EPA later decides to disapprove, the state runs the risk of losing the benefits now available under WAC 173-400-107.

Otherwise, NWPPA supports the proposed revisions to the excess emissions rule.

Response #107-12

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making. We do agree that finalizing a rule that cannot be accepted into the SIP is not a useful exercise.

Comment #107-13

The Puget Sound Clean Air Agency said:

Comment 3- WAC 173-400-107(3)

Issue – The proposed excess emission reporting requirements for registered sources may be unnecessary and are misleading.

Discussion

This defense was historically used only by large sources (i.e. those now in the operating permit program) that exceeded state or local emission standards as a result of startup, shutdown, or scheduled maintenance. With the adoption of the 'emergency provision' in WAC 173-401-645, the provisions of WAC 173-400-107 became redundant, Therefore we suggest Ecology consider repealing WAC 173-400-107 entirely.

If Ecology deems it necessary to retain the affirmative defense in WAC 173-400-107, we are concerned that the proposed language in paragraph (3) (b) and (c) might be construed to require self-reporting of excess emissions by registered sources. Although the current language is somewhat ambiguous in this regard, it has never been interpreted by Ecology or the local authorities to require such reports. We are concerned that the proposed language in paragraph (3) (b) and (c) would establish a new reporting requirement for excess emissions. If paragraph 3 is retained, we believe it should be clarified in this regard to reflect that the only time a source is required to report is when they propose to claim the affirmative defense.

Recommendation

If Ecology deems it necessary to retain WAC 173-400-107 that paragraph 1 state "provides that all of the requirements in subsection (3), (4), (5) or (6) of this section are met. And paragraph 3 state "Reporting and recording of unavoidable excess emissions:" or "Reporting and recording of excess emissions for which the unavoidable excess emission defense is sought."

Response #107-13

Due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comment #107-14

The Weyerhaeuser Company commented:

WAC 173-400-107 – The AWB comment articulates the legal reasoning for retaining the existing regulatory language. The current "Excess Emission" provisions are understood by regulator and source owner, and appear to adequately serve the intended regulatory purpose. The adopted regulation language is SIP-approved. With this reality, we suggest that a nuanced interpretation of an EPA guidance memo is not a sufficient basis to trigger revision of this section. Consistent with RCW 34.05.328(1), Ecology is precluded from adopting a rule more stringent than the federal counterpart absent a state law directive or compelling regulatory reason.

While the proposed revisions in subsections -107(1)-(3) may be acceptable, we are concerned that EPA will find objections and argue for more comprehensive changes. If EPA's concern is limited to the absence of specific rule language allowing for injunctive relief on an excess emission claim, we suggest the jurisdictional agencies have other authority under federal and state law to pursue whatever enforcement actions they might deem appropriate.

Response #107-13

Ecology has been told that the current rule, although it is in the SIP, is insufficient. EPA indicated that at the next SIP revision, no matter the subject matter, the current 107 provision would be deemed insufficient and a "SIP call" would result. This is the reason Ecology has invested time and effort to change the rule. But, due to the nature and extent of the comments received, Ecology is withdrawing the proposal and will attempt to reach a different conclusion in the second phase of the rule making.

Comments on section 110 of the proposal

Comment #110-1

AWB wanted to make the following suggestion:

WAC 173-400-110 New source review (NSR).* ~~In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.~~

(1) **Applicability.** This section, WAC 173-400-112 and ((~~173-400-113~~)) 173-400-113 ~~720~~** apply statewide except where an **authority** has adopted its own **new source** review rule. In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

*AWB proposes to move the introductory sentence into subsection (1) ("Applicability"), as it addresses which projects are subject to this rule.

Response #110-1

Placement of the exact same text is a matter of style. Ecology believes that placement at the beginning of the section does the most to highlight it, which was the intent. Therefore Ecology is not going to make this suggested change.

Comment #110-2

**A project in an attainment area under Ecology's jurisdiction may require a minor NSR order of approval and therefore be subject to the approval criteria in WAC 173-400-113.

Response #110-2

The comment is correct. Deleting the reference to section -720 is also correct since there is similar language in section -700. Therefore we will adopt the suggestion.

Comment #110-3

AWB wanted to make the following suggestion:

110 (2)(b)(i) Any project that qualifies as construction, reconstruction* or modification of an affected facility, within the meaning of 40 CFR Part 60 **(New Source Performance Standards)**, except Part AAA, Wood stoves (in effect on February 20, 2001);

In Phase II of this rulemaking the regulated community will ask Ecology to consider whether the "reconstruction" of an NSPS affected facility qualifies as an NSR-triggering event under RCW 70.94.152.

Response #110-3

As the comment suggests, this issue will be discussed during the send phase of the rule making.

Comment #110-4

AWB suggested:

110 (2)(b)(v) Any **modification** to a stationary* **source** that requires an increase either in a plant-wide cap or in a unit specific **emission limit**.

RCW 70.94.030 defines a modification as "any physical change in, or change in the method of operation of, a **stationary source**. . . "

Response #110-4

The comment is noted and the rule will be changed.

Comment #110-5

AWB commented:

110 (7) **Final determination.**

(a) Within sixty days of receipt of a complete **notice of construction application*** ((~~or **PSD** permit **application**~~)), **the permitting ((~~agency~~)) authority** shall either issue a final decision on the application or, for those projects subject to public notice under WAC 173-400-171(1), initiate ~~public~~ notice and comment ~~under WAC 173-400-171~~ on a proposed decision, followed as promptly as possible by a final decision. **

*RCW 70.94.152(3).

**The changes proposed here serve two functions. First, they revise the rule to track the statutory language in RCW 70.94.152(9). Second, they enable Ecology to delete the convoluted final sentence of the following paragraph, while directing the reader to WAC 173-400-171 for the rules governing which projects must go through newspaper publication.

Response #110-5

"Application" looks to have been inadvertently deleted along with "or PSD permit". Ecology will make the text adjustment since the bulk of the rest of the section uses the term "notice of construction application" or "application" in this context.

The text related to public notice fine tunes the process related to the internet notification of applications which do not require public notice by newspaper publication. It notes that there is a class of these types of projects. It is nice to point to the location of the public involvement requirements and process, but its lack does not keep those requirements from being applicable. Ecology will adopt the language suggested.

Comment #110-6

AWB commented:

110 (7)(b) A **person** seeking approval to construct or **modify** a **source** that requires an operating permit may elect to integrate review of the operating permit application or amendment required under ((~~RCW 70.94.161~~)) chapter 173-401 WAC and the **notice of construction application** required by this section. A **notice of construction application** designated for integrated review

shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. ((~~A **PSD** permit application under WAC 173-400-141, a **notice of nonattainment area construction**~~)) ~~An~~ **application** ~~for a **major modification** in a **nonattainment area**~~, ((~~or~~)) ~~a **notice of construction application** for a **major stationary source** in a nonattainment area, or a notice of construction application for a modification which is not a major modification to a major stationary source in a **nonattainment area** must also comply with WAC 173-400-171.~~*

See the preceding footnote.

Response #110-6

These changes are good editing, thank you.

Comment #110-7

AWB suggested:

110 (7)(d) If the **new source** is a **major stationary source** or the change is a **major modification** subject to the requirements of WAC 173-400-112,* the **permitting ((~~agency~~)) authority** shall:

Each use of the terms major stationary source and major modification must be tied to one of the sets of definitions that appear in WAC 173-400-112 and WAC 173-400-710.

Response #110-7

This is a good suggestion in this section. Ecology will add the words "subject to the requirements of WAC 173-400-112."

Comment #110-8

AWB suggested:

110 (9) **Construction time limitations.*** Approval to construct or modify a **stationary source** becomes invalid if the applicant does not ~~begin actual~~ commence construction ((~~is not **commenced**~~)) ~~or commences construction~~ within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The **permitting ((~~agency~~)) authority** may extend the eighteen-month period upon a satisfactory showing that an extension is justified. ((~~An~~))**~~Any extension allowed for a project ((operating under a **PSD** permit)) must also comply with public notice requirements in WAC 173-400-171.~~ This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must **commence** ~~or begin actual~~ construction within eighteen months of the projected and approved ((~~commencement~~)) commence ~~or begin~~ construction date.

*The proposed edits to subsection (9) are important to the regulated community, because they enable the owner of a large project to vest under its approval order by executing a contract for

on-site construction, as opposed to beginning actual construction activity. Major projects that require third party financing often require 18 months to secure financing and enter into contracts following issue of environmental permits. The edits proposed here track the language in EPA's PSD rules, 40 CFR 52.21(r)(2).

**The grant of an 18 month extension to commence construction on a project that has secured an approval order after compliance with WAC 173-400-171 should not be required to repeat the public involvement process. The extension of time to complete a project, as opposed to an application to revise the project, does not involve enough variation from the original proposal to warrant the delay and cost of another public involvement process.

Response #110-8

Ecology agrees that the deletion of "begin actual" and replacement with the word "commence" is reasonable reversion to the original text in this regard.
The pre-September 2001 versions of this section did not specify that time extensions required public involvement. The sentence added in 2001 applied to only PSD projects, not NOC projects.
Thus while we disagree that time extensions should or should not, be subject to a public involvement action, deleting the sentence stating that a time extension of an NOC is subject to public involvement would return this section to its current and pre-2001 status regarding public involvement for time extensions. Ecology will accept your suggestions for the time being and more completely evaluate this question in Phase 2.

Comment #110-9

Pacific Northwest National Laboratory (Battelle) commented:

WAC 173-400-110 New Source Review

Exemption Levels for Air Toxics

Issue:	The table in Paragraph (5)(d) Exemption Level Table contains an entry for Toxic Air Pollutants and references WAC 173-460 as the source of exemption levels for toxic air pollutants. However -460 does not contain exemption levels.
Basis:	This reference to threshold values creates confusion as to whether the SQERs in -460 are the intended threshold values
Suggestions:	We understand that the SQERs are not the intended threshold levels, and that this entry was originally made anticipating that exemption levels would be established in -460 in future rule revision. Since the planned revision to -460 e few years ago was not completed, and does not appear to be scheduled for the near future, it is recommended that the Toxic Air Pollutants entry be eliminated from the table to avoid potential confusion on the part of users and agencies.

Response #110-9

This problem is recognized and Ecology is planning to deal with de minimus for Toxic Air Pollutants in the second phase of this rule making. We anticipate starting that process in the year 2005.

Be advised: the Small Quantity Emission Rate's (SQER) listed in WAC 173-460-080(2)(e) are not threshold values in any way. The SQER values are an alternative means to demonstrate compliance with the Acceptable Source Impact Levels found in WAC 173-460-150 and 160.

Comment #110-10

EPA suggested:

WAC 173-400-110 New Source Review (NSR)

Note: As discussed above, by using the term "source," WAC 173-400-110 could be interpreted to apply to nonroad engines, which is contrary to the CAA. Therefore, all references to the defined term "source" should be replaced with "stationary source" in this section.

Response #110-10

Ecology has added to the applicability section (110(1)) the following sentence, "This section applies to sources as defined in RCW 70.94.030(21), but does not include non-road engines. Non-Road engines are regulated under WAC 173-400-035."

Comment #110-11

EPA made the following comment:

WAC 173-400-110(7) Final Determination

In subsection (b), the added language in the last sentence is confusing in that it appears to leave out minor NSR in attainment areas, potentially suggesting that such actions are not subject to WAC 173-400-171. We question whether this last sentence is even needed. One option is to strike the last sentence in its entirety and revise the second sentence to read as follows: *"A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 and must also comply with WAC 173-400-171."*

Response #110-11

This is a good suggestion; your rewriting of the rule text includes all types of actions and eliminates text which makes the rule a little more clear.

Comment #110-12

EPA commented:

WAC 173-400-110(9) Construction Time Limitations

As EPA has previously stated, a permit extension in a nonattainment area for either a major stationary source or a major modification is subject to 30-day public notice and must comply with LAER as it exists at the time of the permit extension (see ECY RTC~2compare document under "other revisions"). Although WAC 173-400-110(9) states that any extension must also comply with the public notice requirements of WAC 173-400-171, WAC 173-400-171 does not include such extensions for major NSR in nonattainment areas on the list of actions subject to a mandatory public comment period. In addition, this provision does not make clear that an extension for major NSR in nonattainment areas must impose LAER as it exists at the time of the permit extension.

Adding the following language to WAC 173-400-110(9) and WAC 173-400-171 would address EPA's concerns:

WAC 173-400-110(9): "A permit extension is subject to 30-day public notice and comment under WAC 173-400-171(2) if the project is either a major stationary source in a nonattainment area or a major modification in a nonattainment area. The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension."

Response #110-12

The second sentence of the proposed language above (The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension.) has been added to the rule language.

Comment #110-13

Fluor Hanford wanted Ecology to consider:

7a. WHAT: WAC 173-400-110(4)

7b. WHY: See also comment 3, above. A tie is needed to the portable/temporary section of this regulation.

In addition, the term "*demolition*" should be added to paragraph (4)(a) "*Maintenance/construction*." The rationale for addition ties to an assumption of Ecology's intent to exempt certain categories. An earlier paragraph in Ecology's general standards (i.e., WAC 173-400-040(3)) lists materials handling, construction, demolition or other operation which is a source of fugitive emissions. Since these are sources of fugitive emissions, Ecology chose an emissions control compliance method pursuant to the general standards and reasonable precautions or good industry practices. In looking at the existing WAC 173-400-110(4), all but one of these terms are specifically listed. For example, "construction" is already exempted under paragraph (4)(a). "Materials handling" is exempted as a category heading under paragraph (4)(d) and many "other operations" of fugitive emissions can find exemptions under the

remaining or miscellaneous section of WAC 173-400-110(4).

7c. PROPOSED FIX: Add "*demolition*" to paragraph (4)(a) as a category header, then add a new line "*(x) actions taken in wrecking/demolishing a facility to slab grade,, including removal of equipment, walls, excess or scrap materials, and/or load bearing structures.*"

Response #110-13

This comment will be considered when we address the de minimus issues in Phase 2.

Comment #110-14

Fluor Hanford also suggested:

8a. WHAT: WAC 173-400-110(5)(d)

8b. WHY: The current text in the table includes under entry (i) "*Toxic Air Pollutants, as specified in chapter 173-460 WAC*." Previous discussions with the permit authority have resulted in an agency interpretation that although (a) through (h) of this table offer exemption levels for a source, there are no de minimus levels specified in WAC 173-460 at this time. If this line is a place holder for future exemption levels to be promulgated, then a clarification is requested to avoid confusion in use of the table.

8c. PROPOSED FIX: Please provide clarification text for Ecology's intent pursuant to WAC 173-400-110(5)(d)(i).

Response #110-14

This problem has been pointed out over the last few years by several different persons. The comment will be considered when we address the de minimus issues in Phase 2.

Comment #110-15

Fluor Hanford suggested:

9a. WHAT: WAC 173-400-110(9)

9b. WHY: Under the amended text in this paragraph, a confusing statement is made that an approval "…becomes invalid if the applicant does not begin actual construction or commences construction within eighteen months…"

9c. PROPOSED FIX: The non-action and action triggers should be separated for clarity. In the first situation, it is believed that Ecology intends that an approval would become invalid if the applicant does not begin actual construction within 18 months, unless an extension is approved by the authority. The second part of the current sentence (tied by the current "or") would have an approval become invalid if the applicant commences construction within 18 months. It is assumed that, in the case of the latter, this is not Ecology's intent, but rather "if the applicant fails to commence construction within 18 months." Suggested approach would be to separate into two sentences.

Response #110-15

You are correct; the proposed language is confusing. Ecology will correct this to better reflect the intent. See Response # 110-8.

Comment #110-16

Fluor Hanford commented:

10a. WHAT: WAC 173-400-110(11)

10b. WHY: The basis for Ecology's addition of this paragraph is questioned, since orders of approval received pursuant to this section each have a similar statement. Citing the RCW enforcement section would be helpful. Also, the current language would imply that a person must comply with all approval conditions (immediately and fully) upon receipt of such approval. This would appear to negate phased approvals and/or conditions that are based on commencement or startup.

10c. PROPOSED FIX: Add RCW reference and clarify existing text to add a statement similar to, "Once operation of the source(s) commences, the owner or operator (i.e., person) must comply with order of approval conditions and/or limitations, pursuant to time-frames specified therein."

Response #110-16

Although need for this language may seem to be superfluous, some of the permitting authorities indicated that this change would be welcome, since they have been questioned on whether or not all conditions of an approval order were required to be followed. Adding your suggested language is a good idea that clarifies both when the requirement to comply starts and makes clear the legislative authority.

Comments on section 112 of the proposal

Comment #112-1

AWB wanted to make the following suggestion:

(e) *

~~. (e) **"Commence"** for the purposes of WAC 173-400-112, as applied to construction, means:~~

~~(i) That the owner or operator has all the necessary preconstruction approvals or permits and either has:~~

~~(A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or~~

~~(B) Entered into binding agreements or contractual obligations, which cannot be canceled~~

~~or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.~~

~~(ii) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.~~

This definition is retained in WAC 173-400-030

Response #112-1

Ecology agrees with the commenter and will delete this definition due to duplication.

Comment #112-2

AWB wanted to make the following suggestion:

(f) *~~(f) **"Stationary source"** and **"source"** for the purposes of WAC 173-400-112 means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the FCAA.~~

WAC 173-400-112 covers NOC applications for minor as well as major projects located in a nonattainment area. Thus the definition of "stationary source" used in this section must cover all air contaminants, not just air pollutants subject to regulation under the FCAA. WAC 173-400-030 defines stationary source as proposed here, except that it regulates all air contaminants. The 030 definition is the one Ecology should use here By using the broader definition here Ecology will not increase the number of pollutants subject to major NSR, because the WAC 173-400-112 definitions of "major stationary source" and "major modification" limit the scope of major NSR to federal NSR pollutants.

Response #112-2

Ecology disagrees. Section 112 deals with major projects in non-attainment areas. In areas such as this the federal definition as stated in (f) is the appropriate definition.

Comment #112-3

Pacific Northwest National Laboratory (Battelle) suggested:

WAC 173-400-112 Requirements for New Sources in Nonattainment Areas and WAC 173-400-113 Requirements for New Sources in Attainment or Unclassified Areas

Clarification of Requirements for Approval of New Sources

Issue	There appears to be some confusion as to whether WAC 173-460 applies to all sources, or only those source categories listed in subsection -460-030, Requirements, Applicability, and Exemption

Basis	This confusion leads to potential misinterpretation and misapplication of the air toxics regulation as originally intended and promulgated. Consequently permitting actions may be taken for sources to which the regulation does not apply.
Suggestions	Amend the phrases in -400-112 Paragraph (2)(h) and -400-113 Paragraph (5) to read: "If the proposed new source or the proposed modification **is a source listed in WAC 173-460-030 and** will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements . . ." These additions will avoid the potential misinterpretation that the requirements of -460 apply to any source, whether it is an applicable source per -460-030 or not.

Response #112-3

Ecology is choosing not to add clarification, extension, or restrictions on the applicability of WAC 173-460 under this rule. The references to WAC 173-460 are to its entirety, including the applicability criteria. If an emission unit or industrial type is not subject to the requirements of WAC 173-460, then it has satisfied compliance with that regulation. Any additional clarification to the applicability of WAC 173-460 will be addressed in a forthcoming updating of that regulation.

Comment #112-4

EPA commented:

WAC 173-400-112 Requirements for New Sources in Nonattainment Areas

Usage of Terms with Respect to "Stationary Source" and "Source"

In subsections (1), introductory paragraph, and subsection (1)(f), definitions of "stationary source" and "source": We do not understand why Ecology has chosen to define the usage of the terms in two places, with one being defined in the introductory paragraph and the other as a defined term in subsection (1)(f).

In any event, both are confusing as currently written. We understand that Ecology's intent was to clarify the usage of terms "source" and "stationary source" in WAC 173-400-112 by copying the definition of stationary source in 40 CFR 51.165(a)(1)(i). Note, however, that EPA has not yet updated the definition of "stationary source" in its implementing rules to reflect a change in the CAA's definition of stationary source (CAA section 302(z)), which excludes nonroad engines. Therefore, Ecology's proposed definition of "stationary source" and "source" in WAC 173-400-112 is not consistent with the CAA.

EPA recommends that Ecology revise the definition of "Stationary source" and "Source" in WAC 173-400-112 to read as follows:

"means any building, structure, facility, or installation which emits, or may emit, a regulated NSR pollutant. A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act."

Response #112-4

Ecology recognizes that there is a problem with the use of terms here. We intend to work towards resolving any remaining issues with the usage of those terms within the Ecology regulations in Phase 2. In the interim it is the policy of Ecology to use, when a source is major in a non-attainment area, the federal definitions of stationary source and major modification will be the interpretation that we will use. In an effort to be clear, we have removed the duplicative definition of source that is the first sentence in the section. We have also defined "stationary source" or "source" as EPA has suggested. It should also be noted that in section 112 the word "source" is considered to be short hand for the term "stationary source."

Comments on section 113 of the proposal

Comment #113-1

EPA commented:

WAC 173-400-113 Requirements for New Sources in Attainment or Unclassifiable Areas

Note: As discussed above, all references to defined term "source" should be replaced with "stationary source" in this section.

Response #113-1

See the response to your comment to section 112 above. It should be noted that in section 113 the word "source" is considered to be short hand for the term "stationary source."

Comments on section 116 of the proposal

Comment #116-1

AWB wanted to comment:

WAC 173-400-116 New source review fees. (1) **Applicability.** Every **person** required to submit a **notice of construction application** to the department of **ecology** as authorized in RCW 70.94.152 for establishment of any proposed **new source** or **emissions unit(s)** shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee as required by the local permitting authority. **Persons** required to submit a **notice of construction application** to a local air **authority** may be required to pay a fee to **ecology** to cover the costs of review pursuant to WAC 173-400-~~141~~ 720,* second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an **order of approval** is issued or denied.

These amendments repeal WAC 173-400-141, and move the PSD program into WAC 173-400-720.

Response #116-1

Thank you for pointing out this typo. We will make the change.

Comment #116-2

AWB comment on proposed WAC 173-400-116(2)(a)

Source type	Clarifying criteria	Fee
Basic Review Fees		
Low complexity source	Emissions increase* of individual pollutants are all less than one-half of the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of individual toxic air pollutants are all less than 2.0 tons/year	$1250
Moderate complexity	Emissions increase of one or more individual pollutants are greater than one-half of, and less than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 2.0 tons/year and less than ten tons/year	$8000
High complexity	Emissions increase of one or more pollutants are greater than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than ten tons/year	$18,000

The complexity of a project depends on the size of the emissions increase associated with the project. A tiny modification to a major source should qualify for the low complexity fee.

Response #116-2

Thank you for pointing out this mistake. We will make the changes you have suggested.

Comment #116-3

AWB comment on proposed WAC 173-400-116(3)(b)

Activity		Fee
Tier II toxic air pollutant impact review		$10,000
Tier III toxic air pollutant impact review		$10,000
Case-by-case MACT determinations		$12,500
Fossil fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW	Fees listed in rule implementing RCW 70.94.892 and chapter 80.70 RCW
Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.		
Activity		Fee
Modification to order of approval that authorizes an increase in allowable emissions*		50% of the fee charged in WAC 173-400-116 (2)(a)
Modification of Tier II approval		50% of the fee charged in WAC 173-400-116 (2)(b)

Many types of amendments to an approval order involve no increase in allowable emissions and no ambient impact assessment. These revisions do not warrant a fee equal to 50 percent of the basic new source review fee.

Response #116-3

There are many types of revisions to existing orders. Some involve an increase in allowable emissions and some do not. A strict reading of the current rule requires Ecology to change the same fee for initial issuance and for any modification to the order. This fee reduction allows Ecology to change less for less work. The work load analysis that Ecology performed concluded

if a change in emissions limits is needed that the proposed fee would be the closest to recovering the cost of the effort expended. In order to create a fee that is more appropriate for a lesser amount of work, such as a name change, etc. is something we may be willing to discuss in the future. At this time we will leave the rule language as proposed.

Comment #116-4

Fluor Hanford commented:

11a. WHAT: WAC 173-400-116(b)

11b. WHY: This comment ties to comment (3) in the need for exemptions for certain types of small sources. If the language under WAC 173-400-035 is amended and a tie is made to the categorical exemptions listed under WAC 173-400-110(4), then it is assumed that (since no NOI or NOC would prepared and no order issued) no fee would be required in accordance with this table.

11c. PROPOSED FIX: Following incorporation of comment (3), amend the table under (b) such that it would not unnecessarily burden small de minimus sources with a fee. Specifically, it is suggested that the row listing a $250 fee for insignificant emission units (those either located at a WAC 173-401 source or at a non-chapter 173-401 WAC source) be modified to allow exempted sources a zero fee. The same comment is offered for the line regarding non-road engines with less than 500 installed horsepower.

Response #116-4

The language at the beginning of section 116(1) says, "Every person required to submit a notice of construction application to the department of ecology as authorized in RCW 70.94.152 for establishment of any proposed new source or emissions unit(s) shall pay fees as set forth in subsections (2) and (3) of this section." We read this portion of the rule to mean that only those sources required to get a NOC or NOI are required to pay a fee. If no NOC or NOI is required, then no fee is required.

Comments on section 117 of the proposal

Comment #117-1

The AWB commented:

WAC 173-400-117 Special protection requirements for federal Class I areas. (1) **Definitions.** The following definitions apply~~ies~~ to this section:

(a) **"Adverse impact on visibility"** means **visibility impairment** that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the **federal Class I area**. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(~~a~~i) Times of visitor use of the **federal Class I area**; and

(~~b~~ii) The frequency and timing of natural conditions that reduce visibility.

(b) The terms "major stationary source," "major modification" and "net emissions increase" are defined as provided in WAC 173-400-720. *

These terms are used in subsections (2), (5) and (6), justifying the listing of their definitions up front.

Response #117-1

The reference to the definitions of "major stationary source", Major modification", and "net emissions increase" were located in -117(2)(b) in our proposal. The relocation to a new -117(1)(b) is a reasonable alternative location for this reference. We have incorporated the language as suggested.

Comment #117-2

The AWB proposed:

Proposed WAC 173-400-117(2)(b) ((~~A **source** in a **nonattainment area** that is submitting~~)) Submittal of a **notice of construction application** for a **major stationary source** or a **major modification** to a major stationary source in a nonattainment area~~, as either of those terms are defined in WAC ((173-400-113, Requirements for **new sources** in **attainment** or **unclassifiable areas**)) 173-400-720~~.

Response #117-2

Thank you for catching the necessary clarification. Since the requirements are restricted to major stationary sources, it is important to clearly limit the applicability of the visibility protection process to major stationary sources and major modifications.

The change has been made.

Comment #117-3

The AWB suggested:

(5) **Analysis by federal land manager.**

(a) The **permitting ((~~agency~~)) authority** will consider any demonstration presented by the responsible **federal land manager** that **emissions** from a proposed **new major stationary source*** or the **net emissions increase** from a proposed major modification described in subsection (2) of this section would have an **adverse impact on visibility** in any **federal Class I area**, provided that the demonstration is received by the **permitting ((~~agency~~)) authority** within thirty days of the **federal land manager's** receipt of the complete application.

This paragraph incorporates the requirements of 40 CFR 52.21(p)(3). That subsection applies, by its terms, to major stationary sources and major modifications.

Response #117-3

See response #117-2.

Comment #117-4

The AWB proposed:

(6) **Additional requirements for projects that require a PSD permit.**

(a) For sources impacting **federal Class I areas**, the **permitting ((~~agency~~)) authority** shall provide notice to **EPA** of every action related to consideration of the **PSD** permit.

(b) The **permitting ((~~agency~~)) authority** shall consider any demonstration received from the responsible **federal land manager** prior to the close of the public comment period on a proposed **PSD** permit that emissions from the proposed **new major stationary* source** or the **net emissions increase** from a proposed **major modification** would have an adverse impact on the air quality-related values (including visibility) of any **mandatory Class I federal area**.

See the preceding footnote.

Response #117-4

See response #117-2.

Comment #117-5

The AWB commented:

(7) **Additional requirements for projects located in nonattainment areas.** In reviewing a **PSD** permit application or **notice of construction application** for a ~~project~~ new **major stationary source** or **major modification*** proposed for construction in an area classified as **nonattainment**, the **permitting ((~~agency~~)) authority** must ensure that the **source's emissions** will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, **impairment** of **visibility** by human-caused air pollution in **mandatory Class I federal areas**.

See 40 CFR 51.307(c). -

Response #117-5

The reference to the federal rules is, "(c) Review of any major stationary source or major modification under paragraph (b) of this section, shall be conducted in accordance with paragraph (a) of this section, and §51.166(o), (p)(1) through (2), and (q). In conducting such reviews the State must ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal referred to in §51.300(a). The State may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source." The AWB suggestion is a valid concern and therefore Ecology will make the changes you suggest.

Comment #117-6

The EPA wrote:

EPA - **WAC 173-400-117 Special Protection Requirements for Federal Class I Areas**

Note: As discussed above, all references to defined term "source" should be replaced with "stationary source" in this section.

Response #117-6

See the responses to comments #112-4 and #113-1. It should be noted that in section 117 the word "source" is considered to be short hand for the term "stationary source."

Comments on section 118 of the proposal

Comment #118-1

AWB noted:

WAC 173-400-118 Designation of Class I, II, and III areas. (1) **Designation.**

(a) Lands within the exterior boundaries of Indian reservations may be redesignated only by EPA, upon application of the appropriate Indian ~~g~~Governing ~~b~~Body.* This restriction does not apply to nontrust lands within the 1873 Survey Area of the Puyallup Indian Reservation.

See 40 CFR 52.21(g)(4). Indian Governing Body is a defined term in 40 CFR 52.21(b)

Comment #118-2

AWB commented:

(~~C~~c) Except as provided in subsection (1) of this section, ~~O~~only the department of ecology ~~is allowed~~ may propose* to designate or redesignate the classification of the areas of the state.

EPA must approve the redesignation of an area as a SIP amendment, per 40 CFR 52.21(g)(1).

Response #118-1 and #118-2

Thank you for making these suggestions, your suggestions with some small edits are what Ecology will adopt, in order to reflect the appropriate relationships between the various governmental organizations. The language Ecology has chosen for WAC 173-400-118(1)(a) is "Lands within the exterior boundaries of Indian reservations may be proposed for redesignation by an Indian Governing Body or EPA. ~~redesignated only by the appropriate Indian governing body.~~ This restriction does not apply to nontrust lands within the 1873 Survey Area of the Puyallup Indian Reservation."

Comment #118-3

EPA commented:

WAC 173-400-118 Designation of Class I, II, and III Areas

EPA assumes that the language added in subsection (2)(b)(ii)(C) is to clarify that the local air authorities do not have authority to designate or redesignate the classification of areas of the state. As you know, it is EPA's position that Ecology and the local air authorities in Washington do not have authority to implement and enforce CAA requirements with respect to sources or activities located in Indian Country, as defined in 18 U.S.C.1151. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly

provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

Response #118-3

The reply to AWB comments above supports the position that EPA has taken in their comments. Ecology will edit WAC 173-400-118(2)(b)(ii)(C) to read, "Areas proposed by Ecology for designation or redesignation."

Comments on sections 120, 131 and 136 of the proposal

Comment #120 -1

The EPA made the comment below:

Bubble Rules (120), Issuance of Emission Reduction Credits (131), & Use of Emission Reduction Credits (136)

As currently written, these rules are not approvable for inclusion into the SIP. In order for these types of rules to be approvable, they need to be consistent with CAA requirements, as described in the Final Emissions Trading Policy Statement (see 51 FR 43814, December 4, 1986).

Response #120-1

We are not intending to ask for SIP approval at this time for these provisions.

Comments on section 151 of the proposal

Comment #151-1

The EPA commented:

WAC 173-400-151 Retrofit Requirements for Visibility Protection

Ecology will need to provide a justification regarding the potential relaxation of limiting the scope of the rule to only the 26 listed source categories in subsection (c) instead of all sources. Our understanding from Ecology is that failure to include the 26 source categories in the initial promulgation of the rule was an oversight and that the intent was that the state definition be consistent with the federal definition. This and the potential impact of the change will need to be explained and justified in the SIP submittal.

Response #151-1

Noted. Thank you for the instructions for the SIP submittal.

Comments on section 171 of the proposal

Comment #171-1

The AWB suggested rewriting the entire section as below:

WAC 173-400-171 Public involvement.* (1) ((~~**Applicability.**~~)) **Applicability.** This section applies statewide to the actions described in subsection (2), except actions taken by an authority that has adopted its own public involvement rule. PSD actions under WAC 173-400-720 are not subject to the procedures in this section. The public involvement for these projects shall follow the procedures in WAC 173-400-730(4) and 173-400-740.

*The comments on this section depart from the redline format followed elsewhere in these comments. Because most of the edits recommended by AWB consist of moving text from one subsection to another, it was not helpful to show additions and deletions in redline format. This document shows the form of WAC 173-400-171 that AWB recommends for adoption. The biggest difference between our version and the proposed rule is that our version treats internet notification and newspaper notification as two different types of public notice, as opposed to labeling only newspaper publication as "public notice." In addition, we suggest changing the order of the subsections, so that the rule starts with an applicability statement, followed by a list of all of the actions subject to public notice, followed by a description of the three authorized methods of providing public notice, followed by details on the procedures that Ecology follows in implementing each type of public notice.

AWB's comments contain very little in the way of substantive edits to the proposed rule. Our most important substantive suggestion is to make this rule inapplicable to actions taken by a local air authority that has its own public involvement rule. We urge Ecology to add an "applicability" subsection at the beginning that makes the rule applicable statewide, but clarifies that it does not govern PSD permitting or actions taken by a local authority that has its own public notice process. See WAC 173-400-171(1). We propose to add a new category of actions that require public notice, orders to designate Clean Units or Pollution Control Projects. See WAC 173-400-171(2)(q). We proposed to gather in a new subsection the three types of public notice recognized in Ecology's draft: Internet notification, newspaper publication and integrated review of changes that require a Title V permit amendment as well as NSR.

(2) **Actions subject to public notice.**

The **permitting authority** must provide public notice before approving or denying any of the following types of applications or other actions:

(a) A **notice of construction application** for any **new source or modification**;

(b) The initial application to operate a portable source in the state of Washington;

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2004) as part of review under WAC 173-400-110, 173-400-117, or 173-400-720;

(d) Any **order** to determine **RACT**;

(e) An **order** to establish a compliance schedule or a variance;

(f) An **order** to demonstrate the creditable height of a stack which exceeds the **GEP** formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an **emission limitation**;

(g) An **order** to authorize a **bubble**;

(h) Any action to discount the value of an ERC issued to a source per WAC 173-400-136(6);

(i) Any regulatory order to establish BART for an existing stationary facility;

(j) Any **notice of construction application** or **regulatory order** used to establish a **creditable emission reduction**;

(k) An **order** issued under WAC 173-400-091 that establishes limitations on a **source's potential to emit**;

(l) The original issuance and the issuance of all revisions to a general order of approval issued under chapter 173-560 WAC.

(m) A Washington state recommendation that will be submitted by the **director** of **ecology** to **EPA** for approval of a **SIP** revision, including plans for attainment, maintenance, and visibility protection;

(n) A Washington state recommendation to **EPA** for designation or redesignation of an area as **attainment**, **nonattainment**, or **unclassifiable**;

(o) A Washington state recommendation to **EPA** for a change of boundaries of an **attainment** or **nonattainment** area; or

(p) A Washington state recommendation to **EPA** for redesignation of an area under WAC 173-400-118

(q) An order or approval order designating a Clean Unit or approving a Pollution Control Project under WAC 173-400-720. **

Comment #171-2

**WAC 173-400-720 contemplates that a WAC 173-400-091 regulatory order or a WAC 173-400-110 approval order will be used to designate Clean Units and to approve PCPs. Those sections employ the public notice procedures of WAC 173-400-171, so it is appropriate to add these actions to the list of actions subject to public notice.

(3) **Public notice methods**

(a) Newspaper publication. Public notice of applications and actions described in this section will be provided by newspaper publication, except for those applications that qualify for internet notification as described in paragraph (b) below. A permitting authority may decide to provide public notice by newspaper publication for a project that qualifies for internet notification, if it determines that there is substantial public interest in the application.

(b) Internet notification of receipt of an application. Public notice of a **notice of construction application** for a **new source or modification** or the initial application to operate a portable source in the state of Washington may be provided through internet notification as described below, if no increase in emissions of any air pollutant larger than the emission threshold rate (defined in WAC 173-400-030) would result.

(i) Notice shall remain on the permitting authority's website for a minimum of fifteen consecutive days. The internet posting shall include notice of the receipt of the application, the type of proposed action, and a statement that the public may request an opportunity to comment on the proposed action.

(ii) Requests for a public comment period shall be submitted to the permitting authority in writing via letter, fax, or electronic mail within fifteen days of its internet posting. A public comment period shall be provided pursuant to subsection (7) of this section for any application

or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement.

(iii) Any application or proposed action that requires a public comment period or for which the **permitting authority** proposes to have a public comment period does not have to be announced on the **permitting authority**'s internet website.

(c) Integrated review. A **notice of construction application** designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines. A project designated for integrated review that includes a **notice of construction application** for a new **major stationary source** or a **major modification** in a **nonattainment area**, must also comply with public notice requirements in this section. A project designated for integrated review that includes a PSD permit application must also comply with the requirements in WAC 173-400-730 and 173-400-740.

(4) **Newspaper publication.** Notice of an action or application designated for newspaper publication must be published in a newspaper of general circulation in the area of the proposed project. Notice shall be published only after all information required by the **permitting authority** has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of publication. A copy of the newspaper notice will be sent to the EPA Region 10 regional administrator. The notice shall include:

(a) The name and address of the owner or operator and the facility;

(b) A brief description of the proposal;

(c) The location of the documents made available for public inspection;

(d) A thirty-day period for submitting written comment to the permitting authority;

(e) A statement that a public hearing may be held if the **permitting authority** determines within a thirty-day period that significant public interest exists;

(f) For those actions listed in WAC 173-400-171(8)(b) with a mandatory public hearing requirement, the time, date, and location of the public hearing.

(g) The length of the public comment period in the event of a public hearing;

(h) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117(5)(c), the newspaper notice shall either explain the **permitting authority's** decision or state that an explanation of the decision appears in the support document for the proposed order of approval;

(i) For a redesignation of an area under WAC 173-400-118, the newspaper notice shall state that an explanation of the reasons for the proposed redesignation is available for review at the public location.

(5) **Availability for public inspection.** The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(a) For a redesignation of a class II area under WAC 173-400-118, **ecology** must make available

for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation.

(b) For a revision of the **SIP**, **ecology** must make available for public inspection the information related to the action at least thirty days before the hearing.

(6) **Additional public notice requirements for a SIP revision.** For a revision to the **SIP** that is submitted by the **director** of **ecology**, **ecology** must publish the information described in subsection (4) of this section in the *Washington State Register* in advance of the date of the public hearing.

(7) **Public comment opportunity.**

(a) The public comment period for an action published for comment in a newspaper must be at least the thirty-day period for written comment specified in the newspaper notice.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The **permitting authority** shall make no final decision on any application or action published for comment under this section until the public comment period has ended and any comments received during the public comment period have been considered.

(8) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. The **permitting authority** may hold a public hearing if it determines significant public interest exists. The **permitting authority** will determine the location, date, and time of the public hearing.

(b) **Ecology** must hold a hearing on the following ecology only actions:

(i) A Washington state recommendation to **EPA** that will be submitted by the **director** of **ecology** for approval of a **SIP** revision;

(ii) A Washington state recommendation to **EPA** for a change of boundaries of an **attainment** or **nonattainment** area;

(iii) A Washington state recommendation to **EPA** for designation of an area as **attainment**, **nonattainment**, or **unclassifiable**; and

(iv) A Washington state recommendation to **EPA** to redesignate an area under WAC 173-400-118.

(c) **Ecology** must provide at least thirty days prior notice of a hearing required under subsection (8)(b) of this section.

(9) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

Response #171-1

The suggested revision to the layout and text of this section are indeed a better layout. But there are problems with implementing the suggestion. First the section does contain a small amount of newly proposed text that does not appear any where else; not in the existing rule, nor in the proposed rule. Further there are deletions from the proposal. There has not been sufficient time

to properly evaluate the entire rewrite. These taken together make the change too substantive to implement without further public involvement. Therefore Ecology will not adopt the suggestion. But, we may decide to place this suggestion on the agenda for Phase 2.

Response #171-2

See the comment and response #171-7.

Comment #171-3

Boeing had the concerns below:

Reference to Small Quantity Emission Rate Tables as a trigger for public process requirements in 400-171 should be deleted. Public access and comment opportunity via the internet should be encouraged.

The addition of provisions for public involvement via the internet is important and welcome. Unfortunately, Ecology has attempted to distinguish this type of public notice from more traditional newspaper publication, calling only the latter "mandatory public notice" for purposes of new source review. This distinction denies the public full use of speedier involvement while unnecessarily adding transactional cost to the process.

Also, the addition of small quantity emission rates from the air toxics rule (WAC 173-460-080 (2)(e)) as a "trigger" for the public involvement process is unwarranted. Not only do the provisions of WAC 173-460 stand on their own, requiring NSR public process when appropriate, the rates listed will force many small, uncontroversial projects into an extended, time-consuming public process. Permitting agencies already have the option under proposed Section 400-171(2)(c) to formally involve the public where appropriate. Using the small quantity emission rates would force many non-controversial approvals into lengthy, unproductive public involvement exercises, delaying projects, increasing costs and providing no environmental benefit.

Boeing supports the rearranged language proposed by the Association of Washington Business, and removing the reference to the small quantity emission rates of WAC 173-460-080:

Response #171-3

The establishment of a threshold value to require public involvement for TAP increases is to prevent requiring even trivial TAP emission increases from requiring the formal, newspaper notice process of public involvement. The TAP threshold is similar to the threshold value "criteria air pollutants" contained in the newly defined term "emission threshold" (which replaces our current rule's criteria of a "net significant increase" based on the PSD definition of significant). We proposed the use of the SQER values for TAPS as the threshold in lieu of other suggestions which were even smaller rates which would subject even more facilities to the newspaper publication requirement.

In our view, the lack of a threshold value implies that all actions are subject to the newspaper publication version of public involvement, effectively negating the value of the proposal for internet notification of applications received for those actions not requiring public notice through the newspaper publication process.

Comment #171-4

EPA commented:

WAC 173-400-171 Public Comment

Minor changes to subsections (1), (2) and (3) would better clarify that the internet posting specified in subsection (1) is designed to meet the public participation requirements of 40 CFR 51.161.

In subsection (1)(a), we suggest replacing the term *"mandatory public notification"* with *"a mandatory public notice and comment period."*

In subsection (1)(c), the second sentence should state that *"Public notice and comment shall be provided pursuant to subsections (3) and (4) of this section . . ."*

In subsections (1)(b) and (c), it would be better to use the same phrase to refer to the public comment period in both sections (*"public comment period"* seems more accurate than *"opportunity to comment"*). In addition, at the end of subsection (1)(c), we recommend clarifying that the action can be *". . . processed without further public involvement "at the end of the 15 day posting period."*

Response #171-4

These suggestions are appreciated and help to clarify the intent of the rule.

Comment #171-5

EPA had the following concern:

In subsection (2), we suggest changing the caption to ***"Actions subject to public notice and comment"*** and stating in subsection (2)(a) that *"The permitting authority must provide public notice and a public comment period before . . . "*

Response #171-5

Thanks for the comment, Ecology agrees and will change the rule as suggested.

Comment #171-6

EPA commented:

In subsection (2)(a)(ii), we assume the reference to 173-400-110 captures actions under WAC 173-400-112 and -113. If not, these citations should be added.

Response #171-6

Thanks for the comment, Ecology agrees and will change the rule as suggested.

Comment #171-7

EPA - **In subsection (2)(a),** it is unclear whether the reference to "PSD actions under WAC 173-400-730 and 173-400-740" includes issuance of PSD permitting mechanisms being used to implement NSR reform, such as Clean Unit exemptions, Pollution Control Project (PCP) exemptions, and Plant-wide Applicability Limits (PALs). This is an important issue. If such PSD avoidance mechanisms are not covered under the public involvement procedures in WAC 173-400-730(4) and -740, a category should be added to subsection (2)(a) to make clear that orders issued to designate an emissions units as a Clean Unit under 40 CFR 52.21(y), to permit a

PCP under 40 CFR 52.21(z)(5), or to establish a PAL under 40 CFR 52.21(aa) are subject to the mandatory public notice and comment provisions of subsections (2) and (3).

Response #171-7

Our intent was to include these actions in the public involvement process of the PSD program. Therefore we have modified the sentence to say, "PSD actions, including actions taken to avoid PSD applicability, under WAC 173-400-730 and 173-400-740 are not required to follow the procedures in this section. The public involvement for these projects shall follow the procedures in WAC 173-400-730(4) and 173-400-740."

Comment #171-8

EPA - **In subsection (2)(a)**, Ecology needs to revise the public notice and comment provisions in this subsection to clarify that a permit extension in a nonattainment area for either a major stationary source or a major modification is subject to 30-day public notice.

The following language would address EPA's concern on this issue:

> **WAC 173-400-171(2)(a)(?):** "Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area, or"

Response #171-8

Ecology agrees with EPA's comment and has added the proposed language at WAC 173-400-171(2)(a)(xii).

Comment #171-9

EPA pointed out the following typo:

In subsection (3)(b)(v), should the reference be to WAC 173-400-171(5)(b), rather than (4)(b)?

Response #171-9

Thank you for pointing out this typo. Ecology will fix it.

Comment #171-10

Fluor Hanford made the comment below:

12a. WHAT: WAC 173-400-171

12b. WHY: This comment ties to comment (3). Imposing a public involvement process for typical rental or homeowner-type portable/temporary units would be burdensome.

12c. PROPOSED FIX: Suggest incorporating exemptions for some category of units, as per the outcome of comment resolution on WAC 173-400-035. Clarification in the introductory paragraph could also reference exemptions in the requirements for public review.

Response #171-10

Since the proposed revisions to WAC 173-400-035 have been removed from this rule making, this comment is no longer operative. We may wish to revisit this comment in the context of the second phase of the rule making.

Comment #171-11

The Northwest Clean Air Agency made the suggestion below:

WAC 173-400-171 Public Involvement

The reference to a threshold for toxic air pollutants in WAC 173-460-080 (2) (e) that would require public notice has not been well thought out. This requirement would necessitate that many small projects go through a public notice where it may not be warranted (i.e. small combustion projects like small generators or boilers).

A new threshold for public notice requirements for WAC 173-460 should be established only after more analysis and consideration of these regulations. This process could help to insure that public notice requirements are commensurate with the potential impacts of the project.

This provision was specifically included to in an effort to address SIP deficiencies that were identified by EPA Region 10. It is our understanding that the proposed language will not be sufficient to correct these deficiencies.

Response #171-11

The establishment of a threshold value to require public involvement for TAP increases is to prevent requiring even trivial TAP emission increases from requiring the formal, newspaper notice process of public involvement. The TAP threshold is similar to the threshold value "criteria air pollutants" contained in the newly defined term "emission threshold" (which replaces our current rule's criteria of a "net significant increase" based on the PSD definition of significant). We proposed the use of the SQER values for TAPS as the threshold in lieu of other suggestions which were even smaller rates which would subject even more facilities to the newspaper publication requirement.

In our view, the lack of a threshold value implies that all actions are subject to the newspaper publication version of public involvement, effectively negating the value of the proposal for internet notification of applications received for those actions not requiring public notice through the newspaper publication process.

Comment #171-12

The Puget Sound Clean Air Agency made the following suggestion:

Comment 4 - WAC 173-400-171(2)(a)(i)

Issue - Public involvement provisions are incorrectly extended to an indirect modification of WAC 173-460.

Discussion

The proposed WAC 173-400-171(2)(a)(i) would be a significant change to our public notice requirements since, historically public notice has only been required for applications involving risk management decisions under WAC 173-460-100. This context was based on WAC 173-460-090(7) which specifies that *"Ecology decisions regarding second tier analysis or decisions under WAC 173-450-100 shall comply with public notification requirements contained in WAC 173-400-171."* The only other reference to public notice in WAC 173-460 is in WAC 173-460-

040(5)(b) which requires the permitting authority to *"initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable."* We believe the words *"as applicable"* clearly imply that the public notice isn't always applicable. The distinction between these two citations is that a Tier II decision has a required public process while other language defines a process to be followed when it's used. This proposed change does not address the record established during rulemaking for WAC 173-460, which would include the intent and interests associated with that regulation.

Discussions with Ecology staff regarding the implementation of WAC 173-400 in its present form indicated their underlying assumption was that the absence of emissions thresholds for public notice in WAC 173-460 meant that any emissions increase required public notice. We disagree with that premise for the reasons stated above and submit that this interpretation is not consistently used by all authorities which use WAC 173-400-171 for their public involvement. In similar discussions regarding the absence of toxic air contaminant emission thresholds for new source review applicability [referenced by WAC 173-400-110(5)(d)], Ecology has acknowledged a rulemaking effort for WAC 173-460 is needed. We believe this logic should also be applied to the proposed public notice amendment and that specifying emissions thresholds for public notice here is effectively an attempt to modify WAC 173-460.

One additional concern is that the proposed revisions to WAC 173-400-171 have been included in an effort specifically intended to address SIP deficiencies identified by EPA Region 10. Without the proposed reference to WAC 173-460, this amended section remains clearly worded for our criteria pollutant permitting program and consistant with the requirements for incorporation into the SIP (40 CFR 51,161). Since WAC 173-460 is not a SIP-approved rule, referencing it in WAC 173-460-171 will create a more complicated SIP approval action for EPA Region 10. We believe WAC 173-460 should have its own public notice applicability provision and should reference only the procedural requirements in WAC 173-400-171(3)-(6).

Recommendation

Delete the phrase *"or any increase in a pollutant regulated under chapter 173-460 WAC which will increase above the small quantity emission rate listed in WAC 173-460-080(2)(e) would result."*

Response #171-12

See the response to Comment #171-11.

In addition to the response referenced, WAC 173-460 does not set any criteria or other thresholds for public involvement. That regulation (for example, see WAC 173-460-040(5)(b)) refers the source owner and permitting authority to WAC 173-400-171 for the process and criteria relating to public notice and comment.

Comment #171-13

The Puget Sound Clean Air Agency pointed out the two following typos:

Comment 5 - WAC 173-400-171(2)(a)(xi)

Typo - This paragraph should refer to WAC 173-400-560, not chapter 173-560 WAC.

Comment # 171-14

Comment 6 - WAC 173-400-171(3)(b)(5)

Typo - The reference to actions with a mandatory public hearing should be changed from WAC 173-400-171(4)(b) to WAC 173-400-171(5)(b).

Responses # 171-13 and #171-14

Thanks for pointing out these mistakes. We will fix them.

Comments on section 175 of the proposal

Comment #175-1

AWB pointed out the following:

WAC 173-400-175 Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205, is available for public inspection at the issuing agency. This includes copies of **notices~~s~~ of construction applications**, **orders**, and applications to **modify~~ications~~** orders. *

The edit shown here is a best guess at implementing the original intent of this section. The term "modification" as used in the current rule has no identifiable meaning.

Response #175-1

This change does make the issue a little bit more clear. Ecology will make the changes you suggested.

Comments on section 560 of the proposal

Comment #560-1

AWB made the suggestion below:

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement action for establishment of a new source in violation of WAC 173-400-110 if ~~the emission unit or source~~ a decision to grant coverage under a general order of approval was based on erroneous information submitted by the applicant. *~~is later determined not to qualify for the terms and conditions of the general order of approval.~~

Enforcement action is appropriate where the applicant misstates information on which a permitting authority bases an applicability determination. Enforcement action is not appropriate where the permitting authority simply changes its mind about the availability of coverage under a general order of approval.

Response #560-1

The changes that are outlined in this comment places the burden on the permitting agency to properly make the determination as to whether the source is covered by the terms of the general permit. Ecology agrees that this is where the burden lies and so agrees with the commenter's suggestion.

Comment #560-2

EPA suggested:

WAC 173-400-560 General Order of Approval

Note: As discussed above, by using the term "source," WAC 173-400-560 could be interpreted to apply to nonroad engines, which is contrary to the CAA. Therefore, all references to the defined term "source" should be replaced with "stationary source" in this section.

Response #560-2

It is inappropriate to issue general orders of approval for non-road engines. This is because there is a requirement in WAC 173-400-560 for a BACT determination when writing a general order. Non-road engines are not subject to a BACT requirement as a matter of federal law. Non-road engines are regulated under WAC 173-400-035. At some point in the future Ecology may write rules for the establishment of general permits for non-road engines, without the requirement for BACT. WAC 173-400-560(1) has been modified to read, "(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including non-road engines as defined in section 216 of the federal Clean Air Act, subject to the conditions in this section."

Comment #560-3

EPA commented:

In the introductory paragraph, we recommend that language be revised to match the similar language in WAC 173-400-110 ("*Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.*"). This makes clear that the source has to qualify for a general order of approval in order for it to relieve the source of the responsibility to apply for and obtain an order under WAC 173-400-110.

Response #560-3

Ecology agrees with the changes that are suggested.

Comment #560-4

EPA pointed out the following typo.

In subsection (5), we believe there is a typo. Should "(6)(a) or (b)" be "(5)(a) or (b)"?

Response #560-4

Thank you for pointing out the typo; we will fix the typo.

Comment #560-5

EPA - **In subsection (5)(b),** In addition, this subparagraph should specify the date on which coverage under the general order of approval under this option (b) becomes effective as is done in subsection (a). In this case, coverage would presumably become effective on the 31st day after

the application for coverage was received by the permitting authority unless a denial letter was postmarked before that date.

Response #560-5

This is a good idea; Ecology agrees.

Comment #560-6

EPA made the following suggestion

In addition, we believe there should be a provision, in the general permit regulation, requiring the permitting authority, on some periodic basis, to review general orders of approval to ensure that what is identified as BACT is still BACT and that air quality is still being protected. Therefore, we support language similar to what was in Ecology's earlier draft: *"General Orders of Approval shall be reviewed by the permit issuing authority at least once every five years from the date of announcement of the final form."*

Response #560-6

That language was removed from an earlier draft because many thought that this would be too burdensome on the permitting agencies. But the comment has raised the issue again. Ecology plans to consider a revision of this nature in Phase 2. Ecology cannot make the change as proposed by EPA because the topic of periodic review of the General Permits was not in the formal proposal.

Comments on section 700 of the proposal

Comment #700-1

NWCAA comments

WAC 173-400-700 through 173-400-750

The language used in the sections following WAC 173-400-700 seems to negate the language which indicates local agencies may request delegation of specific PSD avoidance mechanisms. For example, in WAC 173-400-720(4)(b)((iii)(E) & (F), identifying that Ecology is doing the Clean Unit exemptions [per 52.21(y)] and the PCP actions [per 52.21(z)] negates the option identified in WAC 173-400-700, appears to force additional rulemaking activity by a local agency if it wanted to pursue delegation for these actions. It extends the Notice of Construction (NOC) review and approval authority to Ecology for sources outside their current jurisdiction.

There is some confusion within these sections, for the terms, Administrator, Ecology, and permitting authority. In general, the term "permitting authority" should be used in all circumstances except when administrator means "EPA". Permitting authority terms should be qualified in each use as "permitting authority that has received delegation" for the specific action identified, similar to the language in WAC 173-400-700(2)(a) or WAC 173-400-720(4) ("permitting authority with jurisdiction over the source under chapter 173-401 WAC").

Our suggestion that the term "permitting authority" be used instead of Ecology is intended to make the delegation requests by local agencies be processed on a simple and streamlined basis as

possible, should they decide to pursue it. It will also leave the rule intact and unaltered if the delegation agreement identifies who has which specific authority. We also believe that one delegation agreement for the State of Washington which involves all parties involved (including local agencies as appropriate) is appropriate for PSD and PSD avoidance actions. NWCAA intends to seek delegation for PSD avoidance actions in our jurisdiction.

Response #700-1

The intent of the language is to establish that Ecology implements the PSD permitting program and issues the exemption from PSD permitting requirements. This leaves the local agency free to implement the state law based new source review program requirements without the potential conflicts resulting form a local authority saying that for PSD purposes an action is exempt, but for state new source review purposes, the action is subject to the full scope of the state new source review program including the requirement to implement BACT emission controls even when not required by the PSD program exemption (see discussion below related to proposed changes in WAC 173-400-720(4)(b)(iii)(z)).

The coordination language in section 700 is for the purpose of identifying relationships between Ecology and EFSEC and a local authority if it pursues delegation of some or all of the PSD permitting program.

Ecology is used where it is intended that Ecology be the implementing authority, the permitting authority where it is intended to be the agency that issues the air operating permit for a specific source, and EPA where the action is clear, by the terms of 40 CFR 52.21, to be only the EPA administrator.

Ecology intends to continue its close relationship with NWCAA and all other local authorities in implementing the PSD program and coordinating our actions with those of the local authority in its new source review and air operating permit functions. Equally we believe that taking on the PSD program elements is an important action with potential statewide air quality implications that should not be entered into lightly or without forethought. The rulemaking process entails all the ramifications of adopting the program to be evaluated and considered.

If a local authority were to pursue regulatory changes necessary to adopt all or parts of the federal PSD program, we would not act to prevent this decision, but would work to assure the full ramifications, limitations and opportunities the decision entails. At such time as regulatory language to implement all or part of the PSD program is adopted by a local authority into its rules, we would work with the authority and EPA to update our delegation agreement and develop a delegation agreement for the local authority that clearly delineate responsibilities and jurisdictions.

We have not changed the language of these sections to reflect a permitting authority to implement the PSD exemptions without modifying its rules.

Comment #700-2

PSCAA Comment 9, Streamline rule language in Sections -700 - 750 to support local implementation option.

PSCAA suggests that all text in these sections have the term “ecology” replaced with the term “permitting authority” to allow a local authority to utilize the state regulation to support requests

for delegation by EPA-Region 10 of all or portions of the federal PSD permitting program. The requested language adjustment would allow for a simplified process to request such delegation.

Response #700-2

At this time we do not propose to make the requested language adjustment. We believe that requesting delegation of this federal program from EPA is a significant action that needs the full understanding and agreement of the ramifications of receiving the delegation. We believe that such a request should be made with forethought and with necessary adjustments and changes to the local authority regulations to fully conform with the elements requested for delegation. The conflicting requirements between the federal provisions and the local authority NOC programs needs to be fully explored in a public forum which requiring local agency rulemaking to occur will allow to happen.

Comment #700-3

AWB, EPA, the Northwest Clean Air Agency, and the Puget Sound Clean Air Agency pointed out this typo.

(2) WAC 173-400-700 through 173-400-750 apply statewide except:

(a) Where the authority has ~~relieved~~ received delegation of the federal PSD program from EPA or has a SIP approved PSD program.

Response #700-3

We thank you for finding the typo.

Comment #700-4

EPA made the following comment:

WAC 173-400-700 Review of Major Stationary Sources of Air Pollution

General comment: Although Ecology has proposed, in large part, to incorporate the federal PSD regulations at 40 CFR 52.21 by reference, Ecology is proposing to make some changes in adopting the federal rule. EPA will therefore expect, as part of a request for delegation or SIP approval of the PSD program, that Ecology submit an analysis discussing the changes made, the intent of the changes, and that the Ecology rules are equivalent to the federal PSD requirements.

Response #700-4

Thank you for pointing this out, we are aware of this requirement and will submit an analysis at the appropriate time.

Comment #700-5

The Puget Sound Clean Air Agency made the comment below:

Comment 8 - WAC 173-400-700(4)(b)

Editorial Clarity

The numbering sequence [(number)(letter)(lower case Roman numeral)(capital letter)(lower case

Roman numeral)(capital letter)] for the paragraphs and subparagraphs in this section is confusing and difficult to follow without progressive indentation of the subparagraphs. For example, paragraph (4) appears to have two sets of subparagraphs (b)(i) , (b)(ii) and (b)(iii). Please contact the Code Reviser to determine the proper numbering sequence and change it accordingly.

Response #700-5

This comment really applies to a different section of the rule. There is no fourth paragraph in section 700. We believe that both Puget Sound Clean Air Agency comments apply to Section 720. The comment addresses potential confusion from copying the original federal text as published in 52.21 and retaining the original 52.21 paragraph numbering.

We retained the original federal rule paragraph numbering in section 720(4)(b)(iii) to keep that text properly referenced from within the unmodified portions of the original federal text which reference the modified federal language. We will enclose all of these modified sections within quotations with the intent to make it clearer that the language is amending the federal text, not new state text.

Comment #700-6

Puget Sound Clean Air Agency - References to 52.21(b) and 52.21(r) should be explicitly stated as such rather than referenced as 'paragraph (b) of this section' and 'paragraph (r) of this section.' Paragraph (b) of this section could be misinterpreted to mean WAC 173-400-700(4)(b).

Response #700-6

This is a good idea. Ecology will make the changes to the rule for clarity.

Comment #700-7

AWB comments:

-700(2)(c) Deletes text stating "an allowables" as a descriptor for "Plantwide Applicability Limit".

Response #700-7:

Thank you for catching the usage of the incorrect descriptor. We will substitute the correct descriptor ("an actuals") for the incorrect one.

Comment #700-8

AWB commented:

-700(3) (3) The construction of a major stationary source or major modification subject to the permitting requirements of the following section might also be subject to the permitting program in WAC 173-400-110.

Response #700-8:

Thank you for the suggestion the grammatical construction of the sentence is improved with the inclusion of the suggested "the" and the change has been made.

Comments on section 710 of the proposal

Comment #710-1

EPA commented:

WAC 173-400-710 Definitions

In subsection (2), we understand that Ecology's intent was to clarify the usage of term "source" in WAC 173-400-700 through 750 to mean "stationary source" as defined in 52.21(b)(5). As discussed above, however, EPA has not yet updated the definition of "stationary source" in its implementing rules to reflect a change in the CAA's definition of stationary source (CAA section 302(z)), which excludes nonroad engines. Therefore, Ecology's proposed definition of "stationary source" and "source" in WAC 173-400-112 is not consistent with the CAA.

Based on previous EPA comments, Ecology proposes to add the following clarifying language at the end of subsection (2):*"and modified by Section 302(z) of the Clean Air Act"*. Although this revision is acceptable to EPA, EPA understands that there is a concern that such language is overly broad. The following language would also address EPA's concern:

"All usage of the term "source" in WAC 173-400-710 through WAC 173-400-750 and in 40 CFR 52.21 as adopted by reference is to be interpreted to mean "stationary source" as defined in 40 CFR 52.21(b)(5). A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

Response #710-2

Thank you for your clarification to your recommendation related to the criteria that non-road engines and transportation engines are not subject to permitting under the PSD program requirements. We have incorporated your suggestion to clarify this point.

Comment #710-2

AWB comments:

-710(2) (2) ~~All usage of t~~ Notwithstanding subsection (1) of this section, the terms "stationary source" and "source" in WAC 173-400-710 through 173-400-750 and in 40 CFR 52.21 as adopted by reference ~~is to be interpreted to~~ mean "stationary source" as defined in ~~40 CFR 52.21(b)(5) as modified by section 302(z) of the Federal Clean Air Act.~~ WAC 173-400-030. The term "building, structure, facility or installation" is defined as provided in the federal program requirements adopted by reference in WAC 173-400-720.

Ecology, EPA and the business community agree that the PSD definition of "stationary source" should incorporate the exclusion for nonroad engines and vehicles that Congress enacted in 1990. The problem is that the PSD definition in 40 CFR 52.21 does not include the nonroad engine/vehicle exclusion. WAC 173-400-710(2) is an attempt to solve that problem, but the proposed solution does not work for two reasons. First, subsection (2) amends the term "source" but not the term "stationary source." Many sections of 40 CFR 52.21 refer to a "stationary

source," and those references would not be affected by subsection (2). The second problem is that the FCAA section 302(z) definition of "stationary source" is not used by EPA for major NSR programs. The "stationary source" definition used by EPA in all federal NSR progams is the one in FCAA § 111. While the 302(z) definition does exclude nonroad engines and vehicles, it includes a universe of emissions sources that the PSD program does not regulate, and omits criteria (e.g. common two digit SIC code) that the PSD rules do incorporate. Thus the 302(z) definition is not suitable for use in the PSD rules.

The WAC 173-400-030 definition of "stationary source" is the Section 111 definition, with the addition of language clarifying that a stationary source does not include emissions resulting from nonroad engines and vehicles. This is precisely the definition that everyone agrees is proper for the PSD program. Region 10 expressed some concern about using the WAC 173-400-030 definition in the PSD rules, because that definition does not include the PSD definition of "building, structure, facility or installation." We have included language in our proposed amendments to clarify Ecology's intent to use the PSD definition of "building, structure facility or installation."

Response #710-2:

We agree with the editing of this paragraph to clarify the entities that are not regulated is useful. In evaluating the suggestions, we will incorporate the clarification suggested by EPA as noted above, even though EPA has not yet codified this within their regulations

Comment #710-3

Boeing Company comments:

710(2) Delete "as modified by section 302(z) of the Federal Clean Air Act" from the definition of "source" in 400-710 (2).

The definition of "stationary source" contained in section 302(z) of the federal Clean Air Act is not the one that should be used in the major NSR programs. Rather, the definition in Section 111 of the Act and reflected in Section 400-030 of the WAC is the one appropriate for PSD. We agree that vehicles and non-road engines should be excluded from PSD, but believe a more effective way of doing so is to add language to exclude these non-stationary sources from that definition. We suggest the following language be used in Section 400-710:

> "(2) ~~All usage of~~ *Notwithstanding subsection (1) of this section*, the terms *"stationary source" and* "source" in WAC 173-400-710 through 173-400-750 and in 40 CFR 52.21 as adopted by reference ~~is to be interpreted to~~ mean "stationary source" as defined in ~~40 CFR 52.21(b)(5) as modified by section 302(z) of the Federal Clean Air Act~~ *WAC 173-400-030. The term "building, structure, facility or installation" is defined as provided in the federal program requirements adopted by reference in WAC 173-400-720."*

Response: #710-3

See above response # 710-2.

Comments on section 720 of the proposal

Comment #720-1

Puget Sound Clean Air Agency – General comment:

References to 52.21(b) and 52.21(r) should be explicitly stated as such rather than referenced as 'paragraph (b) of this section' and 'paragraph (r) of this section.' Paragraph (b) of this section could be misinterpreted to mean WAC 173-400-700(4)(b).

Response #720-1:

This is a good idea. The suggested clarifications will be made.

Comment #720-2

The EPA Commented:

WAC 173-400-720 Prevention of Significant Deterioration (PSD)

As we have previously discussed, the differing roles and legal authorities of Ecology, on the one hand, and local air authorities, on the other hand, for implementing the PSD and other permitting programs is a complex one. Unless Ecology revises its rules to further clarify these issues, EPA will expect, as part of a delegation request or SIP submittal, an Attorney General's opinion letter clarifying Ecology's and the locals' authority in two respects: 1) Ecology's authority to issue orders of approval under WAC 173-400-110 and -091 to designate Clean Units, approve PCPs, and establish PALs in jurisdictions where a local air authority is implementing a program; and 2) Ecology's authority to issue orders of approval under WAC 173-400-110 to designate Clean Units, approve PCPs, and establish PALs in jurisdictions where a local authority has adopted its own section 110 equivalent such that, as provided in WAC 173-400-110(1), section 110 does not apply in that local jurisdiction.

Response #720-2:

Thank you for your comment. We intend to ask our AAG for clarification of the issues identified. That AAG letter will be forwarded to EPA as part of the SIP submittal.

Comment #720-3

EPA commented:

In subsection (4)(a)(i), by not including attainment areas in this provision, Ecology rules are requiring that permits be denied in attainment areas if the source has *any* contribution to a NAAQS violation. We question whether Ecology intends this result. The EPA provision upon which this is based (40 CFR 51.165(b)(2)) provides for the use of the significant impact levels at any location that does not, or would not, meet the NAAQS.

To provide sources in all areas the benefit of modeling at the significance impact levels, this provision could be revised to read as follows:

> *"This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed major stationary source or the projected impact of the increase in allowable emissions from the proposed major modification does not exceed the following levels at any location that does not or would not meet the NAAQS."*

Response #720-3:

Thank you for the comment. The proposed language does not change how these criteria will be implemented for PSD scale projects in the future from how it has been implemented in the past. The additional language suggested changes the applicability of the language from past criteria. The most important aspect of this paragraph is the establishment of ambient concentrations below which the source can be assumed to be an insignificant contributor to a nonattainment area or a potential (or actual) NAAQS exceedance.

We are not changing the text as suggested.

Comment #720-4

EPA commented:

In subsection(4)(a)(v), the equipment replacement provisions of NSR reform (40 CFR 52.21(cc)) are not currently in effect as a matter of federal law because they have been stayed by the court. Because these provisions do not exist as a matter of federal law, EPA would not be able to delegate the PSD program to Ecology if Ecology adopts this provision. The reference to 40 CFR 52.21(cc) must therefore be deleted from the rule language if Ecology intends to retain delegation of the PSD program.

Response #720-4:

We believe that the large business in our state value having a state run PSD program that is consonant with the federal program. Ecology has said that we will adopt the federal program, "warts and all," meaning, the entire federal program, without regard to how well the federal program is written. On July 1, 2004 EPA posted a Federal Register Notice (Federal Register, volume 69, no. 126, page 40274) that incorporated the Routine Maintenance Repair and Replacement (RMRR) revisions, even though they are stayed by a federal court action. Under that final federal rule the provisions that are stayed will become effective immediately upon the court lifting the stay. The language of that Federal Register notice has many paragraphs that are like the following *"**Note to paragraph . . . (applicable reference) . . . :** By court order on December 24, 2003, the . . . (applicable part of the rule) . . . is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay."* Each adds a note to the many paragraphs that implement the Routine Maintenance Repair and Replacement revisions. The note indicates that when (and if) the court lifts the stay, the RMRR provisions of the federal PSD and non-attainment area major source NSR rule would be returned to the federal rule immediately.
Therefore Ecology has changed the date of the incorporation by reference for the PSD program to July 2, 2004, and we will not be deleting the reference to 52.21(cc) in this section.

Comment #720-5

The AWB commented:

(v) The following subparts of 40 CFR 52.21, in effect on ~~March 30, 2003~~ July 2, 2004, which are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection

If Ecology is going to run a delegated PSD program it needs to implement all elements of that program. Paragraph (4)(a)(v) of the proposed rule incorporates by reference the "equipment replacement rule" in 40 CFR 52.21(cc). That rule was adopted by EPA on October 27, 2003,

and amended by EPA on July 1, 2004. It is important that the incorporation reference date at the beginning of the paragraph pick up all of the subsections referenced in the paragraph.

Ecology has expressed some concern about whether the incorporation of EPA's July 1, 2004 amendment during the pendency of the D.C. Circuit's stay of the equipment replacement rule would constitute an unconstitutional delegation of authority to a federal court to determine the content of Washington's PSD rules. This concern is unfounded. EPA's July 1 rule unambiguously adopts 40 CFR 52.21(cc) as an element of the federal PSD program, with a condition subsequent that the Court of Appeals first must dissolve the stay. By adopting this rule Ecology would make a final determination that the equipment replacement rule is part of its delegated PSD program. Any rule adopted by Ecology is subject to stay or revision by state and federal courts. The fact that the equipment replacement rule is currently undergoing judicial review does not compromise the finality or certainty of Ecology's action in adopting the rule.

Use of "March 30, 2003" as the incorporation by reference date would not just deny Washington industries the benefit of the equipment replacement rule. It also would screen out an amendment EPA published on November 7, 2003 that clarifies the implementation of the PAL concept. *See* 40 CFR 52.21(aa)(6), as amended at 68 Fed.Reg. 63021 (November 7, 2003). This amendment, like the equipment replacement rule, is necessary to enable Washington to run a delegated PSD program.

Response #720-5:

See Response #720-4

Comment #720-6

Boeing Company commented:

Washington's PSD rules should include all provisions of the federal PSD, including 40 CFR 52.21 (cc)

In recent meetings the Stakeholder Committee, including Ecology, agreed Washington would adopt the federal PSD program "warts and all" rather than selectively editing the program. That federal program includes the equipment replacement provisions amended July 1, 2003 and currently stayed by the D.C. Circuit Court of Appeals. By using an "adoption by reference" date of March 30, 2003 in Section 400-720 (4)(a)(v), Ecology fails to fully incorporate this portion of the PSD program and is at odds with its own unambiguous adoption of 40 CFR 52.21 (cc) later in the same proposed section.

There exists no constitutional prohibition on adopting the fully promulgated federal rule. The current stay does not compromise the finality of that regulation, nor does it provide an unconstitutional delegation of authority to the Court. If the stay is lifted, the rule will go into effect immediately in Washington providing sources with access to the full panoply of the federal rule. If it is not lifted, the provisions for equipment replacement will not be in force. If the federal rule is changed we will need to undertake rulemaking in order to adopt the revision. However, if we fail to adopt the current federal rule, Washington's requirements will be inconsistent with federal rule and we would be forced to undertake rulemaking to again come into line with the federal program. Meanwhile Washington sources would be denied access to the valuable provisions of the federal rule. That imposes an unnecessary uncertainty in business decisions, and unwarranted impediment to capital commitment which should be avoided.

We urge the adoption date in Section 400-720 (4)(a)(v) be changed to July 2, 2004.

Response #720-6
See Response #720-4

Comment #720-7

The Western States Petroleum Association commented:

WSPA wants to emphasize the importance to our industry of securing the benefits of the equipment replacement rule proposed for incorporation by reference in WAC 173-400-720. The equipment replacement rule, 40 CFR 52.21 (cc), is a core component of the federal PSD program that should be included within the scope of the delegated federal program. A WB's comments note a technical conflict in the proposed rule between the incorporation by reference of subsection (cc) in WAC 173-400-720, and the incorporation date of March 30, 2003 listed in subsection (4)(a)(v). This conflict should be reconciled by adopting chapter 52.21 as of July 2, 2004.

Response #720-7

See Response #720-4

Comment #720-8

The Georgia Pacific Corporation commented:

Georgia-Pacific Corporation appreciates the opportunity to comment on Ecology's proposal to revise its Prevention of Significant Deterioration/New Source Review ("PSD/NSR") rules. Overall, we support the proposal being considered for adoption and believe this represents a vast improvement in the current PSD/NSR rules for the State of Washington. Georgia-Pacific is a member of both Association of Washington Business and Northwest Pulp and Paper Association. We support, and incorporate by reference, comments made by both of these organizations.

The Washington business community is unanimous in its belief that the federal rule revisions provide the clarity and certainty that were missing in the often re-interpreted NSR regulation first adopted in 1977. The result has been over 3000 pages of often-conflicting guidance and court decisions. The old rules were difficult to interpret, even for the most seasoned environmental professionals and lawyers. To compound the problem, since reforms were adopted in 2002, sources in Washington have been required to comply with both the old and the new standards. Ecology staff has had difficulty in providing guidance to sources trying to comply. Ecology is now acting to remove its outdated standards from Division 400 and adopting by reference the new federal PSD/NSR rules so that Washington will have standards consistent with the rest of the nation.

We understand, and are supportive of, the state's strategy to phase its revisions over time. Phase I revisions—making state PSD/NSR rules consistent with federal rules—are reflected in this rulemaking, while Phase II revisions—streamlining state minor new source review and other provisions—will proceed following adoption of Phase I revisions. In Phase I, however, there are several modifications to the rules which do not relate to NSR. Some of the revisions that do not relate to NSR reform appear to belong in the Phase II proceeding. Georgia-Pacific agrees with observations and comments on the approach concerning non-NSR changes included the Phase I package developed by AWB and will not repeat them here.

We do feel strongly that the "routine maintenance, repair, and replacement" (RMRR) provision is an important component of the federal reform package and should be adopted by reference, along with the rest of the federal reforms. This portion of the reform package was not included in Ecology's rule package due to pending litigation in the D.C. Circuit Court. Ecology believes that it is prohibited by law from adopting prospective rules. We disagree. The federal court has stayed the RMRR rule of the federal rules pending review of northeastern states' arguments opposing the rule. EPA recognized the concerns of the states in implementing the federal package with the stayed RMRR provision and on July 1, 2004, adopted an amendment that stays the implementation of the RMRR revisions until a decision is reached. Ecology, by adopting the rule revision package in force as of July 1, 2004, will in effect adopt the RMRR stay language, as well as any directive that subsequently gets handed down to EPA by the court. If the court upholds the RMRR provisions, Ecology need not amend its rule in the future to incorporate the change and sources in Washington will be able to take full advantage of the RMRR provisions.

Response #720-8
See Response #720-4

Comment #720-9
NWPPA commented:
Comment 1: Ecology should also adopt the EPA Equipment Replacement Rule.

EPA has issued the first two of a series of intended NSR/PSD reform packages. In the current proposal, Ecology only proposes to implement the first of those two (adopted December 2002), and to not adopt the second, known as the "Equipment Replacement Rule" (adopted October 2003). NWPPA strongly urges Ecology to also adopt the second rule package. Ecology's rationale for proceeding with the first set of federal reforms is equally applicable to the second set of reforms.

NSR/PSD is intended to regulate new emission units, or existing units that are sufficiently modified that "new" capacity to emit air pollution is created. Generally, replacement of existing equipment with similar equipment does not create "new" capacity to emit pollution; rather replacement of aging less efficient equipment can help reduce emissions.

NWPPA is aware that the D.C. Circuit, pending resolution of a challenge, has stayed the "Equipment Replacement Rule." EPA took prompt action to address the concerns of states adopting this rule or in the process of doing so. On July 1, 2004, EPA adopted rules staying the effect of equipment replacement rule, pending the outcome of the litigation. In effect, Ecology can incorporate the federal reforms as of July 2004 without risk. If the rules are upheld and the stay lifted, Washington businesses will immediately be able to take advantage of the mandated reform. If the rules are not upheld and are remanded for further action, they simply will not go into effect. Thus, EPA has addressed the concerns of states that this reform may be subject to further change.

NWPPA does not agree that adoption by reference of the equipment replacement rule is a violation of the state constitutional prohibition against adopting prospective rules by reference. The constitutional provision is intended to provide procedural due process for new requirements, namely notice and opportunity to comment. In the present case, the equipment rule is an existing rule, not a prospective rule. EPA has adopted it in full conformity with the federal Administrative Procedure Act. The fact that it is intended to be implemented in the future when the litigation contingency is no longer an issue, does not change the fact that due process is fully

satisfied.

NWPPA also believes the CR101 and CR 102 are broad enough to encompass the equipment replacement rule. In essence, it is an NSR applicability rule, as are the other reforms in the first set of EPA reforms.

Response #720-9
See Response #720-4.

Comment #720-10

Weyerhaeuser Company comment

WAC 173-400-720(4)(a)(v) – For the reasons articulated in both the AWB and NWPPA comment letters, Weyerhaeuser encourages that the applicability dates for these PSD provisions mimic EPA's October 27, 2003 adoption and July 1, 2004 amendment dates. This change from the proposed rule would then incorporate by reference the "equipment replacement rule" in 40 CFR 52.21(cc).

Response #720-10

See Response #720-4

Comment #720-11

AWB comments:

-720(4)(b)(ii) (ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (o) of this section, paragraph (r) of this section, WAC 173-400-117 and 173-400-730 and WAC 173-400-740."

WAC 173-400-740 contains some of the PSD public involvement rules that Ecology intends to reference here.

Response #720-11:

We agree with the noted change and will include it.

Comment #720-12

Boeing Company comment:

Local authorities, upon delegation by EPA, should have full access to the PSD avoidance provisions of WAC Section 400-720.
Washington's local air permitting agencies are granted the opportunity to write regulatory instruments allowing sources to opt out of PSD permitting for Pollution Control Projects, Clean Units and Plantwide Applicability Limits. Unfortunately, the language in Section 400-720(4) limits the authority for these PSD avoidance mechanisms to Ecology only. We understand the reason behind using only "ecology" in the rule is that this would only apply to Ecology sources. Local permitting agencies would be expected to adopt the state rule, but replacing references to ecology and its rules with their own. This requires each agency to individually adopt and amend these sections, and then pursue PSD delegation from EPA. This is an unnecessarily challenging

undertaking, subjecting both the agencies and EPA to useless and time consuming processing. It may be easier to recognize the role of delegated local permitting agencies directly in the state rule, and involve those agencies wishing to access these provisions directly in the delegation process.

Response #720-12

See Response to AWB comment related to this status and changing the language to include the local air authorities.

The 3 PSD exemptions which are the subject of WAC 173-400-720(4)(b)(iii)(E), (F), (G) and (H) are simply exemptions from the federal PSD program applicability. These exemptions do not change the applicability of the state new source review program requirements of RCW 70.94.152, as implemented in WAC 173-400-035, 110, 112, and 113. We modified the sections of the federal language that identified a number of potential regulatory mechanisms to identify those actions under Chapt. 173-400 WAC that are already in the SIP and can be utilized to implement the 3 PSD exemptions (Clean Unit Status under 40 CFR 2.21(y), Pollution control projects under 52.21(z), and Actual Plantwide Applicability Limits under 40 CFR 52.21(aa).

Comment #720-13

AWB commented:

-720(4)(b)(iii)(C) Notes that the Ecology edited provision requires all major stationary sources (not just electric utility steam generating units) using the baseline actual emissions to projected actual emissions test to submit the analyses and annual reviews to the source's air operating permit authority.

Response #720-13

No response required. AWB notes the proposed changes accurately.

Comment #720-14

AWB commented:

-720(4)(b)(iii)(D) Suggest deleting this paragraph in its entirety and retain the language as it exists in 40 CFR 52.21(r)(7).

~~The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs (r)(6)(iv) and (v) of this section annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).~~

40 CFR 52.21(r)(6) requires a facility owner who concludes that the difference between baseline emissions and projected actual emissions is not PSD significant to maintain a record of the projected emissions increase and the actual emissions increase from the project for 5 or 10 years. Ecology's amendments to that subsection require the owner to report that information to the permitting authority, as opposed to just maintaining the records.

The following paragraph, 52.21(r)(7), requires the owner to make the emissions data available for review upon request by EPA or the "general public." Ecology's version of (r)(7) adds to this

requirement another report to the permitting authority. This report, however, would contain the same information that Ecology requires to be reported in (r)(6)(iv) and (v). AWB proposes to delete the duplicative report, which equates to using the EPA version of 52.21(r)(7).

Response #720-14

We do not see a duplicative reporting requirement in the proposal. The text proposed is intended to serve 2 purposes. First, it sets a time schedule within which to submit the report required in WAC 173-400-720(4)(b)(iii)(C) (the 52.21(r)(6) provision which contains no time schedule to submit the report beyond "annually"). Second the revision clarifies the process by which a member of the public to would request to review company information related to company generated determinations of PSD non-applicability. Our proposal indicates that the public will review those records at the permitting authority's office as allowed by the requirements of the state public disclosure requirements.

In our view, the proposed changes are a reasonable requirement related to the required submittal of both the initial PSD applicability determination materials and the annual review of actual emissions against the baseline emissions as specified in the modifications to 40 CFR 52.21(r)(6) codified in WAC 173-400-720(4)(b)(iii)(C). The section simply sets up a timeframe within which to submit the required report.

We will retain the section but clarify that the report is for the information and documents to be submitted pursuant to modified 52.21(r)(6) paragraph.

Comment #720-15

AWB commented:

-720(4)(b)(iii)(E) Propose deletion of text related to a public involvement process for designation of a Clean Unit. If Ecology adopts AWB suggested revisions to section 171, the deleted text is unnecessary. Language referencing section 173-400-113(3) criteria could also prevent a source from qualifying as a Clean Unit if it does not comply with a state ambient air quality standard.

Comment #720-16

Boeing Company commented:

To simplify we suggest that references in Section 400-720(4)(b)(iii): be changed as follows:(E) 40 CFR 52.21 (y)(7) Procedures for designating emissions units as Clean Units. Ecology *or delegated authority* shall designate an emissions unit a Clean Unit only by issuing a regulatory order issued ~~under~~ *pursuant to* the authority of WAC 173-400-091 or (when requested by the applicant as part of its NOC application) in an order of approval issued under ~~WAC 173-400-110~~ *RCW 70.94.152*, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment and when WAC 173-400-091 is used to designate a Clean Unit, a demonstration that the ambient air quality impact limitations of WAC 173-400-113 (1) through (3) will be required. Such *order or* permit must also meet the requirements in paragraph *40 CFR 52.21*(y)(8)~~ of this section~~.

Responses # 720-15 and #720-16:

Since the suggested revision to section -171 cannot be implemented at this time, the deletion cannot be implemented.

The distant danger of not qualifying for Clean Unit status due to a state ambient air quality standard only exists for 2 air contaminants. The state has a 1-hr. standard for SO_2 and a series of ambient standards for fluorides. Both of these pollutants are PSD pollutants and a source could request clean unit status for either or both.

After the adoption of this rule, the provisions of 52.21(y) can only apply when a facility goes through our state's minor source permitting process, WAC 173-400-110. The requirements of section -113 are approval criteria for a source's emissions to meet when going through that permitting process. In order to qualify for a Notice of Construction approval order, the source must be able to meet both the state and federal ambient air quality standards. If the source is unable to comply with one or more of these ambient air quality standards, the application is denied or the applicant is requested to modify its proposal as necessary to comply with the standard(s). In order to receive an Order of Approval from the permitting authority, the source has shown that it has met the ambient air quality impact criteria and can qualify for the BACT-like Clean Unit status provided under 40 CFR 52.21(y). Thus no conflict exists.

The provisions of 52.21(y) have to be requested by the source at the time the application for the minor NSR approval is submitted. The provisions cannot be requested after the project has been permitted or implemented (constructed and operating) unless the request was filed prior to Dec. 31, 2004.

We will retain the proposed language but also include the changes proposed by Boeing for the last sentence.

Comment #720-17

AWB Comment

720(4)(b)(iii)(F) (F) 40 CFR 52.21 (z)(5) Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs (b)(32)(i) through (vi) of this section, the project must be approved by ecology and included in an order of approval issued by ecology pursuant to the requirements in WAC 173-400-110, and/or WAC 173-400-091~~, following opportunity for public comment as provided for in those sections. When WAC 173-400-091 is used to approve a PCP, a demonstration that the ambient air quality impact limitations of WAC 173-400-112(2) and/or WAC 173-400-113 (1) through (3) will be required~~.

The redlined language in this paragraph should be deleted for all of the reasons discussed in the preceding footnote. This paragraph is even worse, because the reference to "ambient air quality impact limitations of WAC 173-400-112(2)" includes the ASILS of WAC ch. 173-460. This language would force Ecology to deny an application for a PCP exemption if a project resulted in the exceedance of an ASIL.

Comment #720-18

Boeing Company commented:

(F) 40 CFR 52.21 (z)(5) Permit process for unlisted projects.
Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs (b)(32)(i) through (vi) of this section, the project must be approved by ecology ***or delegated authority*** and included in an order of approval issued by ecology ***or delegated authority*** pursuant to the requirements in ~~WAC 173-400-110~~ RCW ***70.94.152***, and/or WAC 173-

400-091, following opportunity for public comment as provided for in those sections. When WAC 173-400-091 is used to approve a PCP, a demonstration that the ambient air quality impact limitations of WAC 173-400-112(2) and/or WAC 173-400-113 (1) through (3) will be required.

Responses # 720-17 and #720-18

The reference to WAC 173-460 was an unintended consequence of the reference to the approval criteria of WAC 173-400-112(2). Accordingly, we have limited the scope of the criteria to be met to those criteria in WAC 173-400-112(2)(a) through (g) and (i).

The intent of the reference to nonattainment provisions of WAC 173-400-112(2) is to assure that if a "collateral air pollutant" which is increased in emission rate as a result of the Pollution Control Project and is one for which the location of the project is in nonattainment with the national standards, complies with the criteria of the nonattainment area new source review permitting process.

We proposed and retain Ecology as the authority to make the determinations of Pollution Control Project approval for PSD program purposes. We are doing this to avoid potential conflicts between the local authority and its clients. Under the state NSR program, all emission increases are subject to permitting, including requiring BACT on those increases. The federal Pollution Control Project approval provides a process by which some pollutants are allowed to increase while being exempted from the requirement to install BACT under the federal PSD permitting process.

The PSD exemption granted under the provision of 40 CFR 52.21(z) includes elements that conflict with the requirement that all emission increases from sources are subject to BACT requirements. In the case of both listed and unlisted pollution control projects EPA anticipated that there would be increases in other pollutants (collateral air pollutants) as a result of installation and operation of the pollution control project to reduce the emissions of a specific pollutant (an example of a listed project is a flare used to oxidize VOC's and sulfides increasing NOx and SO_2 emissions). As the federal regulation is written, if the collateral pollutant increase (without any requirement to install BACT) does not violate any ambient air quality standard or limitation, such as Class I increments or NAAQS, that increase is exempt from PSD review, even if the collateral pollutant increase is a significant increase under the PSD definition of significant.

This exemption from the federal PSD requirements (including BACT) for collateral emission increases does not extend to new source review required under state law and regulation. Under the provisions of our regulation and law, this emission increase would require permitting per the requirements of WAC 173-400-110 (or the local authority equivalent), including the requirement to install BACT on the collateral emission increases.

The regulatory mechanisms identified in this section and to implement designation as a pollution control project under 40 CFR 52.21(z) are those available to Ecology which are already part of the SIP and can be immediately implemented to designate this status for businesses in our state.

Since we are unable to include the revisions suggested by AWB for section -171, we will not change the other text of this section.

Comment #720-19

Boeing Company comment

720(4)(b)(iii)(H) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology ***or delegated authority*** issued order of approval issued under ~~WAC 173-400-110~~ ***RCW 70.94.152***, or regulatory order ~~issued~~ under WAC 173-400-091 issued by ecology ***or delegated authority*** that establishes a PAL for a major stationary source.
720(4)(b)(iii)((J) 40 CFR 52.21 (aa)(9)(i)(b) Ecology~~, after consultation with~~ ***or*** the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology ***or delegated authority*** determines is appropriate.

Response #720-19:

See above discussion in responses #720-17 and #720-18. Changes requested will not be made.

Comments on section 730 of the proposal

Comment #730-1

EPA commented:

Notifying EPA: Ecology's current rules require that the permitting authority provide EPA notice of PSD actions. See WAC 173-400-141(6). Earlier drafts of proposed revisions to Ecology's PSD rules also had a requirement that *"The permitting agency shall provide notice to EPA of every action related to consideration of all actions under WAC 173-400-720 through 750.*" It is not clear why Ecology has removed this language from the proposed rule and doing so poses a problem for delegation or SIP approval.

This section needs to be retained in order to meet the notification requirements in 40 CFR 51.166(p), *Sources impacting Federal Class I area – additional requirements*. Note that 40 CFR 51.166(p)(1) requires notification to EPA by transmitting a copy of each permit application relating to a major stationary source or major modification and by providing notice of every action related to consideration of such permit to the EPA Administrator.

Response #730-1:

As specifically not listed in WAC 173-400-720(4)(a)(v), Ecology is not adopting the language of 40 CFR 52.21(p) (or 40 CFR 51.166(p)). In previous rulemaking, we developed and have been implementing these requirements through WAC 173-400-117. EPA will receive a copy of the application per WAC 173-400-117(3) and WAC 173-400-730(1)(b)(iv).

The language on notification to EPA of actions related to the PSD permitting process was removed from the PSD language section because a requirement for such notifications could not be found in the federal regulations. Subsequently, such a requirement was located in the federal Clean Air Act, Section 165(d)(1), related to notification of EPA of actions on PSD Permit applications.. Based on the inclusion of this requirement in the federal law, we will reinstate the requirement in this section, though noting that this is a duplicative requirement to that in WAC 173-400-117.

Comment #730-2

AWB comments:

730(2)(b)(ii) (ii) Within one year after receipt of a complete application, ~~the effective date of the application,~~ ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

AWB notes that 40 CFR 51.166(q)(2) and WAC 173-400-740(2) use the term "receipt of a complete application".

Response #730-2

EPA has used the term "receipt of a complete application" in its requirements for a SIP approvable new source review program. This term is also used within Washington's law and minor NSR program. The proposed language is used within EPA's permit processing regulation 40 CFR 124.

We will make the requested change to be consistent with the terminology used elsewhere in the WAC 173-400-700 – 750 sections.

Comment #730-3

AWB commented:

730(2)(c)(ii) ~~(ii) As expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.~~

This clause is redundant to a clause in section 173-400-740(4).

Response #730-3:

The aspect of this statement relating to allowing the public comment period to finish before issuing a final determination is included in WAC 173-400-740(4) (no decision will be made until all comments have been received). There is nothing in WAC 173-400-740(4) that establishes any expectation or requirement of how soon after the close of the comment period Ecology will issue its final PSD determination. We proposed the term "as expeditiously as possible" to establish an expectation that a decision will be forthcoming soon after the close of the comment period. Establishing a time certain decision time such as within 60 days of the end of the comment period were considered. We have found that the vast majority of our PSD permit decisions are able to be completed in approximately 2 – 3 weeks after the close of the comment period due to a lack of comments. However, we have found that when comments are received, the time required to make a decision and prepare a document detailing the comments and our response to those comments can take considerable time if the comments require considerable research to respond to or permit approval conditions need to be altered in response to the comments.

In response to the results of Governor Locke's Competitiveness Council recommendations on permit timeliness and certainty and directives on this issue by Ecology management, we proposed that the final determination would happen as expeditiously as possible after the close of public comment.

We are retaining this statement related to permit processing timeliness.

Comment #730-4

EPA commented:

In subsection (2)(d), although we agree with including this concept, it is inaccurate as included here. First, as currently worded, there is nothing in the rule that directs which of the three dates applies. Can the permittee choose between the later date specified in the permit or 30 days after receipt of the final determination? In addition, during the time Ecology has delegation, an important caveat to the effective date of the permit occurs in the case where review is requested on the permit under 40 CFR 124.19. One option would be to more closely follow the language in 40 CFR 124.15(b), but modify 124.15(b)(2) as follows: *"Until Ecology's has a SIP approved PSD program, review is requested under 40 CFR 124.19."*

Response #730-4:

The suggestion to add the text on permit effectiveness if the PSD approval is appealed to the EPA's Environmental Appeals Board while Ecology operates a delegated program is reasonable and will be implemented.

The effective date of "a later date specified in the permit", "30 days after issuance" or immediately upon issuance as existing aspects of the program stemming from the incorporation of aspects of 40 CFR 124 on permit effectiveness. This is the location that these differing effective dates were copied. As we have interpreted the language, the later effective date as specified in the permit could be a date contingent on a third party action occurring that is outside of the control of the permitting agency (such as waiting for confirmation that EPA's Endangered Species Act consultation actions have been completed) or some reasonable later date that the applicant requests and Ecology agrees to include in the permit. Since we have no history with an applicant requesting a later effective date, we do not have any established criteria for this determination. We do have recent experience with significant time delays after we have completed the PSD permitting process and made a final determination while waiting for the Endangered Species Act consultation process to complete.

At this time we will not make any additional clarifying or other changes to this text.

Comment #730-5

AWB Comment

730(3)(h) (h) An analysis of the impacts on air quality related values in federal Class I areas ~~and other Class I areas~~ affected by the project; and

See 40 CFR 51.166(p)(3). The PSD rules require an analysis of the impact of a project on air quality related values only in Federal Class I Areas.

Response #730-5

Text of 40 CFR 51.166(p) in general relates to impacts on federal Class I areas, those areas designated in the Clean Air act as Class I, and other federal lands designated as Class I by EPA through rulemaking. The comment is correct in relation to the evaluation and protection of air quality related values for federal Class I areas.

The statement in the draft regulation related to federal Class I areas and other Class I areas receiving protection from AQRV impacts is reflects our general understanding of the application of the federal provisions of 40 CFR 51.166(o) as explained in Chapter E of EPA's New Source Review Workshop Manual, Draft, Oct. 1990, rather than exclusively the special protections afforded to federal Class I areas under 51.166(p). As stated on page E-7 of that manual,

> "The FLM, including the State or Indian governing body, where applicable, is responsible for defining specific AQRV's for an area and for establishing the criteria to determine an adverse impact on the AQRV's**."**

We will retain the reference to "other Class I areas"

Comment #730-6

AWB commented:

-730(3)(i) (i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

WAC 173-400-117 addresses visibility in Federal Class I Areas, and subsection (3)(a) of that section requires that a PSD permit application include an analysis of the impacts of a project on visibility only in Federal Class I areas. The proposed addition matches the content of the technical support document to the scope of the information provided in the permit application.

Response #730-6

We recognize that the suggestion is a duplication of the applicability criteria in WAC 173-400-117. The suggestion is a reasonable clarification and has been implemented.

Comment #730-7

AWB Comment

730(4) Propose moving text on public notice content to section WAC 173-400-740.

Response #730-7

We feel the criteria defining the content of the public notice are more important than whether the criteria are located in either WAC 173-400-730 or -740. There are equally reasonable reasons for each location. The content of the public notice is a processing action which is the responsibility of Ecology and not some other entity. The public involvement section describes the process to involve the public in the decision and the content of the notice is an important aspect of that process. We agree the relocation of the public notice content criteria to the section on public involvement is a reasonable action.

Comment #730-8

EPA Comment

In subsection(4)(m), should the reference be to WAC 173-400-117 instead of WAC 173-400-760?

Response #730-8

Yes the reference should be to section 117, not the nonexistent section 760. This change has been made.

Comment #730-9

EPA commented

In subsection (6)(b)(i), Ecology is requiring an applicant submit an updated BACT analysis in support of a PSD permit extension, but not an updated ambient impact analysis. A reanalysis of the PSD increment consumption and air quality impacts is appropriate before a PSD permit is extended because interim source growth in the area may have occurred and caused significant degradation of air quality. The review agency is responsible for ensuring that the source requesting an extension would not cause or contribute to a PSD increment or NAAQS exceedances.

Response #730-9

Thank you for pointing out this oversight. The procedural guidance on extensions of PSD permits provided by EPA on this matter does indicate that an ambient air quality impact re-evaluation be performed. The guidance also indicates that an increment evaluation should be performed (if one were required initially). Language requiring submittal of an updated ambient air quality analyses is being included.

Comment #730-10

AWB commented:

730(6)(b)(i)(B) (B) An evaluation of BACT for all pollutants subject to the approval conditions in the PSD permit ~~approval~~.

Response #730-10

Thank you for pointing out the typographical error.

Comment #730-11

AWB Comment

730(6)(b)(iii)(C) (C) Ecology shall notify the applicant, EPA and any person who commented on the draft permit of t~~T~~he issuance of an extension ~~is subject to the public involvement requirements in WAC 173-400-740~~.

The grant of an 18 month extension to commence construction on a project that has secured a PSD permit after compliance with WAC 173-400-730 and 740 should not be required to repeat the public involvement process. The extension of time to complete a project, as opposed to an application to revise the project, does not involve enough variation from the original proposal to warrant the delay and cost of another public involvement process.

Response #730-11

The guidance from EPA that we have operated under for the past 12 plus years anticipates any extension in the time to begin construction or a suspension of construction once it has

commenced by more than 18 months is subject to a public involvement and opportunity to comment. As noted in WAC 173-400-730(6)(b)(i)(B), the request is required to be accompanied with a review of BACT, which experience has shown can change between the time of initial approval and even the first request for an extension less than 18 months later. Since the BACT decision may change, the decision on BACT, and the ambient air quality impacts in the area of the project may have changed, and the decision to allow an extension in time to begin construction or to suspend construction is appropriately an action that is subject to public involvement.

We will retain the proposed text which embodies our current practices regarding public involvement for permit time extensions.

Comment #730-12

AWB Comment

730(6)(b)(iv) (iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

Grammatical correction suggested: add "to" between "criteria apply" and "a request".

Response #730-12

Thank you for the suggestion. We will make the change.

Comments on section 740 of the proposal

Comment #740-1

AWB comments:

-740(1)(b) ~~(b) An extension of the time to begin construction or suspend construction under a PSD permit; or~~

See the preceding footnote {comment on WAC 173-400-730(6)(b)(iii)(C)}.

Response #740-1

If we were to accept the proposed change to 173-400-730(6)(b)(iii)(C), this proposed change would be acceptable. We are not making the suggested change to that paragraph and thus, we are retaining the proposed language here.

Comment #740-2

EPA comment

In subsection (2), there is a typo (-730(7) should be -730(6)).

Response #740-2

Thank you for the comment. We have corrected the typographical error.

Comment #740-3

EPA Comment

In subsection (2)(c), Ecology's proposed rules require that notice of the public comment period on a PSD action be sent to the U.S. Forest Service and the National Park Service, which are commonly referred to as "Class I" Federal Land Managers (FLM). 40 CFR 51.166(q)(2)(iv), however, requires that the permitting authority send a copy of the notice of public comment to all FLMs, not just "Class I" FLMs. This was the basis for the comment in our Phase I, June 3, 2002 comment letter stating that*"the references to the U.S. Forest Service and the National Park Service should be replaced with references to the Federal Land Manager, because there may well be other Federal Land Managers in certain cases."* Ecology must revise subsection (2)(c) to require that the notice of public comment be provided to all FLMs.

Response #740-3

Thank you for pointing out the basis for your June, 2002 comment. We have misunderstood the basis for this comment in the past and agree the referenced regulatory language does require notification of any federal land manager whose lands may be affected by a PSD project's emissions. We intend to request EPA Region 10 help us to identify the federal lands in and near Washington and the federal land manager contacts for those lands.

We have adjusted the language of this section to require notification of all federal land managers of lands that may be affected by the project.

Comment #740-4

AWB comment:

740(2)(c)(i) (i) Any Indian ~~g~~Governing ~~b~~Body whose lands may be affected by emissions from the project;

A defined term in 40 CFR 52.21(b)(28).

Response #740-4

The suggestion is accepted and the change has been made.

Comment #740-5

AWB comment:

-740 Public Notice Content

Suggest moving this text from section 0730 to -740 and replacing "permitting authority" with "ecology" in 2 locations of subparagraph (m).

Response #740-5

We have accepted this suggestion to move the text to this section. The other sections have also

been renumbered to reflect this subsection's inclusion here.

Thank you for the corrections to (m). The changes have been made.

Comments on section 750 of the proposal

Comment #750-1

EPA Comment

In subsection (1)(a), this provision states that Ecology may approve a change to a PSD permit condition so long as the change will not cause the source to exceed an emissions standard. We are unclear what is intended by this reference. Is the intent that the change not cause the source to exceed a state or federal emission limit other than a source-specific emission limit established in the PSD permit? The intent should be clarified.

Response #750-1

The intent was to copy text in existing federal guidance on modifications of PSD permits. We intend to interpret "emission standard" as meaning a limitation set in regulation such as 40 CFR 60, 62, or 63 or a limitation established in an Ecology regulation such as WAC 173-400, 405, 410, 415, 434, etc, or similar standards set in regulation by a local authority.

Were we intending to mean "emission standard" to refer to an emission limitation established through the BACT process or otherwise established in a permit, the proposed language on revisions to PSD permits would be effectively meaningless.

The ability of a source owner to request a permit revision and Ecology to approve a revision to a PSD permit limitation does not require that there be a modification (as defined in 52.21 (b)(2) or WAC 173-400-030(47)) to occur.

We have clarified that "emission standard" means a limitation established in regulation, and not a BACT or other limitation established in a PSD permit. We also will make it clear, by training of permit engineers and guidance, that a modification does not have to occur to in order for a major stationary source owner to request a revision to a PSD permit.

Comment #750-2

AWB comment

750(2) ~~(2) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-740. Ecology may choose to require public involvement for administrative revisions, if in its judgment, an opportunity for public comment should be provided.~~

AWB proposes to consolidate this subsection with subsection (4), which already states which PSD actions are subject to public involvement.

Response #750-2

The suggestion is reasonable. The deletion has been made and the remaining sections have been

renumbered.

Comment #750-3

EPA Comment

In subsections (4)(c) and (d), Ecology is intending to administratively process without the opportunity for public comment (1) revisions to compliance monitoring methods that do not reduce the permittee's or Ecology's ability to determine compliance with the emission limitation, and (2) revisions to emission limitations that do not reduce the stringency of the original emission limitation. As currently written these provisions are far too broad to be processed without public process. The determination that a change in monitoring does not reduce the ability to determine compliance or that a revision does not reduce the stringency of the emission limit should be subject to public comment unless additional criteria are added to narrow the extent of the discretion.

Response #750-3

As we are unable to delineate what the changes might be that affect the ability to determine compliance, making it very difficult to prospectively define criteria describing the line between administrative and non-administrative changes.

We would view as an administrative change the elimination of a requirement for using EPA Reference Method 201 testing on a wet stack and replacing it with a Method 5 test. The rational for this type of change is the advice of the EPA Emissions Monitoring Center regarding the inability of the Method 201 particulate test to be used on wet stacks. The Method 201 test might have been required during permitting because the BACT technology the emission limitation was based on used a dry technique while the applicant determined that they could use a wet scrubber process to meet the same emission limitation. Remember BACT is the emission limitation reflecting the application of a technology, not the technology itself.

We would also view as an administrative change a reduction in the frequency of submittal of compliance reports from monthly to quarterly to conform to the reporting frequency of the Air Operating Permit program. A change in reporting frequency from monthly to biannually or annually would be viewed as a reduction in the ability to determine compliance and be subject to public involvement.

We would also view as an administrative change a request to change from a manual emissions testing process such as intermittent manual stack testing for a NSR regulated pollutant to utilization of a continuous emissions monitoring system.

We would not accept as an administrative change a request to replace continuous emission or process monitoring with a system of intermittent monitoring, regardless of the monitoring method. Similarly a request to reduce the frequency of required recordkeeping of process control elements (i.e. pressure drop checks across a control device), would not be an administrative change, but would be subject to public involvement.

While these seem to be clear and relatively easy answers to give, they are the easy questions and are not adequately reflective of the range of requests for permit revisions that we have received in the past which the requestor considered to be administrative in nature.

Comment #750-4

AWB Comment

750(4)(d)(new) (d) Extension of the construction time limitation;

Suggests adding extensions of construction time per WAC 173-400-730(6) as exempt from public involvement.

Response #750-4

See the response to the comment on WAC 173-400-730(6)(b)(iii)(C) - (Response #730-11).

The proposed listing of a construction time period extension as an administrative permit revision will not be included.

Comment #750-5

AWB commented:

750(4)(d) (*as published for comment*) (d) Any other revision ~~(except an extension of the construction time limitation)~~ that does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.

Ecology may choose to require public involvement for administrative revisions, if in its judgment, an opportunity for public comment should be provided.

AWB's suggestion to delete the exception statement for extensions of construction time limitations is consistent with their comments on WAC 173-400-730(6).

The added sentence was in the proposed regulatory language as part of WAC 173-400-750(2).

Response #750-5

Since extensions to construction time limitations are not dealt with as revisions to a permit, it is reasonable to delete any reference to them in this section.

The suggested deletion has been made.

Related to the added sentence:

We believe the option for Ecology to have an administrative permit revision or a revision for which the clarity of being administrative or significant go through a public involvement process is an important and necessary procedural protection for the source and Ecology. As stated in the sentence proposed by AWB, this is an opportunity that we intend to make use of for situations where a public involvement may be advisable, even though the permit revision is viewed as administrative by the applicant. Under our current operating procedures, we have required public involvement for any permit revision where we had any question whether it was or was not administrative in nature. Once this operating procedure has been enacted into rule, visible to anyone, we do not anticipated or expect to change our previous philosophy.

The suggested addition has been made.

Appendix 1: Copies of all written comments received.

Index of Comments

Comments were received from the following persons and organizations:

Commenter	**Comments have been cataloged in the Comments and Response Section of this CES at the following numbered comments and responses.**
Association of Washington Business (AWB)	030-1; 030-2; 030-4; 030-5; 030-8; 030-12; 030-14; 035-1; 070-1; 075-1; 100-1; 105-1; 107-1; 110-1; 110-2; 110-3; 110-4; 110-5; 110-6; 110-7; 110-8; 112-1; 112-2; 117-1; 117-2; 117-3; 117-4; 117-5; 118-; 118-2; 171-1; 171-2; 175-1; 560-1; 700-3; 700-7; 700-8; 710-2; 720-5; 720-11; 720-13; 720-14; 720-15; 720-17; 730-2; 730-3; 730-5; 730-6; 730-7; 730-10; 730-11; 730-12; 740-1; 740-4; 740-5; 750-2; 750-4; 750-5
Boeing Company	035-2; 107-2; 107-3; 171-3; 710-3; 720-6; 720-12; 720-16; 720-18; 720-19
Elena Guilfoil	075-2
Environmental protection Agency (EPA)	030-3; 030-6; 030-7; 030-9; 030-10; 030-11; 030-13; 030-15; 030-16; 035-3; 050-1; 050-2; 105-2; 105-3; 105-4; 107-4; 107-5; 107-6; 107-7; 107-8; 107-9; 110-9; 110-10; 110-11; 110-12; 112-4; 113-1; 116-1; 116-2; 116-3; 117-6; 118-3; 120-1; 151-1; 171-4; 171-5; 171-6; 171-7; 171-8; 171-9; 560-2; 560-3; 560-4; 560-5; 560-6; 700-3; 700-4; 710-1; 720-2; 720-3; 720-4; 730-1; 730-4; 730-8; 730-9; 740-2; 740-3; 750-1; 750-3
Fluor Hanford	030-17; 030-18; 035-4; 040-1; 105-5; 107-10; 110-13; 110-14; 110-15; 110-16; 116-4; 171-10
Georgia Pacific Corporation	720-8
Northwest Clean Air Agency	171-11; 700-1; 700-3
Northwest Pulp and Paper Association	035-5; 107-12; 720-9
Pacific Merchant Shipping Association (PMSA)	035-6
Pacific Northwest National Laboratory (Battelle)	100-2; 107-11; 110-9; 112-3
Puget Sound Clean Air Agency	035-8; 107-13; 171-12; 171-13; 171-14; 700-2; 700-3; 700-5; 700-6; 720-1

Stoel Rives	035-7
Western States Petroleum Association	035-9; 720-7
Weyerhaeuser Company	107-14; 720-10

Appendix 2: List of individuals (name, organizational affiliation, address) providing oral comments at hearings and corresponding comment numbers for indexing

Llewellyn Mathews of the Northwest Pulp and Paper Association was the only person to provide oral comments. These comments were the same as the written comments that were received by written comments. Her concerns were addressed as indicated by the index of written comments in Appendix 1.

Appendix 3: Copies of all public notices regarding rule (i.e., FOCUS sheets, news releases, legal notices and advertisements, handouts and flyers, WSR notices)

Appendix 4: Copy of the final rule text showing revisions being made.

WAC 173-400-030 Definitions. Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:

(1) **"Actual emissions"** means the actual rate of **emissions** of a pollutant from an **emission unit**, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the **emissions unit's** actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.

(3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 CFR Part 60, 61, 62, or 63;

(b) Any applicable SIP emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable approval condition, including those with a future compliance date.

(6) **"Ambient air"** means the surrounding outside air.

(7) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(8) **"Approval order"** is defined in "order of approval."

(9) **"Attainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant**.**

(10) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(11) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(13) **"Best available retrofit technology (BART)"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(14) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

(15) **"Capacity factor"** means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

(16) **"Class I area"** means any area designated under section 162 or 164 of the Federal

Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park;

(h) Pasayten Wilderness; and

(i) Spokane Indian Reservation.

(17) **"Combustion and incineration units"** means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

(18)(a) "**Commence**" as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

(19) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(20) **"Criteria pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O_3) sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(21) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

(22) **"Dispersion technique"** means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

(23) **"Ecology"** means the Washington state department of ecology.

(24) **"Emission"** means a release of air contaminants into the ambient air.

(25) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction **in emissions.**

(26) **"Emission standard"** and "emission limitation" means a requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act or chapter 70.94 RCW.

(27) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter (PM):	25 tpy of PM emissions
	15 tpy of PM-10 emissions
Volatile organic compounds:	40 tpy
Fluorides:	3 tpy
Lead:	0.6 tpy
Sulfuric acid mist:	7 tpy
Hydrogen sulfide (H_2S):	10 tpy
Total reduced sulfur (including H_2S):	10 tpy
Reduced sulfur compounds (including H_2S):	10 tpy

(28) **"Emissions unit"** or **"emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

(29) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard.

(30) **"Excess stack height"** means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

(31) **"Existing stationary facility (FACILITY)"** is defined in WAC 173-400-151.

(32) **"Federal Clean Air Act (FCAA)"** means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(33) **"Federal Class I area"** means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness.

(34) **"Federal land manager"** means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior - National Park Service, the U.S. Department of the Interior - U.S. Fish and Wildlife Service, the U.S. Department of Agriculture - Forest Service, and/or the U.S. Department of the Interior - Bureau of Land Management.

(35) **"Federally enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 CFR 52.21 or under a SIP approved new source review regulation, and emissions limitation orders issued under WAC 173-400-091.

36) **"Fossil fuel-fired steam generator"** means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(37) **"Fugitive dust"** means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

(38) **"Fugitive emissions"** means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) **"General process unit"** means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

(40) **"Good engineering practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

(41) **"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

(42) **"In operation"** means engaged in activity related to the primary design function of the source.

(43) **"Lowest achievable emission rate (LAER)"** means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed

new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event shall the application of this term allow a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards.

(44) **"Mandatory Class I federal area"** means any area defined in Section 162(a) of the Federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness;

(45) **"Masking"** means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

(46) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

(47) **"Modification"** means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(48) **"National Ambient Air Quality Standard (NAAQS)"** means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(49) **"National Emission Standards for Hazardous Air Pollutants (NESHAPS)"** means the federal rules in 40 CFR Part 61.

(50) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 CFR Part 63.

(51) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

(52) **"New source"** means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the Federal Clean Air Act.

(53) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 CFR Part 60.

(54) **"Nonattainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(55) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(56) **"Notice of construction application"** means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

(57) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

(58) **"Open burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from

the combustion. Wood waste disposal in wigwam burners is not considered open burning.

(59) **"Order"** means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

(60) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(61) **"Ozone depleting substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

(62) **"Particulate matter"** or **"particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(63) **"Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

(64) **"Parts per million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

(65) **"Permitting authority"** means ecology or the local air pollution control authority with jurisdiction over the source.

(66) **"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(67) **"PM-10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(68) **"PM-10 emissions"** means finely divided solid or liquid material, including condensible particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

(69) **"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(70) **"Prevention of significant deterioration (PSD)"** means the program in WAC 173-700 to 173-400-750.

(71) **"Projected width"** means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

(72) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

(73) **"Reasonably available control technology (RACT)"** means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(74) **"Regulatory order"** means an order issued by ecology or permitting authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.

(75) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(A) Emissions from ships or trains located at the new or modified major stationary source; and

(B) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(76) **"Source"** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(77) **"Source category"** means all sources of the same type or classification.

(78) **"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(79) **"Stack height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

(80) **"Standard conditions"** means a temperature of 20□ (68□ F) and a pressure of 760 mm (29.92 inches) of mercury.

(81) **"State implementation plan (SIP)"** or **"Washington SIP"** means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the

purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

(82) **"Stationary source"** means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

(83) **"Sulfuric acid plant"** means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(84) **"Synthetic minor"** means any source whose potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or approval condition.

(85) **"Total reduced sulfur (TRS)"** means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 or an approved equivalent method and expressed as hydrogen sulfide.

(86) **"Total suspended particulate"** means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

(87) **"Toxic air pollutant (TAP)"** or "toxic air contaminant" means any Class A or B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(88) **"Unclassifiable area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

(89) **"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

(90) **"Visibility impairment"** means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(91) **"Volatile organic compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane

(HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate and perfluorocarbon compounds that fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology or the authority, the amount of negligibly-reactive compounds in the source's emissions.

We are retaining the language in 035 that is in the current rule

WAC 173-400-035 Portable and temporary sources. (1) For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location providing that the owner(s) or operator(s) notifies **ecology** or the **authority** of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable **ecology** or the **authority** to determine that the operation will comply with the **emission standards** for a **new source**, and will not cause a violation of applicable **ambient air quality standards** and, if in a **nonattainment area**, will not interfere with scheduled attainment of **ambient standards**. The permission to operate shall be for a limited period of time (one year or less) and **ecology** or the **authority** may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable **emission standards**. A temporary or portable source that is considered a **major stationary source** within the meaning of WAC 173-400-113 must also comply with the requirements in WAC 173-400-141.

(2) This section applies statewide except where an authority has its own rule regulating such sources.

WAC 173-400-040 General standards for maximum emissions. All **sources** and **emissions units** are required to meet the **emission standards** of this chapter. Where an **emission standard** listed in another chapter is applicable to a specific **emissions unit**, such standard will take precedent over a general **emission standard** listed in this chapter. When two or more **emissions units** are connected to a common **stack** and the operator elects not to provide the means or facilities to sample **emissions** from the individual **emissions units**, and the relative contributions of the individual **emissions units** to the common discharge are not readily distinguishable, then the **emissions** of the common **stack** must meet the most restrictive standard of any of the connected **emissions units**. Further, all **emissions units** are required to use **reasonably available control technology (RACT)** which may be determined for some **sources** or **source categories** to be more stringent than the applicable **emission limitations** of any chapter of Title 173 WAC. Where current controls are determined to be less than **RACT**, **ecology** or the **authority** shall, as provided in RCW 70.194.154 [RCW 70.94.154}, define **RACT** for each **source** or **source category** and issue a rule or **regulatory order** requiring the installation of **RACT**.

(1) **Visible emissions.** No **person** shall cause or allow the **emission** for more than three minutes, in any one hour, of an **air contaminant** from any **emissions unit** which at the **emission** point, or within a reasonable distance of the **emission** point, exceeds twenty percent **opacity** except:

(a) When the **emissions** occur due to soot blowing/grate cleaning and the operator can demonstrate that the **emissions** will not exceed twenty percent **opacity** for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and **ecology** or the **authority** be advised of the schedule.

(b) When the owner or operator of a **source** supplies valid data to show that the presence of uncombined water is the only reason for the **opacity** to exceed twenty percent.

(c) When two or more **emission units** are connected to a common **stack**, **ecology** or the **authority** may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate **opacity** limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 CFR Part 60, Appendix A, Reference Method 9 and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Visible emissions resulting from military obscurant training exercises is exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(iii) Visible emissions from fixed and mobile fire fighter training facilities while being used to train fire fighters and while complying with the requirements of chapter 173-425 WAC.

(2) **Fallout.** No **person** shall cause or allow the **emission** of **particulate matter** from any **source** to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) **Fugitive emissions.** The owner or operator of any **emissions unit** engaging in materials handling, construction, demolition or other operation which is a **source** of fugitive emission:

(a) If located in an **attainment area** and not impacting any **nonattainment area**, shall take reasonable precautions to prevent the release of **air contaminants** from the operation.

(b) If the **emissions unit** has been identified as a **significant** contributor to the **nonattainment status** of a designated **nonattainment area**, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control **emissions** of the **air contaminants** for which **nonattainment** has been designated.

(4) **Odors.** Any **person** who shall cause or allow the generation of any odor from any **source** which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(5) **Emissions detrimental to persons or property.** No person shall cause or allow the **emission** of any **air contaminant** from any **source** if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) **Sulfur dioxide.**

No **person** shall cause or allow the **emission** of a gas containing sulfur dioxide from any **emissions unit** in excess of one thousand **ppm** of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion **sources**, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an **emissions unit** supplies **emission** data and can demonstrate to **ecology** or the **authority** that there is no feasible method of reducing the concentration to less than one thousand **ppm** (on a dry basis, corrected to seven percent oxygen for **combustion sources**) and that the state and federal **ambient air quality standards** for sulfur dioxide will not be exceeded. In such cases, **ecology** or the **authority** may require specific **ambient air** monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to **ecology** or the **authority**.

(7) **Concealment and masking.** No **person** shall cause or allow the installation or use of any means which conceals or masks an **emission** of an **air contaminant** which would otherwise violate any provisions of this chapter.

(8) **Fugitive dust.**

(a) The owner or operator of a **source** of **fugitive dust** shall take reasonable precautions to prevent **fugitive dust** from becoming airborne and shall maintain and operate the **source** to minimize **emissions**.

(b) The owner or operator of any existing source of **fugitive dust** that has been identified as a **significant** contributor to a **PM-10 nonattainment area** shall be required to use **reasonably available control technology** to control **emissions**. Significance will be determined by the criteria found in WAC 173-400-113 (2)(c).

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration **emissions units** must meet all requirements of WAC 173-400-040 and, in addition, no **person** shall cause or allow **emissions** of **particulate matter** in excess of 0.23 gram per dry cubic meter at **standard conditions** (0.1 grain/dscf), except, for an **emissions unit** combusting wood derived fuels for the production of steam. No **person** shall allow the **emission** of **particulate matter** in excess of 0.46 gram per dry cubic meter at **standard conditions** (0.2 grain/dscf), as measured by **EPA** method 5 in Appendix A to 40 CFR Part 60, (in effect on July 1, 2004) or approved procedures contained in *"**Source** Test Manual - Procedures For Compliance Testing,"* state of Washington, department of **ecology**, as of July 12, 1990, on file at ecology.

(2) For any **incinerator**, no **person** shall cause or allow **emissions** in excess of one hundred **ppm** of total carbonyls as measured by Source Test Method 14 procedures contained in *"**Source** Test Manual - Procedures for Compliance Testing,"* state of Washington, department of **ecology**, as of July 12, 1990, on file at **ecology**. An applicable EPA reference method or other

procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority or ecology prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements adopted by reference in WAC 173-400-075 (40 CFR 63 subpart EEE) and WAC 173-400-115 (40 CFR 60 subparts E, Ea, Eb, Ec, AAAA, and CCCC) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting **authority**.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of July 12, 1990, on file at ecology.

(3) Measured concentrations for **combustion and incineration units** shall be adjusted for volumes corrected to seven percent oxygen, except when **ecology** or the **authority** determines that an alternate oxygen correction factor is more representative of normal operations.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. (See WAC 173-400-115(2) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(a) Definitions.

(i) **"Commercial and industrial solid waste incineration (CISWI) unit"** means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas: (A) The combustion unit flue gas system, which ends immediately after the last combustion chamber. (B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) **"Commercial and industrial solid waste"** means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more

by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 CFR Part 60, subpart Ea or subpart Eb (in effect on July 1, 2000); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 CFR Part 60, subpart AAAA (adopted on December 6, 2000 and in effect on June 1, 2001); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, subparts Ea (in effect on July 1, 2000), Eb (in effect on July 1, 2000), and AAAA (adopted on December 6, 2000 and in effect on June 1, 2001), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 CFR Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, 2000);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2000).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on January 30, 2001).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 CFR 60.2265 (in effect on January 30, 2001).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on January 30, 2001).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2000).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, 2000).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (H) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst

metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on January 30, 2001).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on January 30, 2001) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115(2), which adopts 40 CFR Part 60, subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on January 30, 2001, which is adopted by reference. The federal rule contains these major components:

. Increments of progress towards compliance in 60.2575 through 60.2630;

. Waste management plan requirements in 60.2620 through 60.2630;

. Operator training and qualification requirements in 60.2635 through 60.2665;

. Emission limitations and operating limits in 60.2670 through 60.2685;

. Performance testing requirements in 60.2690 through 60.2725;

. Initial compliance requirements in 60.2700 through 60.2725;

. Continuous compliance requirements in 60.2710 through 60.2725;

. Monitoring requirements in 60.2730 through 60.2735;

. Recordkeeping and reporting requirements in 60.2740 through 60.2800;

. Title V operating permits requirements in 60.2805;

. Air curtain incinerator requirements in 60.2810 through 60.2870;

. Definitions in 60.2875; and

. Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the

owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. (See WAC 173-400-115(2) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (d)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (d)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on February 5, 2001).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas,

petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on February 5, 2001) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on February 5, 2001).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on February 5, 2001).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on February 5, 2001), mean the unit is considered a new unit and subject to WAC 173-400-115(2), which adopts 40 CFR Part 60, subpart AAAA (in effect on June 6, 2001).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on February 5, 2001) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on February 5, 2001) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on February 5, 2001).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on February 5, 2001) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on February 5, 2001) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on February 5, 2001), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - operator training in 60.1645 through 60.1670;

(C) Good combustion practices - operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule.

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must comply with Table 1.

Table 1 Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin on-site construction)	Increment 4 (Complete on-site construction)	Increment 5 (Final compliance)
All Class I units	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
All Class II units	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on February 5, 2001).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, subpart BBBB (in effect on February 5, 2001) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

WAC 173-400-060 Emission standards for general process units. General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or allow the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. EPA test methods (in effect on February 20, 2001) from 40 CFR Parts 51, 60, 61, and 63 and any other approved test procedures which are contained in ecology's "*Source Test Manual - Procedures For Compliance Testing*" as of July 12, 1990, will be used to determine compliance.

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of **sources** within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for **emissions units** within the categories listed. Except as specifically provided in this section, such **emissions units** shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam burners.**

(a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), and WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) as applicable.

(b) All wigwam burners shall use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new **sources** including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) **Ecology** may establish additional requirements for wigwam burners located in sensitive areas as defined by chapter 173-440 WAC. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(1). An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that **emissions** may exceed twenty percent **opacity** for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible **emission** exceeding twenty percent **opacity**, except during the first thirty minutes after such device or material is ignited.

(4) **Grain elevators.**

Any grain elevator which is primarily classified as a **materials handling** operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Catalytic cracking units.**

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) **Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) must meet all applicable provisions of those sections.

(b) Such wood waste burners shall utilize **RACT** and shall be operated and maintained to minimize **emissions**.

(7) **Sulfuric acid plants.**

No **person** shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H_2SO_4.

(8) **Sewage sludge incinerators.** Standards for the incineration of sewage sludge found in 40 CFR Part 503 subparts A (General Provisions) and E (Incineration) in effect on July 1, 2004, are adopted by reference.

(9) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115(2) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the

applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submittal of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 CFR 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted

to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b)(2)(v).

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) **National emission standards for hazardous air pollutants (NESHAPs).** 40 CFR Part 61 and Appendices in effect on July 1, 2004, is adopted by reference. The term "administrator" in 40 CFR Part 61 includes the permitting authority.

(2) The **permitting authority** may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Parts 61, 62, 63 and/or 65 in order to determine the status of compliance

of sources of these contaminants and to carry out its enforcement responsibilities.

(3) **Source** testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 CFR Parts 61, 62, 63 and/or 65.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Parts 61 or 63, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

(6) **Maximum achievable control technology (MACT) standards.** MACT standards are officially known as **National Emission Standards for Hazardous Air Pollutants for Source Categories**.

(a) Adopt by reference.

40 CFR Part 63 and Appendices in effect on October 1, 2004, is adopted by reference. Exceptions are listed in (6)(b) of this section.

The following list of subparts to 40 CFR 63 which are shown as blank or reserved as of the date listed above, is provided for informational purposes only: Subparts K, P, V, Z, FF, NN, ZZ, AAA, BBB, FFF, KKK, SSS, WWW, YYY, ZZZ, BBBB, DDDDD, NNNNN, and OOOOO.

(b) Exceptions to adopting 40 CFR Part 63 by reference.

(i) The term "administrator" in 40 CFR Part 63 includes the **permitting authority**.

(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:

(A) Subpart C: List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, source Category List.

(B) Subpart E: Approval of State Programs and Delegation of Federal Authorities.

(C) Subpart M: National Perchloroethylene Emission Standards for Dry Cleaning Facilities as it applies to nonmajor sources.

(6) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** 40 CFR Part 65, in effect on July 1, 2001, is adopted by reference.

(7) **Emission Standards for Perchloroethylene Dry Cleaners.**

(a) **Applicability.**

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 regulatory **source categories** by the type of equipment they use and the volume of PCE purchased. Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2001).

(b) **Operations and maintenance record.**

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(c) **General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four

hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

(d) **Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

(ii) An inspection must include an examination of these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

(iii) The dry cleaning system must be inspected while it is operating.

(iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(e) **Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(f) **Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45□F (7.2□C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2□F (1.1□C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32□F (0□C) to 120□F (48.9□C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2□F (1.1□C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32□F (0□C) to 120□F (48.9□C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20□F (11.1□C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(g) **Requirements for systems with carbon adsorbers.** A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring

must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

WAC 173-400-099 Registration program. (1) Program purpose.

(a) The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(b) Permit program sources, as defined in RCW 70.94.030(17), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

(2) Program components. The components of the registration program consist of:

(a) Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter 70.94 RCW.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

(e) Staff review, including engineering analysis for accuracy and currentness of information provided by source owners pursuant to registration program requirements.

(f) Clerical and other office support in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

WAC 173-400-100 Source classifications. (1) **Source classification list.** In counties without a local authority, or for sources under the jurisdiction of ecology, the owner or operator of each **source** within the following **source categories** shall register the **source** with **ecology**:

(a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;

(b) Agricultural drying and dehydrating operations;

(c) Any category of **stationary source** that includes an emissions unit subject to a **new source performance standard (NSPS)** under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters);

(d) Any stationary **source**, that includes an emissions unit subject to a **National Emission Standard for Hazardous Air Pollutants (NESHAP)** under 40 CFR Part 61, other than:

(i) Subpart M (National Emission Standard for Asbestos); or

(ii) Sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I, and that are not subject to any other part of 40 CFR 61, 62 or 63, or any other parts of this section;

(e) Any **source**, or emissions unit subject to a **National Emission Standard for Hazardous Air Pollutants for Source Categories** (Maximum Achievable Control Technology (MACT) standard) under 40 CFR Part 63;

(f) Any **source**, **stationary source** or **emission unit** with an emission rate of one or more pollutants equal to or greater than an "emission threshold" defined in WAC 173-400-030;

(g) Asphalt and asphalt products production facilities;

(h) Brick and clay manufacturing plants, including tiles and ceramics;

(i) Casting facilities and foundries, ferrous and nonferrous;

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(k) Chemical manufacturing plants;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

(m) Concrete product manufacturers and ready mix and premix concrete plants;

(n) Crematoria or animal carcass **incinerators**;

(o) Dry cleaning plants;

(p) **Materials handling** and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

(q) Flexible vinyl and urethane coating and printing operations;

(r) Grain, seed, animal feed, legume, and flour processing operations, and handling

facilities;

(s) Hay cubers and pelletizers;

(t) Hazardous waste treatment and disposal facilities;

(u) Ink manufacturers;

(v) Insulation fiber manufacturers;

(w) Landfills, active and inactive, including covers, gas collections systems or flares;

(x) Metal plating and anodizing operations;

(y) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

(z) Mills such as lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

(aa) Mineralogical processing plants;

(bb) Other metallurgical processing plants;

(cc) Paper manufacturers;

(dd) Petroleum refineries;

(ee) Petroleum product blending operations;

(ff) Plastics and fiberglass product fabrication facilities;

(gg) Rendering plants;

(hh) Soil and ground water remediation projects;

(ii) Surface coating manufacturers;

(jj) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

(kk) Synthetic fiber production facilities;

(ll) Synthetic organic chemical manufacturing industries;

(mm) Tire recapping facilities;

(nn) Wastewater treatment plants;

(oo) Any **source** that has elected to opt-out of the operating permit program by limiting its potential-to-emit **(synthetic minor)** or is required to report periodically to demonstrate nonapplicability to **EPA** requirements under Sections 111 or 112 of Federal Clean Air Act.

(2) **Equipment classification list.** In counties without a local **authority**, the owner or operator of the following equipment shall register the **source** with **ecology**:

(a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

(b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;

(c) Chemical concentration evaporators;

(d) Degreasers of the cold or vapor type in which more than five percent of the solvent is

comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;

(e) Ethylene oxide (ETO) sterilizers;

(f) Flares utilized to combust any gaseous material;

(g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;

(h) **Incinerators** designed for a capacity of one hundred pounds per hour or more;

(i) Ovens, burn-out and heat-treat;

(j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;

(k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;

(l) Vapor collection systems within commercial or industrial facilities;

(m) Waste oil burners above 0.5 mm Btu heat output;

(n) Woodwaste **incinerators**;

(o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);

(p) Small municipal waste combustion units subject to WAC 173-400-050(5).

WAC 173-400-102 Scope of registration and reporting requirements. (1) **Administrative options.** A **source** in a listed **source category** that is located in a county without an active local **authority** will be addressed in one of several ways:

(a) The **source** will be required to register and report once each year. The criteria for identifying these **sources** are listed in subsection (2) of this section.

(b) The **source** will be required to register and report once every three years. The criteria for identifying these **sources** are listed in subsection (3) of this section.

(c) The **source** will be exempted from registration program requirements. The criteria for identifying these **sources** are listed in subsection (4) of this section.

(2) **Sources requiring annual registration and inspections.** An owner or operator of a **source** in a listed **source category** that meets any of the following criteria shall register and report once each year:

(a) The **source** emits one or more **air pollutants** at rates greater than the "emission threshold" rates defined in WAC 173-400-030;

(b) Annual registration and reporting is necessary to comply with federal reporting requirements or **emission standards**; or

(c) Annual registration and reporting is required in a **reasonably available control technology** determination for the **source category**; or

(d) The **director** of **ecology** determines that the **source** poses a potential threat to human health and the environment.

(3) **Sources requiring periodic registration and inspections.** An owner or operator of a **source** in a listed **source category** that meets any of the following criteria shall register and report once every three years:

(a) The **source** emits one or more **air pollutants** at rates greater than the emission rates listed in subsection (5) of this section and all **air pollutants** at rates less than the "emission threshold" rates defined in WAC 173-400-030; or

(b) The **source** emits measurable amounts of one or more Class A or Class B **toxic air pollutants** listed in WAC 173-460-150 and 173-460-160.

(4) **Sources exempt from registration program requirements.** Any **source** included in a listed **source category** that is located in a county without an active local air **authority** shall not be required to register if **ecology** determines the following:

(a) The **source** emits pollutants below **emission** rates specified in subsection (5) of this section; and

(b) The **source** or **emission unit** does not emit measurable amounts of Class A or Class B **toxic air pollutants** specified in WAC 173-460-150 and 173-460-160.

(5) **Criteria for defining exempt sources.** The following emission rates will be used to identify listed **sources** that are exempt from registration program requirements:

Pollutant	Tons/Year
Carbon Monoxide	5.0
Nitrogen oxides	2.0
Sulfur dioxide	2.0
Particulate Matter (PM)	1.25
Fine Particulate **(PM10)**	0.75
Volatile organic compounds (VOC)	2.0
Lead	0.005

WAC 173-400-104 Registration fees. (1) Registration fee determination. In counties without an active local air pollution control authority, ecology shall establish registration fees based on workload using the process outlined below. The fees collected shall be sufficient to cover the direct and indirect costs of administering the registration program within ecology's jurisdiction.

(2) Budget preparation. Ecology shall conduct a workload analysis projecting resource requirements for administering the registration program. Workload estimates shall be prepared

on a biennial basis and shall estimate the resources required to perform registration program activities listed in WAC 173-400-099(2). Ecology shall prepare a budget for administering the registration program using workload estimates identified in the workload analysis for the biennium.

(3) Registration fee schedule. Ecology's registration program budget shall be distributed to sources located in its jurisdiction according to the following:

(a) Sources requiring periodic registration and inspections shall pay an annual registration fee of four hundred dollars.

(b) Sources requiring annual registration and inspections shall pay a registration fee comprised of the following three components:

(i) Flat component. This portion of a source's fee shall be calculated by the equal division of thirty-five percent of the budget amount allocated to annual registration sources by the total number of sources requiring annual registration.

(ii) Complexity component. Each source is assigned a complexity rating of 1, 3, or 5 which is based on the estimated amount of time needed to review and inspect the source. This portion of the fee is calculated by dividing forty percent of the budget amount allocated to annually registered sources by the total complexity of sources located in ecology's jurisdiction. The quotient is then multiplied by an individual source's complexity rating to determine that source's complexity portion of the fee.

(iii) Emissions component. This portion of a source's fee is calculated by dividing twenty-five percent of the budget amount allocated to annually registered sources by the total billable emissions from those sources. The quotient is then multiplied by an individual source's billable emissions to determine that source's emissions portion of the fee. Billable emissions include all air pollutants except carbon monoxide and total suspended particulate.

(4) Regulatory orders. Owners or operators registering a source as a synthetic minor must obtain a regulatory order which limits the source's emissions. The owner will be required to pay a fee based on the amount of time required to research and write the order multiplied by an hourly rate of sixty dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce registration fees for an individual source if that source demonstrates the use of approved pollution prevention measures or best management practices beyond those required of the source.

(6) Fee reductions for economic hardships. If a small business owner believes the registration fee results in an extreme economic hardship, the small business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits, and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars.

(7) Fee payments. Fees specified in this section shall be paid within thirty days of receipt of ecology's billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the

fee, whichever is more, may be assessed for any fee not received after the thirty-day period.

(8) Dedicated account. All registration fees collected by ecology shall be deposited in the air pollution control account.

(9) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of ecology budget functions.

(10) Additional registration fee for fossil fueled electric generating facilities. A fossil fueled electric generating facility subject to the provisions of chapter 80.70 RCW and RCW 70.94.892, is subject to additional fees pursuant to that chapter.

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a **source** shall upon notification by the **director** of **ecology**, maintain records on the type and quantity of **emissions** from the **source** and other information deemed necessary to determine whether the **source** is in compliance with applicable **emission limitations** and control measures.

(1) **Emission** inventory. The owner(s) or operator(s) of any **air contaminant source** shall submit an inventory of **emissions** from the **source** each year. The inventory will include **stack** and fugitive **emissions** of **particulate matter**, **PM-10**, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, **total reduced sulfur** compounds **(TRS)**, fluorides, lead, VOCs, ammonia, and other contaminants. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported **emissions**, consistent with the averaging times for the applicable standards. Emissions estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s) which ever is the better estimate.

(2) **Monitoring. Ecology** shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of **air contaminants**. As a part of this program, the **director** of **ecology** or an authorized representative may require any **source** under the jurisdiction of **ecology** to conduct **stack** and/or **ambient air** monitoring and to report the results to **ecology**.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of **air contaminants** into the atmosphere, **personnel** from **ecology** or an **authority** shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, **ecology** or the **authority** may conduct or require that a test be conducted of the **source** using approved **EPA** methods from 40 CFR parts 51, 60, 61 and 63 (in effect on July 1, 2004), or procedures contained in *"**Source** Test Manual - Procedures for Compliance Testing,"* state of Washington, department of **ecology**, as of July 12, 1990, on file at **ecology**. The operator of a **source** may be required to provide the necessary platform and sampling ports for **ecology** personnel or others to perform a test of an **emissions unit**. **Ecology** shall be allowed to obtain a sample from any **emissions unit**. The operator of the **source** shall be given an opportunity to observe the sampling and to obtain a

sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of **sources** shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those **emissions** specified.

(a) Fossil fuel-fired steam generators.

(i) **Opacity**, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous **emission** monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average **capacity factor** of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to **ecology** or the **authority** by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing **emissions** to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. **Opacity** where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) **Opacity**, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by **ecology**.

(e) Owners and operators of those **sources** required to install continuous monitoring equipment under this subsection shall demonstrate to **ecology** or the **authority**, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (in effect on July 1, 2004).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, **ecology** determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of **stack** tests conducted at a frequency sufficient to establish the **emission** levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any equipment subject to continuous emissions monitoring requirement imposed by standard or requirement under 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal

standards.

(h) Monitoring system malfunctions. A **source** may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the **source** owner(s) or operator(s) shows to the satisfaction of the permitting **authority** that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Change in raw materials or fuels for **sources** not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in **emissions** of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to **ecology** or the **authority** to determine the effect of the increase upon ambient concentrations of sulfur dioxide. **Ecology** or the **authority** may issue **regulatory orders** requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

(7) No **person** shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or **order** in force pursuant thereto.

(8) No **person** shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or **order** in force pursuant thereto.

We are retaining the language in 107 that is in the current rule

WAC 173-400-107 Excess emissions. (1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.

(2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.

(3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of

recurrence.

(4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(6) Excess emissions due to upsets shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

WAC 173-400-110 New source review (NSR). In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Applicability.**

(a) This section, WAC 173-400-112 and 173-400- 113 apply statewide except where an **authority** has adopted its own **new source** review rule.

(b) This section applies to sources as defined in RCW 70.94.030(21), but does not include non-road engines. Non-Road engines are regulated under WAC 173-400-035.

(2) **Projects subject to NSR - notice of construction application.**

(a) A notice of construction application must be filed by the owner or operator and an order of approval issued by the permitting authority prior to the establishment of any new source, except for the following:

(i) Those sources exempt under subsection (4) or (5) of this section; and

(ii) A source regulated under WAC 173-400-035.

For purposes of this section "establishment" shall mean to begin actual construction, as

that term is defined in WAC 173-400-030, and "new source" shall include any modification to an existing stationary source, as defined in WAC 173-400-030.

(b) Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the permitting authority prior to establishment of any of the following new sources:

(i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 **(New Source Performance Standards)**, except Part AAA, Wood stoves (in effect on February 20, 2001);

(ii) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 **(National Emission Standards for Hazardous Air Pollutants)** (in effect on July 1, 2004), except for asbestos demolition and renovation projects subject to 40 CFR 61.145, and except from sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I;

(iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 **(National Emission Standards for Hazardous Air Pollutants for Source Categories)** (in effect on July 1, 2004);

(iv) Any project that qualifies as a new **major stationary source**, or a **major modification** to a major stationary source subject to the requirements of WAC 173-400-112;

(v) Any **modification** to a stationary **source** that requires an increase either in a plant-wide cap or in a unit specific **emission limit**.

(c) An applicant filing a **notice of construction application** for a project described in WAC 173-400-117(2), Special protection requirements for **Class I areas**, must send a copy of the application to the responsible **federal land manager**.

(3) **Modifications. New source** review of a **modification** shall be limited to the **emission unit** or **units** proposed to be added to an existing **source** or modified and the **air contaminants** whose **emissions** would increase as a result of the **modification**; provided, however, that review of a **major modification** must comply with WAC 173-400-112 and/or 173-400-720, as applicable.

(4) **Emission unit and activity exemptions.**

Except as provided in subsection (2) of this section, establishment of a new **emission unit** that falls within one of the categories listed below is exempt from **new source** review. **Modification** of any **emission unit** listed below is exempt from **new source** review, provided that the modified unit continues to fall within one of the listed categories. The installation or **modification** of a unit exempt under this subsection does not require the filing of a **notice of construction application**.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

(iv) Paving application and maintenance, excluding asphalt plants;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine

house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application;

(viii) Insulation application and maintenance, excluding products for resale;

(ix) Janitorial services and consumer use of janitorial products.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. **Ecology** strongly recommends that an owner or operator contact the **permitting authority** to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

(vi) Operation, loading and unloading of storage tanks, 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21□C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) A project with combined aggregate heat inputs of combustion units, all of the following:

(i) 500,000 Btu/hr using coal with 0.5% sulfur or other fuels with 0.5% sulfur;

(ii) 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

(iii) 400,000 Btu/hr wood waste or paper;

(iv) < 1,000,000 Btu/hr using kerosene, #1, or #2 fuel oil and with 0.05% sulfur;

(v) 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state

department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150□C or vapor pressure not more than 5 mm Hg @21□C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers not using **toxic air pollutant** gases, as regulated under chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or **modification** of a single laboratory fume hood;

(iv) Laboratory calibration and maintenance equipment.

(g) Monitoring/quality assurance/testing:

(i) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(ii) Hydraulic and hydrostatic testing equipment;

(iii) Sample gathering, preparation and management;

(iv) Vents from continuous **emission** monitors and other analyzers.

(h) Miscellaneous:

(i) Single-family residences and duplexes;

(ii) Plastic pipe welding;

(iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(iv) Comfort air conditioning;

(v) Flares used to indicate danger to the public;

(vi) Natural and forced air vents and **stacks** for bathroom/toilet activities;

(vii) Personal care activities;

(viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(ix) Tobacco smoking rooms and areas;

(x) Noncommercial smokehouses;

(xi) Blacksmith forges for single forges;

(xii) Vehicle maintenance activities, not including vehicle surface coating;

(xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);

(xiv) Wax application;

(xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(xvi) Ozone generators and ozonation equipment;

(xvii) Solar simulators;

(xviii) Ultraviolet curing processes, to the extent that **toxic air pollutant** gases as defined in chapter 173-460 WAC are not emitted;

(xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(xx) Pulse capacitors;

(xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

(xxii) Fire suppression equipment;

(xxiii) Recovery boiler blow-down tank;

(xxiv) Screw press vents;

(xxv) Drop hammers or hydraulic presses for forging or metal working;

(xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

(xxvii) Kraft lime mud storage tanks and process vessels;

(xxviii) Lime grits washers, filters and handling;

(xxix) Lime mud filtrate tanks;

(xxx) Lime mud water;

(xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21□C;

(xxxiv) Surface coating, aqueous solution or suspension containing 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

(5) **Exemptions based on emissions.**

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) A new **emissions unit** that has a **potential to emit** below each of the levels listed in the table contained in (d) of this subsection is exempt from **new source** review provided that the conditions of (b) of this subsection are met.

(ii) A **modification** to an existing **emissions unit** that increases the unit's **actual emissions** by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from **new source** review provided that the conditions of (b) of this subsection are met.

(b) The owner or operator seeking to exempt a project from **new source** review under this section shall notify, and upon request, file a brief project summary with the **permitting authority** prior to **beginning actual construction** on the project. If the **permitting authority** determines that the project will have more than a de minimus impact on air quality, the **permitting authority** may require the filing of a **notice of construction application**. The **permitting authority** may require the owner or operator to demonstrate that the **emissions** increase from the new **emissions unit** is smaller than all of the levels listed below.

(c) The owner/operator may **begin actual construction** on the project thirty-one days after the **permitting authority** receives the summary, unless the **permitting authority** notifies the owner/operator within thirty days that the proposed **new source** requires a **notice of construction application**.

(d) Exemption level table:

POLLUTANT	**LEVEL (TONS PER YEAR)**
(a) **Total Suspended Particulates**	1.25
(b) **PM-10**	0.75

(c) Sulfur Oxides	2.0
(d) Nitrogen Oxides	2.0
(e) **Volatile Organic Compounds,** total	2.0
(f) Carbon Monoxide	5.0
(g) Lead	0.005
(h) **Ozone Depleting Substances** (in effect on July 1, 2000), total	1.0
(i) **Toxic Air Pollutants**	As specified in chapter 173-460 WAC.

(6) **Application processing - completeness determination.**

(a) Within thirty days after receiving a **notice of construction application**, the **permitting authority** shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) For a project subject to the Special protection requirements for **federal Class I areas** in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

(7) **Final determination.**

(a) Within sixty days of receipt of a complete **notice of construction** application, **the permitting authority** shall either issue a final decision on the application or for those projects subject to public notice under WAC 173-400-171(1), initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision.

(b) A **person** seeking approval to construct or **modify** a **source** that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the **notice of construction application** required by this section. A **notice of construction application** designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must also comply with WAC 173-400-171.

(c) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the **permitting authority**.

(d) If the **new source** is a **major stationary source** or the change is a **major modification** subject to the requirements of WAC 173-400-112, the **permitting authority** shall:

(i) Submit any control technology determination included in a final **order of approval**

for a major source or a major modification to a major stationary source in a nonattainment area to the **RACT/BACT/LAER** clearinghouse maintained by **EPA**; and

(ii) Send a copy of the final **approval order** to EPA.

(8) **Appeals.** Any conditions contained in an **order of approval**, or the denial of a **notice of construction application** may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. The **permitting authority** shall promptly mail copies of each **order** approving or denying a **notice of construction application** to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(9) **Construction time limitations.** Approval to construct or modify a **stationary source** becomes invalid if the applicant does not begin construction within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The **permitting authority** may extend the eighteen-month period upon a satisfactory showing that an extension is justified. The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must **commence** construction within eighteen months of the projected and approved commence construction date.

(10) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an **approval order** and the **permitting authority** may approve the request provided the **permitting authority** finds that:

(i) The change in conditions will not cause the **source** to exceed an **emissions standard**;

(ii) No **ambient air quality standard** will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of **ecology** or the **authority** to determine compliance with an **emissions standard**;

(iv) The revised **order** will continue to require **BACT**, as defined at the time of the original approval, for each **new source** approved by the **order** except where the **Federal Clean Air Act** requires **LAER**; and

(v) The revised order meets the requirements of WAC 173-400-110, 173-400-112, 173-400-113 and 173-400-720, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171.

(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a **notice of construction application**, that application must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC 173-400-116 shall also apply to requests filed as **notice of construction applications**.

(11) **Enforcement.** All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

WAC 173-400-112 Requirements for new sources in nonattainment areas. (1) **Definitions.** The following definitions apply to this section:

(a) **"Major modification,"** for the purposes of WAC 173-400-112, means any physical change in or change in the method of operation of a **major stationary source** that would result in a **significant net emissions increase** of any pollutant subject to regulation under the **Federal Clean Air Act**.

(i) Any **net emissions increase** that is considered **significant** for **volatile organic compounds** or nitrogen oxides shall be considered **significant** for ozone.

(ii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an **order** under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) Use of an alternative fuel by reason of an **order** or rule under section 125 of the **Federal Clean Air Act**;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste; (E) Use of an alternative fuel or raw material by a **source** which:

(I) The **source** was capable of accommodating before December 21, 1976, unless such change would be prohibited under any **federally enforceable** permit or **approval order** condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a **SIP** approved **new source** review regulation; or

(II) The **source** is approved to use under any permit or **approval order** issued under WAC 173-400-112;

(iii) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or **approval order** condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a **SIP** approved **new source** review regulation.

(iv) Any change in ownership at a **source**.

(v) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the **permitting authority** determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the **permitting authority** has reason to believe that the pollution control project would result in a **significant net emissions** increase in representative actual annual **emissions** of any **criteria pollutant** over levels used for that **source** in the most recent air quality impact analysis in the area conducted for the purpose of title I of the **Federal Clean Air Act**, if any; and

(B) The **permitting authority** determines that the increase will cause or contribute to a

violation of any **National Ambient Air Quality Standard** or **PSD** increment, or visibility limitation.

(vi) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The **SIP**; and

(B) Other requirements necessary to attain and maintain the **National Ambient Air Quality Standard** during the project and after it is terminated.

(b) **"Major stationary source,"** for the purposes of WAC 173-400-112, means:

(i) Any **stationary source** of air pollutants which emits, or has the **potential to emit**, 100 tons per year or more of any pollutant subject to regulation under the **Federal Clean Air Act**, except that lower **emissions** thresholds shall apply as follows:

(A) 70 tons per year of **PM-10** in any "serious" **nonattainment area** for PM-10.

(B) 50 tons per year of carbon monoxide in any "serious" **nonattainment area** for carbon monoxide where **stationary sources** contribute **significantly** to carbon monoxide levels in the area.

(ii) Any physical change that would occur at a **stationary source** not qualifying under (b)(i) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(iii) A major stationary source that is major for **volatile organic compounds** or NOx shall be considered major for ozone.

(iv) The **fugitive emissions** of a **stationary source** shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the **source** belongs to one of the following categories of **stationary sources** or the **source** is a major stationary source due to (b)(i)(A) or (b)(i)(B)of this subsection:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(AA) Any other **stationary source** category which, as of August 7, 1980, is being regulated under section 111 or 112 of the **Federal Clean Air Act**.

(c) **"Net emissions increase,"** for the purposes of WAC 173-400-112, means:

(i) The amount by which the sum of the following exceeds zero:

(A) Any increase in **actual emissions** from a particular physical change or change in method of operation at a **source**; and

(B) Any other increases and decreases in **actual emissions** at the **source** that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in **actual emissions** is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(iii) An increase or decrease in **actual emissions** is creditable only if:

(A) It occurred no more than one year prior to the date of submittal of a complete **notice of construction application** for the particular change, or it has been documented by an **emission reduction credit (ERC)**. Any **emissions** increases occurring between the date of issuance of the **ERC** and the date when a particular change becomes operational shall be counted against the **ERC**.

(B) The **permitting authority** has not relied on it in issuing any permit or **order of approval** for the **source** under this section or a previous **SIP** approved **nonattainment area new source** review regulation, which **order** or permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in **actual emissions** is creditable only to the extent that the new level of

actual emissions exceeds the old level.

(v) A decrease in **actual emissions** is creditable only to the extent that:

(A) The old level of **actual emissions** or the old level of **allowable emissions**, whichever is lower, exceeds the new level of **actual emissions**;

(B) It is federally enforceable at and after the time that actual construction on the particular change begins;

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(D) The **permitting authority** has not relied on it in issuing any permit or **order of approval** under this section or a **SIP** approved **nonattainment area new source** review regulation; or the **permitting authority** has not relied on it in demonstrating attainment or reasonable further progress.

(vi) An increase that results from a physical change at a **source** occurs when the **emission unit** on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(d) **"Significant,"** for purposes of WAC 173-400-112, means, in reference to a **net emissions increase** or the **potential** of a **major stationary source to emit** any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM-10:	15 tpy

(e) **"Stationary source"** and **"source"** for the purposes of WAC 173-400-112 means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant. A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act."

(f) **"Building, structure facility or installation"** means for the purposes of WAC 173-400-112, all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the

same two digit code) as described in the *Standard Industrial Classification Manual*, as amended by the 1977 supplement.

(2) The **permitting authority** that is reviewing an application to establish a **new source** in a **nonattainment area** shall issue the **order of approval** if it determines that the proposed project satisfies each of the following requirements:

(a) The proposed **new source** or **modification** will comply with all applicable **new source performance standards**, **national emission standards for hazardous air pollutants**, **national emission standards for hazardous air pollutants for source categories**, **emission standards** adopted under chapter 70.94 RCW and, for **sources** regulated by an **authority**, the applicable **emission standards** of that **authority**.

(b) The proposed **new source** will employ **BACT** for all **air contaminants**, except that if the **new source** is a **major stationary source** or the proposed **modification** is a **major modification** it will achieve **LAER** for the **air contaminants** for which the area has been designated **nonattainment** and for which the proposed **new source** or **modification** is **major**.

(c) The proposed **new source** will not cause any **ambient air quality standard** to be exceeded, will not violate the requirements for reasonable further progress established by the **SIP** and will comply with WAC 173-400-113 (3) for all **air contaminants** for which the area has not been designated **nonattainment**.

(d) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, the **permitting authority** has determined, based on review of an analysis performed by the **source** of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or **modification**.

(e) If the proposed **new source** or the proposed **modification** is **major** for the **air contaminant** for which the area is designated **nonattainment**, **allowable emissions** from the proposed **new source** or **modification** of that **air contaminant** are offset by reductions in **actual emissions** from existing **sources** in the **nonattainment** area. **Emission** offsets must be sufficient to ensure that total **allowable emissions** from existing **major stationary sources** in the **nonattainment area**, **new** or **modified sources** which are not **major stationary sources**, and the proposed **new** or **modified source** will be less than total **actual emissions** from existing **sources** (before submitting the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the **Federal Clean Air Act**) reasonable further progress. All offsetting **emission** reductions must satisfy the following requirements:

(i) The proposed new level of **allowable emissions** of the source or **emissions unit(s)** providing the reduction must be less than the current level of **actual emissions** of that **source** or **emissions unit(s)**. No emission reduction can be credited for **actual emissions** which exceed the current **allowable emissions** of the **source** or **emissions unit(s)** providing the reduction. **Emission** reductions imposed by local, state, or federal regulations, regulatory orders, or permits required by the **Federal Clean Air Act**, including the **SIP**, cannot be credited.

(ii) The **emission** reductions must provide for a net air quality benefit. For marginal ozone **nonattainment areas**, the total **emissions** of **volatile organic compounds** or total **emissions** of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the **new source** is located. For any other **nonattainment area**, the **emissions** offsets must provide a positive net air quality benefit in the **nonattainment area**. Determinations on whether

emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, 2004).

(iii) If the offsets are provided by another **source**, the reductions in **emissions** from that **source** must be federally enforceable by the time the **order of approval** for the **new** or **modified source** is effective. An **emission reduction credit** issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(f) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, the owner or operator has demonstrated that all **major stationary sources** owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to **emission limitations** and are in compliance, or on a schedule for compliance, with all applicable **emission limitations** and **standards** under the **Federal Clean Air Act**, including all rules in the **SIP**.

(g) If the proposed **new source** is a **major stationary source** within the meaning of WAC 173-400-720, or the proposed **modification** is a **major modification** within the meaning of WAC 173-400-720, it meets the requirements of the **PSD** program in WAC 173-400-720 for all **air contaminants** for which the area has not been designated **nonattainment**.

(h) If the proposed **new source** or **modification** will emit any **toxic air pollutants** regulated under chapter 173-460 WAC, the **source** meets all applicable requirements of that chapter.

(i) If the proposed **new source** is a **major stationary source** within the meaning of WAC 173-400-720, or the proposed **modification** is a **major modification** within the meaning of WAC 173-400-720, the project meets the special protection requirements for **federal Class I areas** in WAC 173-400-117.

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. The **permitting authority** that is reviewing an application to establish a **new source** or **modification** in an **attainment** or **unclassifiable area** shall issue an **order of approval** if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed **new source** or **modification** will comply with all applicable **new source performance standards**, **national emission standards for hazardous air pollutants**, **national emission standards for hazardous air pollutants for source categories, emission standards** adopted under chapter 70.94 RCW and, for **sources** regulated by an **authority**, the applicable **emission standards** of that **authority**.

(2) The proposed **new source** or **modification** will employ **BACT** for all pollutants not previously emitted or whose **emissions** would increase as a result of the **new source** or **modification**.

(3) **Allowable emissions** from the proposed **new source** or **modification** will not delay the **attainment** date for an area not in **attainment** nor cause or contribute to a violation of any **ambient air quality standard**. This requirement will be considered to be met if the projected impact of the **allowable emissions** from the proposed **new source** or the projected impact of the increase in **allowable emissions** from the proposed **modification** at any location within a **nonattainment area** does not exceed the following levels for the pollutants for which the area has been designated **nonattainment**:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-		0.5 mg/m^3	-	2 mg/m^3
SO_2	1.0 µg/m^3	5 µg/m^3	-	25 µg/m^3	30 µg/m^3
PM_{10}	1.0 µg/m^3	5 µg/m^3	-	-	-
NO_2	1.0 µg/m^3	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(4) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, it meets all applicable requirements of WAC 173-400-720 through 173-400-750.

(5) If the proposed **new source** or the proposed **modification** will emit any **toxic air pollutants** regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

(6) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, the project meets the special protection requirements for **federal Class I areas** of WAC 173-400-117.

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called **New Source Performance Standards**, or **NSPS**.

(1) **Adoption by reference.**

(a) 40 CFR Part 60 and Appendices in effect on July 1, 2004, is adopted by reference. Exceptions are listed in subsection (1)(b) of this section.

The following list of subparts to 40 CFR Part 60 which are shown as blank or reserved in the Code of Federal Regulations as of the date listed above, is provided for informational purposes only:

40 CFR Part 60, subparts FF, II, JJ, OO, YY, ZZ, CCC, EEE, MMM, XXX, YYY, ZZZ, Appendix E, and Appendix H.

(b) Exceptions to adopting 40 CFR Part 60 by reference.

(i) The term "administrator" in 40 CFR Part 60 includes the **permitting authority**.

(ii) The following sections and subparts of 40 CFR Part 60 are not adopted by reference:

(A) 40 CFR 60.5 (determination of construction or modification);

(B) 40 CFR 60.6 (review of plans);

(C) 40 CFR Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, and DDDD (emission guidelines); and

(D) 40 CFR Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois

Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

WAC 173-400-116 New source review fees. (1) **Applicability.** Every **person** required to submit a **notice of construction application** to the department of **ecology** as authorized in RCW 70.94.152 for establishment of any proposed **new source** or **emissions unit(s)** shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee as required by the local permitting authority. **Persons** required to submit a **notice of construction application** to a local air **authority** may be required to pay a fee to **ecology** to cover the costs of review pursuant to WAC 173-400-720, second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an **order of approval** is issued or denied.

(2) **Basic review fees.** All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, **BACT** determination, technical review, public involvement and **approval**/denial **orders**. Complexity determination shall be based on the project described in the **notice of construction application**. The basic review fees are either (a) or (b) below:

(a) Basic new source review fees.

Source type	Clarifying criteria	Fee
Basic Review Fees		
Low complexity source	Emissions increase of individual pollutants are all less than one-half of the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of individual toxic air pollutants are all less than 2.0 tons/year	$1250

Moderate complexity	Emissions increase of one or more individual pollutants are greater than one-half of, and less than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 2.0 tons/year and less than ten tons/year	$8000
High complexity	Emissions increase of one or more pollutants are greater than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than ten tons/year	$18,000

(b) New source review fees for specific source categories.

Source type		Clarifying criteria	Fee
Dry cleaners			$250
Gasoline stations			$250
Storage tanks			
	< 20,000 gallons		$250
	20,000 - 100,000 gallons		$650
	> 100,000 gallons		$900
Chromic acid plating and anodizing identified in WAC 173-460-060			$250

Solvent metal cleaners identified in WAC 173-460-060		$250
Abrasive blasting identified in WAC 173-460-060		$250
New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 173-401 WAC source or nonchapter 173-401 WAC source		$250
Application for coverage under a general order of approval	WAC 173-400-560 and criteria included in a specific general order of approval	$500
Nonroad engines		
Less than a total of 500 installed horsepower		$500
More than 500 horsepower and less than a total of 2000 installed horsepower		$900
More than 2000 horsepower and less than a total of 5000 installed horsepower		$2000
More than 5000 horsepower and less than a total of 10,000 installed horsepower		$4000
More than a total of 10,000 installed horsepower		$7500

(c) Additional units. An owner or operator proposing to build more than one identical **emission unit** shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.

(3) **Additional charges.** In addition to those fees required under subsection (2)(a) through (c) of this section, the following fees will be required as applicable:

(a) Major NSR actions under WAC 173-400-720 and 173-400-112.

Activity	Clarifying criteria	Fee
Prevention of significant deterioration review or increase in a PAL limitation	WAC 173-400-720	$15,000
Establishing LAER and offset requirements	WAC 173-400-112	$10,000
Establishing or renewal of clean unit status	Per 40 CFR 52.21(y)	$1500
Pollution control project approval	Per 40 CFR 52.21(z)	$1500
Establishment of a PAL	Per 40 CFR 52.21(aa)	$4000
Renewal of a PAL	Per 40 CFR 52.21(aa)	$4000
Expiration of a PAL	Per 40 CFR 52.21(aa)	$12,000
PSD permit revisions		
All except administrative	WAC 173-400-750	$10,000
Administrative revisions	WAC 173-400-750	$1500

(b) Other actions.

Activity		Fee
Tier II toxic air pollutant impact review		$10,000
Tier III toxic air pollutant impact review		$10,000

Case-by-case MACT determinations		$12,500
Fossil fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW	Fees listed in rule implementing RCW 70.94.892 and chapter 80.70 RCW
Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.		
Activity		Fee
Modification to order of approval		50% of the fee charged in WAC 173-400-116 (2)(a)
Modification of Tier II approval		50% of the fee charged in WAC 173-400-116 (2)(b)

(4) **Small business fee reduction.** The **new source** review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business **new source** review fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) **Ecology** may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the **new source** review fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which **ecology** may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the **new source** review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(5) Fee reductions for pollution prevention initiatives. **Ecology** may reduce the fees defined in subsections (2) and (3) of this section where the owner or operator of the proposed **source** demonstrates that approved pollution prevention measures will be used.

(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a **notice of construction application** is submitted to the department. **A notice of construction application** is considered incomplete until **ecology** has received the appropriate **new source** review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an **ecology** billing statement. All fees collected under this regulation shall be made payable to the Washington department of **ecology**.

(7) Dedicated account. All **new source** review fees collected by the department shall be deposited in the air pollution control account.

(8) Tracking revenues, time, and expenditures. **Ecology** shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of complexity categories.

(9) Periodic review. **Ecology** shall review and, as appropriate, update this section at least once every two years.

WAC 173-400-117 Special protection requirements for federal Class I areas. (1) **Definitions.** The following definitions apply to this section:

(a) **"Adverse impact on visibility"** means **visibility impairment** that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the **federal Class I area**. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(i) Times of visitor use of the **federal Class I area**; and

(ii) The frequency and timing of natural conditions that reduce visibility.

(b) The terms “major stationary source,” “major modification” and “net emissions increase” are as provided in WAC 173-400-720.

(2) **Applicability.** The requirements of this section apply to all of the following permitting actions:

(a) A **PSD** permit application for a new **major stationary source** or a **major modification**; or

(b) Submittal of a **notice of construction application** for a **major stationary source** or a **major modification** to a major stationary source in a nonattainment area, as either of those terms are defined in WAC 173-400-720.

(3) **Contents and distribution of application.**

(a) The application shall include an analysis of the anticipated impacts of the project on visibility in any **federal Class I area**.

(b) The applicant must mail a copy of the application for the project and all amendments to the application to the **permitting authority, EPA** and to the responsible **federal land managers**. **Ecology** will provide a list of the names and addresses of the **federal land manager**.

(4) **Notice to federal land manager.**

(a) The **permitting authority** shall send a copy of the completeness determination to the responsible **federal land manager**.

(b) If, prior to receiving a **notice of construction application** or a **PSD** permit application, the **permitting authority** receives notice of a project described in subsection (2) of this section that may affect visibility in a **federal Class I area**, the **permitting authority** shall notify the responsible **federal land manager** within thirty days of the notification.

(5) **Analysis by federal land manager.**

(a) The **permitting authority** will consider any demonstration presented by the responsible **federal land manager** that **emissions** from a proposed **new major stationary source** or the **net emissions increase** from a proposed major modification described in subsection (2) of this section would have an **adverse impact on visibility** in any **federal Class I area**, provided that the demonstration is received by the **permitting authority** within thirty days of the **federal land manager's** receipt of the complete application.

(b) If the **permitting authority** concurs with the **federal land manager's** demonstration, the PSD permit or **approval order** for the project either shall be denied, or conditions shall be included in the **approval order** to prevent the adverse impact.

(c) If the **permitting authority** finds that the **federal land manager's** analysis does not demonstrate that the project will have an **adverse impact on visibility** in a **federal Class I area**, the **permitting authority** either shall explain its decision in the public notice required by WAC 173-400-730, or, in the case of public notice of proposed action on a **PSD** permit application, state that an explanation of the decision appears in the Technical Support Document for the proposed permit.

(6) **Additional requirements for projects that require a PSD permit.**

(a) For sources impacting **federal Class I areas**, the **permitting authority** shall provide notice to **EPA** of every action related to consideration of the **PSD** permit.

(b) The **permitting authority** shall consider any demonstration received from the responsible **federal land manager** prior to the close of the public comment period on a proposed

PSD permit that emissions from the proposed **new major stationary source** or the **net emissions increase** from a proposed major **modification** would have an adverse impact on the air quality-related values (including visibility) of any **mandatory Class I federal area**.

(c) If the **permitting authority** concurs with the demonstration, the PSD permit either shall be denied, or conditions shall be included in the PSD permit to prevent the adverse impact.

(7) **Additional requirements for projects located in nonattainment areas.** In reviewing a **PSD** permit application or **notice of construction application** for a new major stationary source or major modification proposed for construction in an area classified as **nonattainment**, the **permitting authority** must ensure that the **source's emissions** will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, **impairment** of **visibility** by human-caused air pollution in **mandatory Class I federal areas**. In determining the need for **approval order** conditions to meet this requirement, the **permitting authority** may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(8) **Monitoring.** The **permitting authority** may require post-construction monitoring of the impact from the project. The monitoring shall be limited to the impacts on visibility in any **federal Class I area** near the proposed project.

WAC 173-400-118 Designation of Class I, II, and III areas. (1) **Designation.**

(a) Lands within the exterior boundaries of Indian reservations may be proposed for redesignation by an Indian Governing Body or EPA. This restriction does not apply to nontrust lands within the 1873 Survey Area of the Puyallup Indian Reservation.

(b) All areas of the state must be designated either **Class I**, II or III.

(i) The following areas are the **Class I areas** in Washington state:

(A) Alpine Lakes Wilderness;

(B) Glacier Peak Wilderness;

(C) Goat Rocks Wilderness;

(D) Adams Wilderness;

(E) Mount Rainier National Park;

(F) North Cascades National Park;

(G) Olympic National Park;

(H) Pasayten Wilderness; and

(I) Spokane Indian Reservation.[1]

(ii) All other areas of the state are Class II, but may be redesignated as provided in subsections (2) and (3) of this section.

1. EPA redesignated this land based on a request from the Spokane Tribal Council. See 40 CFR 52.2497 and 56 FR 14862, April 12, 1991, for details.

(2) **Restrictions on area classifications.**

(a) Except for the Spokane Indian Reservation, the **Class I areas** listed in subsection (1) of this section may not be redesignated.

(b) Except as provided in (a) of this subsection, the following areas that exceed 10,000 acres in size may be redesignated as **Class I** or II:

(i) Areas in existence on August 7, 1977:

(A) A national monument;

(B) A national primitive area;

(C) A national preserve;

(D) A national wild and scenic river;

(E) A national wildlife refuge;

(F) A national lakeshore or seashore; or

(G) A national recreation area.

(ii) Areas established after August 7, 1977:

(A) A national park;

(B) A national wilderness area; or

(C) Areas proposed by Ecology for designation or redesignation.

(3) **Redesignation of area classifications.**

(a) **Ecology** shall propose the redesignation of an area classification as a revision to the **SIP**.

(b) **Ecology** may submit to **EPA** a proposal to redesignate areas of the state as **Class I** or II if:

(i) **Ecology** followed the public involvement procedures in WAC 173-400-171;

(ii) **Ecology** explained the reasons for the proposed redesignation, including a description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation;

(iii) **Ecology** made available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation;

(iv) **Ecology** notified other states, tribal governing bodies, and **federal land managers** (as defined in 40 CFR 52.21 (b)(24)) whose lands may be affected by the proposed redesignation at least thirty days prior to the public hearing;

(v) **Ecology** consulted with the elected leadership of local governments in the area covered by the proposed redesignation before proposing the redesignation; and

(vi) **Ecology** followed these procedures when a redesignation includes any federal lands:

(A) **Ecology** notified in writing the appropriate **federal land manager** on the proposed redesignation. **Ecology** allowed forty-five days for the **federal land manager** to confer with **ecology** and to submit written comments.

(B) **Ecology** responded to any written comments from the **federal land manager** that were received within forty-five days of notification. **Ecology's** response was available to the public in advance of the notice of the hearing.

(I) **Ecology** sent the written comments of the **federal land manager**, along with **ecology's** response to those comments, to the public location as required in WAC 173-400-171 (2)(a).

(II) If **ecology** disagreed with the **federal land manager's** written comments, **ecology** published a list of any inconsistency between the redesignation and the comments of the **federal land manager**, together with the reasons for making the redesignation against the recommendation of the **federal land manager**.

(c) **Ecology** may submit to **EPA** a proposal to redesignate any area other than an area to which subsection (1) of this section applies as Class III if:

(i) The redesignation followed the public involvement requirements of WAC 173-400-171 and 173-400-118(3);

(ii) The redesignation has been specifically approved by the governor of Washington state, after consultation with the appropriate committees of the legislature if it is in session, or with the leadership of the legislature, if it is not in session;

(iii) The redesignation has been approved by local governments representing a majority of the residents of the area to be redesignated. The local governments enacted legislation or passed resolutions concurring in the redesignation;

(iv) The redesignation would not cause, or contribute to, a concentration of any **air contaminant** which would exceed any maximum allowable increase permitted under the classification of any other area or any **National Ambient Air Quality Standard**; and

(v) A **PSD** permit under WAC 173-400-720 for a new **major stationary source** or **major modification** could be issued only if the area in question were redesignated as Class III, and material submitted as part of that application was available for public inspection prior to any public hearing on redesignation of the area as Class III.

WAC 173-400-120 Bubble rules. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting authority.

(a) The contaminants exchanged must be of the same type, that is, PM_{10} for PM_{10}, sulfur dioxide for sulfur dioxide, etc.

(b) The bubble will not interfere with the attainment and maintenance of air quality standards. No bubble shall be authorized in a nonattainment area unless there is an EPA-approved SIP which demonstrates attainment for that area.

(c) The bubble will not result in a delay in compliance by any source, nor a delay in any

existing enforcement action.

(d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous contaminants shall not be increased.

(e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.

(f) A bubble may not be authorized only for opacity limits. However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:

(i) The new opacity limit shall be specific for the given emissions unit;

(ii) The new opacity limit shall be consistent with the new particulates limit;

(iii) An opacity greater than sixty percent shall never be authorized;

(iv) If the given emissions unit emits or has the potential to emit one hundred tons per year or more of particulate matter, the opacity shall be monitored continuously.

(g) The emission limits of the bubble are equivalent to existing limits in enforceability.

(h) Concurrent with or prior to the authorization of a bubble, each emission unit involved in a bubble shall receive or have received a regulatory order or permit that establishes total allowable emissions from the source for the contaminant being bubbled, expressed as weight of the contaminant per unit time.

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

(j) Specific situations may require additional demonstration as requested by the permitting authority.

(3) Jurisdiction. Whenever a bubble application involves emissions units, some of which are under the jurisdiction of an authority, approval will require concurrence by both authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, the permitting authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all the required information has been received, the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit affected by the bubble. The regulatory order or equivalent document shall include any conditions required to assure that subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment. The regulatory order establishing the bubble is subject to the public involvement requirements of WAC 173-400-171.

WAC 173-400-131 Issuance of emission reduction credits. (1) **Applicability.** The owner or operator of any **source** may apply to the **permitting authority** for an **emission reduction credit (ERC)** if the **source** proposes to reduce its **actual emissions** rate for any contaminant regulated by state or federal law for which the **emission** requirement may be stated as an allowable limit in weight of contaminant per unit time for the **emissions units** involved.

(2) **Time of application.** The application for an **ERC** must be made prior to or within one hundred eighty days after the **emission** reduction has been accomplished.

(3) **Conditions.** An **ERC** may be authorized provided the following conditions have been demonstrated to the satisfaction of the **permitting authority**.

(a) The quantity of **emissions** in the **ERC** shall be less than or equal to the old **allowable emissions** rate or the old **actual emissions** rate, whichever is the lesser, minus the new **allowable emissions** rate.

(b) The **ERC** application must include a description of all the changes that are required to accomplish the claimed **emissions** reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The **ERC** must be large enough to be readily quantifiable relative to the **source** strength of the **emissions unit(s)** involved.

(d) No part of the **emission** reductions claimed for credit shall have been used as part of a determination of **net emission increase**, nor as part of an offsetting transaction under WAC 173-400-112 (2)(d), nor as part of a **bubble** transaction under WAC 173-400-120, nor to satisfy **NSPS**, **NESHAPS, for Source Categories**, **BACT**, or **LAER**.

(e) Concurrent with or prior to the authorization of an **ERC**, the applicant shall receive (have received) a **regulatory order** or permit that establishes total **allowable emissions** from the **source** or **emissions unit** of the contaminant for which the **ERC** is requested, expressed as weight of contaminant per unit time.

(f) The use of any **ERC** shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an **ERC** application and all supporting data and documentation, the **permitting authority** may require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all required information has been received, the **permitting authority** shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. If the application is approved, the **permitting authority** shall:

(a) Issue a **regulatory order** or equivalent document to assure that the **emissions** from the **source** will not exceed the allowable **emission** rates claimed in the ERC application, expressed in weight of pollutant per unit time for each **emission unit** involved. The **regulatory order** or equivalent document shall include any conditions required to assure that subsection (3)(a) through (e) of this section will be satisfied. If the **ERC** depends in whole or in part upon

the shutdown of equipment, the **regulatory order** or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of **emission reduction credit**. The certificate shall specify the issue date, the contaminants involved, the **emission** decrease expressed as weight of pollutant per unit time, the **nonattainment area** involved, if applicable, and the **person** to whom the certificate is issued.

WAC 173-400-136 Use of emission reduction credits (ERC). (1) **Permissible use.** An **ERC** may be used to satisfy the requirements for authorization of a **bubble** under WAC 173-400-120; as a part of a determination of **"net emissions increase;"** or as an offsetting reduction to satisfy the requirements for **new source** review in WAC 173-400-112 or 173-400-113 (3).

(2) **Surrender of ERC certificate.** When an **ERC** is used under subsection (1) of this section, the certificate for the **ERC** must be surrendered to the **permitting authority**. If only a portion of the **ERC** is used, the amended certificate will be returned to the owner.

(3) **Conditions of use.**

(a) An **ERC** may be used only for the **air contaminants** for which it was issued.

(b) The **permitting authority** may impose additional conditions of use to account for temporal and spatial differences between the **emissions units** that generated the **ERC** and the **emissions units** that use the **ERC**.

(4) **Sale of an ERC.** An **ERC** may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing **authority**. After receiving the certificate, the issuing **authority** shall reissue the certificate to the new owner.

(5) **Redemption period.** An unused **ERC** expires ten years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the **SIP** are required to meet an **ambient air quality standard**, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an **ERC** may be discounted by the **permitting authority** after public involvement according to WAC 173-400-171. This discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

WAC 173-400-151 Retrofit requirements for visibility protection. (1) The requirements of this section apply to an **existing stationary facility**. An **"existing stationary facility"** means a **stationary source** of **air contaminants** that meets all of these conditions:

(a) The **stationary source** must have the potential to emit 250 tons per year or more of any **air contaminant**. **Fugitive emissions**, to the extent quantifiable, must be counted in determining the **potential to emit**; and

(b) The **stationary source** was not in operation prior to August 7, 1962, and was in existence on August 7, 1977; and

(c) Is in one of the following 26 source categories:

Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,	Coke oven batteries,
Coal cleaning plants (thermal dryers),	Sulfur recovery plants,
Kraft pulp mills,	Carbon black plants (furnace process),
Portland cement plants,	Primary lead smelters,
Primary zinc smelters,	Fuel conversion plants,
Iron and steel mill plants,	Sintering plants,
Primary aluminum ore reduction plants,	Secondary metal production facilities,
Primary copper smelters,	Chemical process plants,
Municipal incinerators capable of charging more than 250 tons of refuse per day,	Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
Hydrofluoric, sulfuric, and nitric acid plants,	Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
Petroleum refineries,	Taconite ore processing facilities,
Lime plants,	Glass fiber processing plants, and
Phosphate rock processing plants,	Charcoal production facilities.

(d) For purposes of determining whether a **stationary source** is an existing stationary facility, the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended in the 1977 supplement.

(2) Ecology shall identify each **existing stationary facility** which may reasonably be anticipated to cause or contribute to **visibility impairment** in any **mandatory Class 1 federal area** in Washington and any adjacent state.

(3) For each **existing stationary facility** identified under subsection (2) of this section, ecology, in consultation with the **permitting authority** shall determine **BART** for each **air contaminant** of concern and any additional air pollution control technologies that are to be required to reduce impairment from the **existing stationary facility**.

(4) Each **existing stationary facility** shall apply **BART** as new technology for control of the **air contaminant** becomes reasonably available if:

(a) The **existing stationary facility** emits the **air contaminant** contributing to **visibility impairment**;

(b) Controls representing **BART** for that **air contaminant** have not previously been required under this section; and

(c) The **impairment of visibility** in any **mandatory Class 1 federal area** is **reasonably attributable** to the emissions of the air contaminant.

WAC 173-400-171 Public involvement. (1) **Internet notification of receipt of an application.**

(a) For applications and actions not subject to mandatory public notice and comment period per subsection (2)(a) of this section, the permitting authority will either:

(i) Post on the permitting authority's internet website an announcement of the receipt of notice of construction applications and other proposed actions; or

(ii) Follow the public involvement process found in subsection (3) of this section.

(b) For internet notification, notice shall remain on the permitting authority's website for a minimum of fifteen consecutive days. The internet posting shall include notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(c) Requests for a public comment period shall be submitted to the permitting authority in writing via letter, fax, or electronic mail within fifteen days of its internet posting. A public notice and comment period shall be provided pursuant to subsection (3) and (4) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the 15 day comment period.

(d) Any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section or for which the agency proposes to have a public comment period does not have to be announced on the permitting authorities' internet website.

(2) **Actions subject to public notice and comment.**

(a) The **permitting authority** must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(i) **Notice of construction application** for any **new** or **modified source**, including the initial application for operation of a portable source, if an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any

increase in a pollutant regulated under chapter 173-460 WAC which will increase above the small quantity emission rate listed in WAC 173-460-080 (2)(e) would result; or

(ii) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2004) as part of review under WAC 173-400-110, 173-400-112, 173-400-113, 173-400-117, or 173-400-720; or

(iii) Any **order** to determine **RACT**; or

(iv) An **order** to establish a compliance schedule or a variance; or

(v) An **order** to demonstrate the creditable height of a stack which exceeds the **GEP** formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an **emission limitation**; or

(vi) An **order** to authorize a **bubble**; or

(vii) Any action to discount the value of an ERC issued to a source per WAC 173-400-136(6); or

(viii) Any regulatory order to establish BART for an existing stationary facility; or

(ix) **Notice of construction application** or **regulatory order** used to establish a **creditable emission reduction**;

(x) An **order** issued under WAC 173-400-091 that establishes limitations on a **source's potential to emit**; or

(xi) The original issuance and the issuance of all revisions to a general order of approval issued under chapter 173-400-560 WAC.

(xii) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area, or

(xiii) Exception. PSD actions, including actions taken to avoid PSD applicability, under WAC 173-400-730 and 173-400-740 are not required to follow the procedures in this section. The public involvement for these projects shall follow the procedures in WAC 173-400-730(4) and 173-400-740.

(b) Ecology must provide notice on the following ecology only actions:

(i) A Washington state recommendation that will be submitted by the **director** of **ecology** to **EPA** for approval of a **SIP** revision, including plans for attainment, maintenance, and visibility protection; or

(ii) A Washington state recommendation to **EPA** for designation or redesignation of an area as **attainment**, **nonattainment**, or **unclassifiable**; or

(iii) A Washington state recommendation to **EPA** for a change of boundaries of an **attainment** or **nonattainment** area; or

(iv) A Washington state recommendation to **EPA** for redesignation of an area under WAC 173-400-118.

(c) The permitting authority will provide public notice before approving or denying any application or other action for which the permitting authority determines there is substantial public interest.

(d) A **notice of construction application** designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines. A project designated for integrated review that includes a **notice of construction application** for a **major modification** in a **nonattainment area**, or a **notice of construction application** for a **major stationary source** in a **nonattainment area** must also comply with public notice requirements in this section. A project designated for integrated review that includes a PSD permit application must also comply with the requirements in WAC 173-400-730 and 173-400-740.

(3) **Public notice.** Public notice shall be made only after all information required by the **permitting authority** has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include:

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(i) For a redesignation of a class II area under WAC 173-400-118, **ecology** must make available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation.

(ii) For a revision of the **SIP** subject to subsection (2)(b)(iii) of this section, **ecology** must make available for public inspection the information related to the action at least thirty days before the hearing.

(b) Newspaper publication. Public notice of the proposed project must be published in a newspaper of general circulation in the area of the proposed project and must include:

(i) The name and address of the owner or operator and the facility;

(ii) A brief description of the proposal;

(iii) The location of the documents made available for public inspection;

(iv) A thirty-day period for submitting written comment to the **permitting authority**;

(v) A statement that a public hearing may be held if the **permitting authority** determines within a thirty-day period that significant public interest exists or for those actions listed in WAC 173-400-171 (5)(b) with a mandatory public hearing requirement, the time, date, and location of the public hearing.

(vi) The length of the public comment period in the event of a public hearing;

(vii) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), public notice shall either explain the **permitting authority's** decision or state that an explanation of the decision appears in the support document for the proposed order of approval; and

(viii) For a redesignation of an area under WAC 173-400-118, public notice shall state that an explanation of the reasons for the proposed redesignation is available for review at the public location.

(c) Notifying EPA. A copy of the public notice will be sent to the **EPA** Region 10 regional administrator.

(d) Additional public notice requirements for a **SIP** revision. For a revision to the **SIP** that is submitted by the **director** of **ecology**, **ecology** must publish the public notice required by subsection (3)(b) of this section in the *Washington State Register* in advance of the date of the public hearing.

(4) **Public comment.**

(a) The public comment period must be at least the thirty-day period for written comment specified in the public notice.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The **permitting authority** shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered.

(5) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. The **permitting authority** may hold a public hearing if it determines significant public interest exists. The **permitting authority** will determine the location, date, and time of the public hearing.

(b) **Ecology** must hold a hearing on the following ecology only actions:

(i) A Washington state recommendation to **EPA** that will be submitted by the **director** of **ecology** for approval of a **SIP** revision;

(ii) A Washington state recommendation to **EPA** for a change of boundaries of an **attainment** or **nonattainment** area;

(iii) A Washington state recommendation to **EPA** for designation of an area as **attainment**, **nonattainment**, or **unclassifiable**; and

(iv) A Washington state recommendation to **EPA** to redesignate an area under WAC 173-400-118.

(c) **Ecology** must provide at least thirty days prior notice of a hearing required under subsection (4)(b) of this section.

(6) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

NEW SECTION

WAC 173-400-175 Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205, is available for public inspection at the issuing agency. This includes copies of **notice of construction applications**, **orders**, and applications to **modify** orders.

WAC 173-400-200 Creditable stack height and dispersion techniques. (1) Applicability. These provisions shall apply to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Outdoor burning for agricultural or silvicultural purposes as covered under the smoke management plan;

(e) Residential wood combustion and open burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(2) Prohibitions. No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack which exceeds the greater of:

(i) Sixty-five meters, measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$

where: H_g = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), subject to the proviso below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust

gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(3) Exception. EPA, ecology, or a permitting authority may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the EPA Guideline for Determination of Good Engineering Practice Height (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the state implementation plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced

in the absence of such downwash, wakes, or eddy effects.

NEW SECTION

WAC 173-400-560 General order of approval. In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may apply for coverage under a general order of approval issued under this section. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including non-road engines as defined in section 216 of the federal Clean Air Act, subject to the conditions in this section. A general order of approval shall identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered emission unit or source. At a minimum, these terms and conditions shall include:

(a) Applicable emissions limitations and/or control requirements;

(b) Best available control technology;

(c) Appropriate operational restrictions, such as:

(i) Criteria related to the physical size of the unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria determined by a permitting authority;

(d) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;

(e) Appropriate initial and periodic emission testing requirements;

(f) Compliance with chapter 173-460 WAC, and WAC 173-400-112 (2)(c) or 173-400-113(3) as applicable;

(g) Compliance with 40 CFR Parts 60, 61, 62, and 63; and

(h) The application and approval process to obtain coverage under the specific general order of approval.

(2) **Public comment.** A permitting authority shall provide an opportunity for public comment on a proposed new general order of approval or modification of an existing general order of approval in accordance with WAC 173-400-171.

(3) **Modification of general orders of approval.** A permitting authority may review and modify a general order of approval at any time. Only the permitting authority that issued a general order of approval may modify that general order of approval. Modifications to general orders of approval shall follow the procedures of this regulation and shall only take effect prospectively.

(4) **Application for coverage under a general order of approval.**

(a) In lieu of applying for an individual order of approval under WAC 173-400-110, an owner or operator of an emission unit or source may apply for and receive coverage from a permitting authority under a general order of approval if:

(i) The owner or operator of the emission unit or source applies for coverage under a general order of approval in accordance with this regulation and any conditions of the approval related to application for and granting coverage under the general order of approval;

(ii) The emission unit or source meets all the qualifications listed in the requested general order of approval;

(iii) The requested emission unit or source is not part of a new major stationary source or major modification subject to the requirements of WAC 173-400-112 or 173-400-720; and

(iv) The requested emission unit or source does not trigger applicability of the operating permit program under chapter 173-401 WAC or trigger a required modification of an existing operating permit.

(b) Owners or operators of emission units or sources applying for coverage under a general order of approval shall do so using the forms supplied by a permitting authority and include the required fee. The application must include all information necessary to determine qualification for, and to assure compliance with, a general order of approval.

(c) An application shall be incomplete until a permitting authority has received any required fees.

(d) The owner or operator of a new source or modification of an existing source that qualifies for coverage under a general order of approval may not begin actual construction of the new source or modification until its application for coverage has been approved or accepted under the procedures established in WAC 173-400-560(5).

(5) **Processing applications for coverage under a general order of approval.** Each general order of approval shall include a section on how an applicant is to request coverage and how the permitting authority will grant coverage. The section of the general order of approval will include either the method in subsection (5)(a) or (b) of this section to describe the process for the applicant to be granted coverage.

(a) Within thirty days of receipt of an application for coverage under a general order of approval, the permitting authority shall notify an applicant in writing that the application is incomplete, approved, or denied. If an application is incomplete, the permitting authority shall notify an applicant of the information needed to complete the application. If an application is denied, the permitting authority shall notify an applicant of the reasons why the application is denied. Coverage under a general order of approval is effective as of the date of issuance of approval by the permitting authority.

(b) The applicant is approved for coverage under the general order of approval <u>31 days after an application for coverage is received by the permitting authority,</u> unless the owner or operator receives a letter from the permitting authority, postmarked within thirty days of when the application for coverage was received by the permitting authority, notifying the owner or operator that the emissions unit or source does not qualify for coverage under the general order of approval. The letter denying coverage shall notify the applicant of the disqualification and the reasons why coverage is denied.

(6) **Termination of coverage under a general order of approval.** An owner or operator who has received approval of an application for coverage under a general order of approval may later request to be excluded from coverage under that general order of approval by applying to the same permitting authority for an individual order of approval, under WAC 173-400-110, or for coverage under another general order of approval. If the same permitting authority issues an individual order of approval or other permit or order serving the same purpose as the original general order of approval, or approves coverage under a different general order of approval, coverage under the original general order of approval is automatically terminated, effective on the effective date of the individual order of approval, order or permit or new general order of approval.

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement action for establishment of a new source in violation of WAC 173-400-110 if a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

PERMITTING OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS TO MAJOR STATIONARY SOURCES

NEW SECTION

WAC 173-400-700 Review of major stationary sources of air pollution. (1) The following sections are to be used by ecology when reviewing and permitting new major stationary sources and major modifications to major stationary sources located in attainment or unclassified areas in Washington.

(2) WAC 173-400-700 through 173-400-750 apply statewide except:

(a) Where the authority has received delegation of the federal PSD program from EPA or has a SIP approved PSD program.

(b) To projects under the jurisdiction of the energy facility site evaluation council site certification process pursuant to chapter 80.50 RCW.

(c) Applications or requests to designate an emissions unit as a Clean Unit under 40 CFR 52.21(y), to permit a Pollution Control Project under 40 CFR 52.21(z)(5), or to establish an actuals Plantwide Applicability Limit under 40 CFR 52.21(aa) shall be processed by the authority where the authority has received delegation from EPA to administer the relevant alternative PSD applicability tests.

(3) The construction of a major stationary source or major modification subject to the permitting requirements of the following section might also be subject to the permitting program in WAC 173-400-110.

NEW SECTION

WAC 173-400-710 Definitions. (1) The definitions in WAC 173-400-030 are to be used in WAC 173-400-700 through 173-400-750 unless:

(a) A term is defined differently in WAC 173-400-710 for use in the major source permitting requirements in WAC 173-400-700 through 173-400-750; or

(b) A term is defined differently in the federal program requirements adopted by reference in WAC 173-400-720.

(2) All usage of the term "source" in WAC 173-400-710 through 173-400-750 and in 40 CFR 52.21 as adopted by reference is to be interpreted to mean "stationary source" as defined in 40 CFR 52.21(b)(5) as modified by section 302(z) of the Federal Clean Air Act. A stationary source (or source does not include emissions resulting directly from an internal combustion engine for transportation purposes for from a nonroad engine or nonroad vehicle as defined in section 216 of the federal Clean Air Act.

NEW SECTION

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply shall begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the **PSD** permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) Allowable emissions from the proposed major stationary source or major modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed major stationary source or the projected impact of the increase in allowable emissions from the proposed major modification at any location within a nonattainment area does not exceed the following levels for the pollutants

for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-		0.5 mg/m^3	-	2 mg/m^3
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$	-	25 $\mu g/m^3$	30 $\mu g/m^3$
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	-	-	-
NO_2	1.0 $\mu g/m^3$	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-730 - Prevention of significant deterioration application processing;

(iv) WAC 173-400-740 - Prevention of significant deterioration public involvement requirements; and

(v) The following subparts of 40 CFR 52.21, in effect on July 2, 2004, which are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

Section	Title
40 CFR 52.21(a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions.
40 CFR 52.21 (c)	Ambient air increments.
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.
40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
40 CFR 52.21 (r)	Source obligation.

40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
40 CFR 52.21 (x)	Clean unit test for emission units subject to BACT or LAER.
40 CFR 52.21 (y)	Clean unit test for emission units that achieve an emission limitation comparable to BACT.
40 CFR 52.21 (z)	Pollution Control Project exclusion.
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.
40 CFR 52.21 (bb)	Severability clause.
40 CFR 52.21 (cc)	Equipment replacement provisions.

(b) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (o) of this section, paragraph (r) of this section, WAC 173-400-117, 173-400-730, and 173-400-720."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21 (r)(6) “The provisions of this paragraph of 40 CFR 52.21(r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 40 CFR 52.21(b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21(b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 CFR 52.21(r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21(r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c), by a significant amount (as defined in paragraph 40 CFR 52.21(b)(23) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph 40 CFR 52.21 (r)(6)(iii); and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

(D) 40 CFR 52.21 (r)(7) The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).

(E) 40 CFR 52.21 (y)(7) Procedures for designating emissions units as Clean Units. Ecology shall designate an emissions unit a Clean Unit only by issuing a regulatory order issued under the authority of WAC 173-400-091 or (when requested by

the applicant as part of its NOC application) in an order of approval issued under WAC 173-400-110, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment and when WAC 173-400-091 is used to designate a Clean Unit, a demonstration that the ambient air quality impact limitations of WAC 173-400-113 (1) through (3) will be required. Such permit must also meet the requirements in paragraph 40 CFR 52.21 (y)(8).

(F) 40 CFR 52.21 (z)(5) Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs 40 CFR 52.21 (b)(32)(i) through (vi), the project must be approved by ecology and included in an order of approval issued by ecology pursuant to the requirements in WAC 173-400-110, and/or WAC 173-400-091, following opportunity for public comment as provided for in those sections. When WAC 173-400-091 is used to approve a PCP, a demonstration that the ambient air quality impact limitations of WAC 173-400-112(2) and/or WAC 173-400-113 (1) through (3) will be required.

(G) 40 CFR 52.21 (z)(6)(iii) Permit requirements. The owner or operator must comply with any provisions in the order of approval or other order issued for the project related to use and approval of the PCP exclusion.

(H) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source.

(I) 40 CFR 52.21 (aa)(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740.

(J) 40 CFR 52.21 (aa)(9)(i)(b) Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate.

(K) 40 CFR 52.21 (aa)(14) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii).

(L) 40 CFR 52.21 (aa)(14)(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3).

NEW SECTION

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) **Application submittal.**

(a) The applicant shall submit an application that provides complete information adequate for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for requests for a Clean Unit designation under 40 CFR 52.21(y), a pollution control project exemption under 40 CFR 52.21(z) or the initial request, renewal or expiration of a PAL under 40 CFR 52.21(aa) shall be done as provided in WAC 173-400-720 (4)(b)(iii).

(2) **Application processing.**

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) Within one year after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) As expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) The effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

NEW SECTION

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit.

(2) **Notification of the public.** Within one year of the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or for a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public by:

(i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty-day comment period.

(ii) If ecology grants a request to extend the public comment period, the extension notice must also be published in a newspaper as noted above and a copy of the extension notice sent to the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii) If a hearing is held, the public comment period must extend through the hearing date.

(iv) The applicant or other initiator of the action must pay the cost of providing public notice.

(c) Send a copy of the public notice to:

(i) Any Indian Governing Body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Send a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected Federal Land Manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC;

(v) Individuals or organizations who request a copy; and

(vi) The location for public inspection of material required under (a) of this subsection.

(3) **Public notice content.** The public notice shall contain at least the following information:

(a) The name and address of the applicant;

(b) The location of the proposed project;

(c) A brief description of the project proposal;

(d) The preliminary determination to approve or disapprove the application;

(e) How much increment is expected to be consumed by this project;

(f) The name, address, and telephone number of the person to contact for further information;

(g) A brief explanation of how to comment on the project;

(h) An explanation on how to request a public hearing;

(i) The location of the documents made available for public inspection;

(j) There is a thirty-day period from the date of publication of the notice for submitting written comment to ecology;

(k) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;

(l) The length of the public comment period in the event of a public hearing;

(m) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where the Ecology disagrees with the analysis done by the Federal Land Manager, the Ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) Public hearings.

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same locations where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination shall include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall mail a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal;

(ii) Other individuals who requested notification of PSD permits.

(c) A copy of the final determination shall be sent to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC;

(vi) Any person who commented on the preliminary determination; and

(vii) The location for public inspection of material required under subsection (2)(a) of this section.

NEW SECTION

WAC 173-400-750 Revisions to PSD permits. (1) The owner or operator may request, at any time, a change in conditions of a PSD permit and ecology may approve the request provided ecology finds that:

(a) The change in conditions will not cause the source to exceed an emissions standard established by regulation;

(b) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

(c) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(d) The revised PSD permit will continue to require BACT, as defined at the time of the original PSD permit, for each new or modified emission unit approved by the original PSD permit; and

(e) The revised PSD permit continues to meet the requirements of WAC 173-400-112(2), and 173-400-113, as applicable.

(2) A request to revise a PSD permit must be acted upon using the timelines found in WAC 173-400-730. The fee schedule found in WAC 173-400-116 shall also apply.

(4) All revisions to PSD permits are subject to public involvement except for the following administrative revisions:

(a) Change of the owner or operator's business name and/or mailing address;

(b) Corrections to typographical errors;

(c) Revisions to compliance monitoring methods that do not reduce the permittee's or ecology's ability to determine compliance with the emission limitations; or

(d) Any other revision that does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.