



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-400 WAC
General Regulations for Air Pollution
Sources

Summary of rule making and response to comments

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Concise Explanatory Statement

Chapter 173-400 WAC General Regulations for Air Pollution Sources

Air Quality Program
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Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: General Regulations for Air Pollution Sources
WAC Chapter: 173-400
Adopted date: March 1, 2011
Effective date: April 1, 2011

To see more information related to this rule making or other Ecology rule makings please visit our web site: www.ecy.wa.gov/lawsandrules.

Reasons for Adopting the Rule

Washington Clean Air Act, Chapter 70.94 RCW

Washington's Clean Air Act was first enacted by the state legislature in 1957. The Act has been periodically amended since that time. The most significant amendments that affect the activities covered by this rule occurred in 1965, 1971, and 1991.

The Act directs Ecology to establish rules to implement the state clean air act programs and requirements. These rules apply statewide, except where a local clean air agency has implemented its own rules that are at least as stringent as Ecology's. The Act's intent is that local clean air agencies and Ecology are primarily responsible for implementing programs and rules to control air pollution.

In addition to the state Clean Air Act's requirements, the federal Clean Air Act and regulations require Ecology to have in place specific programs and requirements to protect air quality. Portions of this rule are specific to fulfilling those federal requirements.

General Air Pollution Regulations and New Source Review

Washington's Clean Air Act and the rules developed to implement it require new and modified sources of air pollution to be permitted through Ecology's New Source Review Program.

There are six air pollutants which have federal National Ambient Air Quality Standards (NAAQS), commonly known as "criteria air pollutants:"

- Carbon monoxide
- Sulfur dioxide
- Ozone
- Nitrogen oxides
- Lead
- Particulate matter

Additional air pollutants are named and regulated under both state and federal air quality laws and regulations.

Reason for this rule proposal

The General Regulation for Air Pollution Sources (Chapter 173-400 WAC) is a major part of the groundwork for Washington's program to meet National Ambient Air Quality Standards and protect air quality. The rule includes a number of programs, such as the new source review program for major and minor sources in attainment, unclassifiable, and nonattainment areas. A nonattainment area is an area of the state where air pollution levels do not meet EPA's standards. The proposed amendments contain new language regulating new sources and modifications of major sources in nonattainment areas.

The proposed amendments to Chapter 173-400 WAC will:

- Make the rule consistent with the EPA's current new source review requirements
- Support Ecology's revision to the State Implementation Plan (SIP)
- Simplify the permitting for portable sources and emergency electric generators

The state will prepare and submit to EPA a request to amend the Washington State Implementation Plan (SIP). For EPA to approve revisions to the SIP, Ecology's rule must meet specific requirements of the Clean Air Act and EPA rules. Once EPA approves a SIP, EPA and citizens may enforce the SIP rules, requirements, and commitments in federal court.

Chapter 173-400 WAC contains requirements for:

- New source review
- Adoption of federal new source performance standards, emission guidelines, and national emission standards for hazardous air pollutants
- Unavoidable excess emissions
- Stationary source permitting
- Stationary source permitting for nonattainment new source review
- Registration of sources that are not required to have air operating permits

- Particulate matter: Updating PM_{2.5} rules
- National Ambient Air Quality Standards
- Non-road engines
- Portable source relocation
- Emergency engines

New source review

The current rule requires permitting of new and modified sources of air pollution and defines levels of criteria air pollutants that are exempt from minor new source review requirements. Sources that emit below the levels are exempt from program requirements for criteria air pollutants. The current rule contains exemption limits (basically, de minimis limits) for:

- Carbon monoxide
- Nitrogen oxides
- Sulfur dioxide
- Total suspended particulates
- Lead
- Fine particulate PM₁₀
- Volatile organic compounds

The proposed rule adds de minimis emission rates for fine particulate matter (PM_{2.5}), and for greenhouse gases. New sources would be required to calculate emissions rates for the listed air pollutants and compare them to the de minimis emission rates. If all emissions are below the de minimis rates, then the project would be exempt from registration program requirements.

Washington's proposed greenhouse gas de minimis emission rate IS 75,000 tons per year. It is expressed as carbon dioxide equivalent (CO₂e), and is made up of the following greenhouse gases:

- Carbon dioxide (CO₂)
- Methane (CH₄)
- Nitrous oxide (NO₂)
- Hydrofluorocarbons (HFCs)
- Perfluorocarbons (PFCs)
- Sulfur hexafluoride (SF₆)
- Any other gas or gases designated by Ecology in WAC 173-441

The proposed rule separates the applicability requirements contained in WAC 173-400-110 from the permit application processing requirements. These requirements are now contained in a new section, WAC 173-400-111.

Adoption of new source performance standards, emission guidelines, and national emission standards for hazardous air pollutants

The current rule incorporates a large number of federal performance standards by reference. The proposed rule updates the date used to incorporate these standards from October 2006 to July 2010. Portions of 40 CFR Part 63 that apply to major stationary sources of hazardous air pollutants are adopted by reference. Portions of 40 CFR, part 63 that apply to the following area sources are adopted:

- Primary and secondary copper smelting
- Primary nonferrous meta
- Pressed and blown glass manufacturing
- Stainless and non-stainless steel manufacturing
- Hazardous waste incineration
- Mercury cell chlor-alkali plants
- Portland cement
- Secondary lead smelting

The proposed rule also updates the emissions standards for perchloroethylene drycleaners to keep the state rule in compliance with federal rules.

Unavoidable excess emissions

In 1982 and 1999, EPA issued policy memos regarding excess emissions (those emissions greater than any applicable emission standard or permit limitation) that may occur during maintenance, startup and shutdown activities, of malfunctions. State law also includes a requirement to excuse certain occurrences of these excess emissions. The current regulation contains provisions that conform to the state law and the 1982 EPA guidance.

In this proposed rule, Ecology is proposing to delete the current section on excess emissions, WAC 173-400-107, and replace it with two new sections that more closely conform to the 1999 EPA guidance: WAC 173-400-108 and 109. This is proposed to address EPA's concerns with the current rule section. The replacement sections on unavoidable excess emissions do not come into effect until EPA adopts them into the SIP as a replacement for the current section.

Stationary source permitting: Prevention of significant deterioration and greenhouse gas tailoring rule

The current rule adopts, by reference, some of the sections of the federal Prevention of Significant Deterioration (PSD) program. The current rule is based on the Federal Implementation Plan rule language effective in 2007.

The proposed rule updates the adoption by reference date to specifically include the PSD program aspects of the "Tailoring Rule," PM_{2.5} emissions permitting requirements, and PSD increments for PM_{2.5}.

EPA's greenhouse gas emission rate thresholds temporarily "tailor" that permit program to limit which facilities would be required to get new source review permits. By not requiring PSD permits

for very small sources of criteria pollutants, EPA's "tailoring rule" covers those sources responsible for nearly 70 percent of the national greenhouse gas emissions that come from stationary sources. These include emissions from the nation's largest emitters - power plants, refineries, and cement production facilities.

Ecology will submit the state PSD program rule sections to EPA for approval into the SIP, eliminating the existing delegated PSD permitting program.

Stationary Source Permitting: Nonattainment New Source Review

The current rule text in section WAC 173-400-112 covers permitting of sources located in nonattainment areas. The current requirements were established in 1992 and are significantly out of date with the many changes that have occurred since 2000. The proposed rule deletes this entire section and replaces it with sections WAC 173-400-800 – 850. The new sections conform to the current EPA program requirements.

When there were no nonattainment areas in Washington, there was no reason to update these nonattainment area permitting provisions. Since there is now the Wapato Hills nonattainment area, this rule revision is an important segment of the state implementation plan that Ecology will submit to EPA to bring that area into compliance with the NAAQS.

Particulate matter: Updating PM_{2.5} rules

New rule language addressing PM_{2.5} has been added in several subsection of the rule, including the following:

- WAC 173-400-030 Definitions: The definition of "Emission threshold" has been updated.
- WAC 173-400-102 Registration and reporting requirements: If PM 2.5 emissions are at or below 0.5 tons per year, then registration is not required.
- WAC 173-400-110 New source review: If the potential to emit PM_{2.5} is below 0.5 tons per year, then the emissions are exempt from NSR.
- WAC 173-400-113 Threshold values for impacts on a nonattainment area:
 - Annual average: M_{2.5} 0.3 micrograms/m³.
 - 24-hour average: 1.2 micrograms /m³.
- WAC 173-400-116 Increment protection: Adopt EPA's amended PSD increment rule by reference as published as final rule on October 20, 2010.
- WAC 173-400-810 Major stationary source definitions:
- (24)(a) Regulated new source review pollutant: PM 2.5
- (26) Significant means: PM 2.5

National Ambient Air Quality Standards

EPA has established National Ambient Air Quality Standards (NAAQS) for criteria pollutants to protect human health and welfare. There are many other air pollutants that are directly or indirectly hazardous to human health. These air pollutants include a number of toxic air pollutants and greenhouse gases.

The rule revisions address PM_{2.5} in several sections. EPA published a new federal rule on October 20, 2010 that addresses particulate matter and prevention of significant deterioration. In response to this new federal rule and other federal updates that have been put in place since the last amendments, Chapter 173-400 WAC includes updates for PM_{2.5}.

Non-road engines

The current rule addresses the approval to locate and operate non-road engines under the provisions for portable and temporary sources. EPA believes our current permitting approach based on the current process in WAC 173-400-035 is illegal under the federal Clean Air Act. The existing text in WAC 173-400-035 would be replaced in its entirety with a new section addressing the operation of non-road engines. This subsection would not change the definition of what a nonroad engine is, but would make it clear that, in Washington, only certain types of non-road engines are regulated. It would also clarify that in Washington the regulatory authority over non-road engines is limited.

The purpose of this provision is twofold. First, it would merge the authority granted in state law to regulate emissions from sources with the limitation in the Federal Clean Air Act on permitting of nonroad engines. Second, it would ease the regulatory burden on applicants. Applicants would no longer be required to notify air agencies of non-road engines with a cumulative brake horse power (BHP) equal to or less than 500. For facilities with a cumulative BHP between 500 and 2,000, notification and record keeping would be required, but no permitting would be needed.

For facilities with a cumulative BHP greater than 2,000 for non-road engines, the applicant would need to notify the local permitting authority of their intent to operate, but the review period and review criteria would be limited.

Portable source relocation

WAC 173-400-036, Relocation of Portable Sources, is a new regulatory provision introduced in this proposed rule. The purpose of this section is to allow stationary portable sources to move from the jurisdiction of one air agency to the jurisdiction of another air agency without having to acquire a new notice of construction.

Local permitting authorities are not required to participate in the relocation program and may continue to require a new permit or approval when a portable source operates in their jurisdiction. Likewise, applicants may always choose to obtain a new permit instead of transferring an existing permit to a new location.

The intent of this provision is to ease the regulatory burden on applicants while still protecting air quality. Relocation would be allowed within fifteen days after the applicant gives notice. This can get a piece of equipment on the job weeks sooner than if a new permit is required.

Emergency engines

WAC 173-400-930, Emergency Engines, is a new regulatory provision introduced in this proposed rule. It allows for unlimited use of emergency generators and engines during emergencies; however the engines must meet specific federal engine emission standards and the hours used to maintain and test each engine cannot exceed 50 hours per year.

This provision would establish an alternative to Second Tier Review for the installation of certified diesel-powered emergency generators. The purpose is to limit the health impacts of emergency generator emissions while reasonably assuring the protection of human health.

If the requirements of this rule section do not fit a particular situation, the option of applying for a Second Tier Review would always be available.

If a source owner or operator meets the requirements of WAC 173-400-930 the time and cost to install the emergency engines would be reduced. The standard review procedure for engines with toxic air pollutant emissions in excess of the Acceptable Source Impact Level (ASIL) is a site specific Second Tier Review, a process that can take several months and cost thousands of dollars to complete. Ecology has set parameters that would allow for the installation of emergency engines without requiring a site-specific Second Tier Review.

These parameters assure the protection of human health and reduce the permitting burden on both sources and permitting agencies.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(b)(ii) requires Ecology to 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, stating the reasons for the differences.

There are some differences between the proposed rule filed on October 6, 2010 and the adopted rule filed on March 1, 2011. Ecology made these changes for all of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them. Where a change was made solely for editing or clarification purposes, we did not include it in this section.

Chapter 173-400 WAC was updated to incorporate changes to PSD increments. This was published as a final rule in 40 CFR 52.21 of the Federal Register on October 20, 2010, after Washington's proposed rule was published. During the stakeholder process, Ecology clearly announced our intention to make these updates before adopting a final rule. Reference dates throughout the rule were updated to capture these updates.

- WAC 173-400-030, Definitions. The provision to except Tertiary-butyl acetate from this list of Volatile organic compounds was amended to match the federal definition of VOC:

“The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: Tertiary-butyl acetate.”

The change complies with EPA regulations and was requested in a public comment.

- WAC 173-400-036, Relocation of portable sources. The provision was changed to accommodate a stakeholder request for clarification that nonroad engines subject to regulation under WAC 173-400-035 are not subject to regulation as portable sources. EPA requested that relocated stationary sources be limited to some specific time period. In keeping with the existing provisions of WAC 173-400-035, Portable and temporary sources, the duration was set for a maximum of one year.
- WAC 173-400-075. When the list of specific area sources of hazardous air pollutants was updated, three sources were inadvertently left off the listing. EPA noted their absence and requested that we add these sources to comply with federal regulations:
 - MMMMM, Carbon black production
 - NNNNNN, Chromium compounds
 - VVVVV, Chemical manufacturing for synthetic minors
- WAC 173-400-105(8). The CR 102 contained new requirements for continuous emission monitoring systems. The criteria for measuring opacity had inadvertently been omitted. These criteria are added in WAC 173-400-105(8) as are the criteria for measuring emissions other than opacity.
- WAC 173-400-108. In response to comments about a facility’s need to respond to an excess emissions episode with an urgency that may leave little time for procedural actions, the requirement for reporting the excess emissions has been revised. The final rule requires that excess emissions which represent a potential threat to human health or safety must be reported as soon as possible, but in no case later than twelve hours after the excess emissions were discovered.
- WAC 173-400-109 In response to a comment from the EPA, explanatory text was added to the rule to clarify that in a federal enforcement case concerning excess emissions, the court will consider the initial decision made by the permitting authority, but is not bound by that decision.
- WAC 173-400-110. Paragraph (2) notes the approval criteria for new source review. In response to a comment, the regulatory language was simplified and brought into compliance with federal regulations.

- WAC 173-400-110.(5) In response to a comment, new regulatory language was added that makes it clear that an applicant can request emission limits on greenhouse gases.
- WAC 173-400-111 The EPA requested that the rule state the minimum information that must be provided in a new source review application. This information was inserted into the rule.
- WAC 173-400-116. Section 400-116 regulates increment protection. This section has no effect until it is adopted into the State Implementation Plan by the EPA. The amended language clarifies this applicability criteria and states that Ecology is obligated to periodically review the increment consumption.
- WAC 173-400-131. The proposed language in the CR102 stated that the emission reduction credit must be less than the actual reduction, but there were no criteria stating the minimum difference. Rule language has been added to clearly state the minimum difference between the reduction and the credit.
- WAC 173-400-720. Paragraph (4) lists the permit requirements for approval of a PSD permit. Rule language has been added to reference the federal new source performance standards, the national emission standards and the state emission standards that must be complied with.
- WAC 173-400-720. Paragraph (4)(b) lists the exceptions to 40 CFR 52.21 which is adopted by reference. New rule language was added to (4)(b)(iii)(D) that clarifies when fugitive emission must be monitored.
- WAC 173-400-730(2)(d). The new rule language recognizes that one set of procedures is effective before the WAC 173-400-700 series is adopted into the SIP and another set of procedures is effective after the series has been adopted into the SIP.
- WAC 173-400-820(5). When the rule language was proposed, paragraph (5), Reasonable possibility, contained section (f) that set out specific criteria for determining what constitutes a “reasonable possibility”. This section has been deleted in response to a comment.
- WAC 173-400-840. Emission offset requirements are detailed in the 800 section. At the request of the EPA, a new paragraph was added. The new paragraph (8) references an EPA policy on the control of volatile organic compounds.
- WAC 173-400-930. Emergency engine provisions are detailed in section 930. In response to a comment, the list of activities that qualify as maintenance and testing has been expanded to include operation of an engine to meet the warrantee and maintenance procedures established by the engine manufacturer.

Response to Comments

Description of comments:

Ecology has summarized and edited some of the comments in this section for clarity. You can see the original content of the comments we received in Appendix A of this document.

Commenter identification:

Ecology accepted comments between October 6, 2010 and November 12, 2010. This section provides summarized comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii))

General comments on Chapter 173-400 WAC

Concerned Citizens of the Yakama Reservation, Comment: Is Concentrated Animal Feeding Operation pollution being addressed with Ecology?

Response: The Department of Ecology does regulate Concentrated Animal Feeding Operations. These operations are subject to regulation if their regulated emissions reach specified thresholds. Please note that the Yakima Regional Clean Air Agency is the permitting authority for operations in Yakima County. You can contact them at (509) 834-2050.

USDOE, Comment #14, WAC 173-400 General

Due to the complexity and size of this rule, it is difficult to know which terms/words have specific definitions in WAC 173-400-030. A mechanism to highlight these words, terms or phrases would be useful. Revise the presentation of the rule language to bold (or other clearly distinguishing presentation) those words, terms and/or phrases for which there is a definition in WAC 173-400-030.

Response: Past versions of Chapter 173-400 WAC did bold the defined terms throughout the rule text. This practice proved to be distracting to many readers, didn't always correctly identify the usage of the defined term, and was difficult to keep updated. The bolding of defined words has been eliminated due to the number of adverse comments received from rule users.

Shall and must

Several comments were submitted about the use of "shall" and "must". It is Ecology's intent to retain "shall" in all citations that are copied from federal regulations and in those places where the phrase "has a duty to" can be substituted for "shall". "Must" is the most common substitution and is used in those situations where substituting "has a duty to" for "shall" creates an implausible situation. "Shall" and "must" both indicate mandatory actions.

Because this rule has been created by a variety of rule writers over several years it reflects a diversity of writing styles. This revision continues that pattern. Only a portion of the rule has been opened and the scope of revisions was often restricted within the open sections. We did not make a comprehensive update of the rule and as a result, not all occurrences of "shall" were analyzed.

Legally enforceable/Enforceable/Federally enforceable

The Boeing Company commented on the definition of and usage of the term "federally enforceable" and suggested its nearly universal replacement by a new term "legally enforceable". See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal

enforceability requirement of the PTE definitions in EPA's *See, also e.g.*, 57 Fed. Reg. 14352 (March 25, 2010) (Direct final rule approving a revision to the Michigan SIP) ("On September 11, 2008, MDEQ adopted the revised rule, at the State level, to include in the definition of "potential to emit" the condition that a limitation must be "enforceable as a practical matter by the State, local air pollution control agency, or United States environmental protection agency." The revised definition is consistent with the definition in 40 CFR 51.166(b)(4) and with the Interim Policy dated January 22, 1996."

Boeing proposed the use of a new term "Legally enforceable" as a replacement definition. The commenter proposes a number of substitutions of "federally enforceable" with "Legally enforceable" throughout the body of the proposed rule where they believe it is appropriate to make the change.

Response: Ecology has reviewed the reference court cases and EPA guidance and regulations. Based on our review, we have chosen to not delete the definition of "Federally enforceable" Ecology has consulted with our AAG in developing our changes in using the term "Federally enforceable". It retains legal value within a number of contexts related to nonattainment areas and emission offsets. Instead of adding a new definition for "Legally enforceable" to replace most instances of "Federally enforceable", Ecology has simply deleted the word "Federally" in those locations where, based on EPA guidance documents and the requirements of federal law, we have determined Federal enforceability is not required. In some instances, Ecology has retained the term "Federally enforceable" where the requirements of law and the guidance are unclear.

Comments on WAC 173-400-030, Definitions.

EPA Comment #1. WAC 173-400-030(27). A comma appears to be missing between "equipment" and "work practice."

Response: The comma has been inserted.

EPA Comment #2. WAC 173-400-030(28): How does Ecology consider precursors to the pollutants listed in this definition? Note that for SIP approved programs, Ecology must consider pollutants that have been identified by the Administrator as precursors to NAAQS pollutants in determining whether the construction of new sources and modifications, both major and minor, assure attainment and maintenance of the NAAQS and, as applicable, PSD increments.

Response: This definition is not utilized in any new source review context. As a result, Ecology does not consider any need to spell out precursor pollutant issues. The annual emission rates are used to denote classes of registration program sources and which Notice of Construction projects are subject to mandatory public involvement. The only other place where the phrase 'emissions threshold' is used is in the nonattainment NSR section where it refers to a specific set of criteria within those sections.

Coalition (represented by Matt Cohen) Comment #1. Definition (35) *Federal land manager*
This definition should track the definition of "Federal Land Manager" found in EPA's major NSR rules, 40 CFR 51.165(a)(1)(xlili) and 51.166(b)(24). The additional text in Ecology's definition modifies or editorializes on the delegation schemes of various federal agencies, and conflicts with WAC 173-400-730(1), which directs PSD permit applicants to send copies of their application to the only two FLMs that EPA cares about: The Forest Service and the National Park Service.

Response: The definition of “Federal land manager” has been edited as suggested.

EPA Comment #3, Weyerhaeuser Comment #1, TBC #4, and Coalition #2. Definition (42) Greenhouse gases. In order to avoid confusion with EPA’s requirements for major source new source review, this WAC 173-400 definition should mirror the EPA definition of greenhouse gases.

Response: The definition of greenhouse gas has been edited as follows:
"Greenhouse gases (GHGs)" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

EPA Comment #4. WAC 173-400-030(45) Lowest achievable emission rate. Should the 2nd and 3rd sentences of subsection (b) be a new paragraph such that they apply to both (a) and (b)?

Response: This definition has been deleted in favor to the definition within the nonattainment NSR program requirements in WAC 173-400-810. For any usage of the term LAER within this rule, we will use the definition in that section.

Weyerhaeuser Comment #2 and the Coalition #3. Definition (54) New Source – Ecology proposes to add the words “installation” and “establishment” as subjects in this definition. The regulatory value of this proposed modification is not obvious. Unless it is compelling, it would be better for Ecology to retain the new source definition appearing in the Washington Clean Air Act.

Response: The definition of “new source” as contained in Chapter 70.94 RCW, Washington Clean Air Act, has been retained.

EPA Comment #5. Definition (72) PM_{2.5} emissions. Should the reference to 40 CFR Part 53 be to 40 CFR Part 51?

Response: The reference has been corrected. It now reflects 40 CFR Part 51.

Puget Sound Clean Air Agency Comment #7. Definition of PM_{2.5} and PM_{2.5} emissions.

We understand the challenge created by the fact the EPA has not finalized a PM-2.5 emission test method to be used for their new source review programs. However, clarity is needed on what definitions/methods will be used and where it will be cited when EPA finalizes its test method decisions. Also, to the extent possible, definitions/methods should be consistent between NOC, PSD, and nonattainment new source review transactions..

Response: EPA’s emission test methods for PM₁₀ and PM_{2.5} became effective on January 1, 2011. While not specifically included in the adoption by reference of 40 CFR Part 51 stack test methods in WAC 173-400-105(4), we expect that permits requiring monitoring of PM_{2.5} will reference the appropriate text methods in 40 CFR Part 51, Appendix M.

Coalition Comment #4. Definition (79) Regulatory order. RCW chapters 80.70 and 80.80 address GHG emissions from fossil fuel power plants. The programs established by those chapters are not part of Ch. 70.94, and the legislature established in those chapters the administrative vehicles for Ecology and EFSEC to accomplish the objectives of those chapters. The implementation vehicles for CO₂ mitigation under Ch. 80.70 RCW include a new source review approval order issued under RCW 70.94.152, but not a regulatory order.

Response: The references to Chapter 80.70 and 80.80 RCW have been deleted from the definition of “regulatory order”.

TBC Comment #6. Definition (79) Regulatory order.

We request the definition be clear that regulatory orders include those used to create synthetic minor status. The commenter provided text that would provide this additional clarity.

Response: Ecology has not made the requested change. The general language in (a) of the definition provides the necessary coverage.

Coalition Comment #5. Definition (80) "Secondary emissions". It's time for Ecology to conform its definition of the technical term “secondary emissions” to the form used by EPA in both its nonattainment NSR rules, 40 CFR 51.165(a)(1)(viii) and its PSD rules, 40 CFR 51.166(b)(18). We recognize that a 1984 court decision qualified the exemption for vessels in this definition, but EPA has not yet seen fit to amend its definition, and Ecology should track EPA's definition until EPA gets around to updating its own rules. The definition in WAC 173-400-030 should be amended, because it defines “secondary emissions” more broadly than EPA would, even after revision to account for the holding in *NRDC v. EPA*, 725 F.2d. 761 (D.C.Cir. 1984).

TBC Comment #7. Definition (80) "Secondary emissions".

This definition does not match 40 CFR 52.21(b)(18). What is this definition used for in light of the fact that the PSD regulations in WAC 173-400-720 have their own definition of “secondary emissions”? (See WAC 173-400-720(4)(a)(vi)).

Response: Ecology has retained its longstanding definition of “Secondary Emissions”. The language is modified from the federal PSD program definition of the term and conforms to the court decision on the coverage of the definition and EPA guidance on how this definition should be written to conform to that court decision. This definition is used in determining which emissions are associated with a project and must be modeled for ambient air quality impacts.

Kowa American Corp. Comment. Definition (96) “Volatile organic compound.” Kowa American Corp. would like to ask the Washington Department of Ecology to exempt the solvent Dimethyl Carbonate as a VOC in your state.

Response: Dimethyl carbonate is listed as a compound that is not a volatile organic compound (VOC) in WAC 173-400-030(96).

EPA Comment #6. WAC 173-400-030(96). Ecology's definition of VOC does not appear to be consistent with EPA's definition in 40 CFR 51.200(s). The revision adds in "tertiary-butyl acetate" to section (a) which is an exclusion-but then omits 40 CFR 51.200(s)(5), which states that that chemical has to be counted for recordkeeping, reporting, and modeling but not for an emission limit. So it appears that EPA provided a limited exclusion for this chemical whereas Ecology is proposing a complete exclusion.

Response: The final text has been revised to incorporate the federal language describing the treatment of the compound. That language addresses "tertiary-butyl acetate has to be counted for recordkeeping, reporting, and modeling, but not for an emission limit.

Comments on WAC 173-400-035, Nonroad engines.

Puget Sound Clean Air Agency: Comment #1.

“The current rule states, “This section applies statewide except where an authority has its own rule regarding such sources.”

The proposed nonroad engine provisions, WAC 173-400-035(2) (a), “Nonroad engines are not subject to: New source review.” conflicts with SEPA.

Response: WAC 173-400-020 Applicability, states in paragraph (2), “An authority may enforce this chapter and may also adopt standards or requirements.” This applicability statement applies to all subsection of Chapter 173-400, except for those provisions that are specifically reserved for Ecology such as WAC 173-400-118 and WAC 173-400-700 through 750.

Ecology recognizes that PSCAA has a different approach to addressing the ambient air quality impacts of the nonroad engines covered by this rule.

The statement, “Nonroad engines are not subject to: New source review” was inserted into the revision to make it clear that in compliance with the Federal Clean Air Act, nonroad engines are not subject to new source review. This statement does not conflict with SEPA which has its own applicability requirements in Chapter 197-11 WAC and Chapter 43.21C RCW.

USDOE Comment #01, Weyerhaeuser #3, and Coalition #6. The proposed rule language in the definition and 400-035 is unnecessarily redundant. Internal combustion engines meeting the criteria identified in these paragraphs are already excluded from the definition of non-road engines per WAC 173-400-030(57). Therefore, these engines would already be excluded from the applicability statement in WAC 173-400-035(1) since they are not non-road engines. The inclusion of this redundant exclusionary language reduces the clarity of the proposed rule.

Response: We received a couple comments asking that we change either the definition of nonroad engine or change the list of exceptions in WAC 173-400-035. The definition listed in WAC 173-400-030 is a direct quote of EPA regulations. It has not been changed. We have deleted subsections WAC 173-400-035 (1) (c), competition vehicles, (d), engines subject to NSPS, and (e), seasonal sources, as by definition they are not nonroad engines.

Coalition Comment #7. We understand that Ecology intends to apply the ULSD fuel requirement to all nonroad engines. If so, it is better to state the requirement only once, in a subsection that applies to all nonroad engines.

Response: WAC 173-400-035 has been restructured so that the reference to ultra low sulfur fuel is contained in subsection (3) Fuel Standards.

Coalition Comment #8. Nonroad engines are not stationary sources, which is why Congress exempted them from stationary source emission limits. Most of the edits to this subsection are intended to recognize that Ecology’s regulatory authority to conduct new source review of nonroad engines has a different source than Ecology’s authority to conduct NSR on stationary sources.

Response: We recognize that federal law has exempted nonroad engines from stationary source

permitting requirements. The proposed language was intended to clarify that situation. As a result of comments, WAC 173-400-035 (5) has been amended to read as follows:

Applicants seeking approval to construct or modify a stationary source that requires review under WAC 173-400-110 or 173-400-560 and to operate one or more nonroad engines in conjunction with the new or modified stationary source may elect to integrate the reviews. The notification process for integrated review must comply with the new source review public involvement procedures for the stationary source as applicable (i.e., WAC 173-400-171 or 173-400-740).

Coalition Comment #10. Subsection (2) lists certain types of limits that states cannot apply to nonroad engines. It leaves the permitting authority free to impose what EPA calls “in use” restrictions – fuel specifications, hours of operation limits, etc. – to protect the NAAQS.

Response: In recognition of the requirement to protect the national ambient air quality standards WAC 173-400-035(5) (g) has been edited to read as follows:

Conditions to assure compliance with NAAQS. Subject to the limitations of subsection (2) of this section, the permitting authority may set specific conditions for operation as necessary to ensure that the nonroad engines do not cause or contribute to a violation of National Ambient Air Quality Standards.

AT&T Comment #1.

AT&T does not believe it was the DOE’s intent to require AT&T and similar regulated sources to submit a notice of intent to DOE each time an engine is brought to a staging area since such engines are not considered by AT&T to be installed and operated at such sites. Given the nature of the staging area, merely for the storage and maintenance of engines, such submittals would be onerous and of little environmental benefit. In order to clarify that the notification requirements do not apply to staging areas, AT&T requests that a clause specifically exempting these types of operations be added to WAC 173-400-035(1) as follows:

(f) Engines that are stored in work centers/garages or engine pool sites prior to being dispatched to the field for use and do not provide back-up power at the work center/garage or pool location. Such engines may be utilized at these facilities only for the purpose of engine maintenance, testing, and repair.

Response: The proposed edit has been inserted into the rule to clarify that storage and work yards are not subject to WAC 173-400-035.

AT&T Comment #2.

AT&T requests that the DOE provide an exemption for emergency use of non-road engines. Requiring approval to operate from the DOE (or other permitting authority) prior to commencing operation of engines at sites with greater than 2000 BHP from non-road engines essentially renders any emergency use of non-road engines a violation of the rule since such usage is required immediately to maintain the availability of the wireless and wireline telecommunications systems.

Response: WAC 173-400-930 contains provisions for operation of emergency engines with a power rating equal to or less than 2000 BHP. This power rating applies to the emergency engine being put into use, not the cumulative total of all non-road engines at the site. Each project will be reviewed for its own merits, as is done for a notice of construction. It is the new source or new emission unit that is reviewed, not all existing engines at the facility.

Emergency engines that are permanently located as a site are not non-road engines but may be emergency engines subject to the criteria in WAC 173-400-930 related to emergency engines..

AT&T Comment #3.

WAC 173-400-035(3)(b)-(c) and (4)(c) require that the owner or operator maintain the required records at each site.

While this requirement may be appropriate for the majority of affected facilities, a number of AT&T's sites are unmanned and do not have any practical storage area on-site for maintaining records. Therefore, AT&T requests that a clause be added to allow for records to be maintained in a readily available format at an off-site location for engines located at a source where it would be unreasonable to maintain those records on-site. AT&T recommends that WAC 173-400-035(3)(b)-(c) (which are referenced by (4)(c)) be revised as follows:

(b) Recordkeeping. ~~At~~ For each site, the owner or operator must record the following information, **which can be stored off-site if records can be readily available upon request by the agency,**...

(c) Record retention requirements. The owner or operator must keep ~~on-site the records of the current engine and equipment activity. The owner or operator may keep all other records at the main office~~ **each record readily accessible in hard copy or electronic form. These records can be maintained on-site or off-site for the required retention period.** Records must be kept for at least five years and be readily available to the permitting authority on request.

Response: Edits that implement the suggestion have been inserted into WAC 173-400-035 as they clarify the intent of the record keeping requirements.

AT&T Comment #4. To avoid potential confusion (particularly since certain nonroad engines are sometimes regulated and /or referred to as “portable engines”), AT&T recommends that DOE clarify in the regulatory text that engines subject to WAC 173-400-035 are not “portable sources” subject to WAC 173-400-036.

Response: The suggested edits have been inserted into WAC 173-400-036 as they clarify the intent of the section.

Comments on WAC 173-400-036, Relocation of portable sources

EPA Comment #7. WAC 173-400-036. This provision must make clear that a portable source that qualifies as a major source or a major modification to an existing major source is subject to the provisions of WAC 173-400-700 to -750 and 173-400-800 to 850 and not to the provisions of this section. In addition, this section must clarify that it applies only to sources that locate "temporarily" at a certain location.

Response: First and foremost all portable sources are stationary sources and as such are subject to new source review through WAC 173-400-110. Major sources will be identified during new source review and the appropriate reviews will be conducted.

The text of WAC 173-400-036(3) has been amended to reflect the "temporary" nature of these operations. "WAC 173-400-036(3) (d) Operation at any location under this provision is limited to one year or less. Operations lasting more than one year must obtain a site specific order of approval."

Puget Sound Clean Air Agency Comment #2. WAC 173-400-036.

The agency supports the qualifying language in this proposal that requires a permitting authority to adopt these rules in order to participate in an inter-jurisdictional relocation process with a source. At this time, we do not plan on adopting this provision, but support the language which clarifies its applicability.

Response: Thank you for the comment.

EPA Comment #8. WAC 173-400-036(1)(b). This provision appears to authorize permitting authorities to reach agreements amongst themselves regarding the criteria for the relocation and new source review permitting of portable sources.

Response: The cited provision, "Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here" was drafted to allow each permitting authority to establish the conditions limiting the circumstances of when they will or will not accept an order of approval from another permitting authority. The types of limitations that this is intended to cover include limitations such as accepting only those orders that are less than five years old; accepting orders for a specific type of source; perhaps allowing gravel crushers but not asphalt plants; or allowing portable sources for a maximum of ninety days. It is not the intent of this provision to allow carte blanche revision of an order. Other provisions in WAC 173-400-036 make it clear that a change in conditions to the order or a modification of the source require a new order of approval.

EPA Comment #9. WAC 173-400-036(3)(b). The relocation notice provision should specifically state the information required in the notice, such as the new location and the intended duration at the new location. We also recommend that a source be required to notify the permitting authority when it is leaving the jurisdiction of that permitting authority.

Response: Ecology acknowledges that a permitting authority will need several very specific bits of information before issuing an order of approval. The decision was purposefully made to not list

the required information in the rule, but rather to leave that level of detail at the discretion of each permitting authority to place in their application or relocation notification forms as they find appropriate.

The rule advisory committee discussed the concept of requiring notice when a portable source is leaving the jurisdiction of that permitting authority. It was universally agreed that operators would not provide this notice and that the authorities didn't need to track departures, only arrivals and durations of operation.

Coalition Comment #10. WAC 173-400-036(2) Portable sources in nonattainment areas. Keeping in mind the permitting agency for pulp mills and aluminum smelters, revise (2) to read as follows:

“The order of approval must be issued by the permitting authority with jurisdiction over the nonattainment area in which the owner or operator proposes to locate the portable source wishes to locate, or by Ecology if the proposed location is on or adjacent to a stationary source for which Ecology is the permitting authority.”

Response: The suggested edit seems to give authority to a permitting authority on projects that are not just within their jurisdiction, but on adjacent properties. This rule cannot expand a permitting authority's jurisdiction in this manner. The permitting authorities recognize that project review of proposals that are on their borders or that impact the air sheds of more than one permitting authority call for interagency coordination. The proposed edits were not incorporated into the final rule. The final rule language does not contain criteria on what permitting authority issues the approval to operate in a nonattainment area.

Coalition Comment #12. WAC 173-400-036(6) Portable source modification. A portable source is a type of stationary source, per WAC 173-400-030(73). Ecology has authority under RCW 70.94.152 to review the “establishment of a new source.” A new source is defined by RCW 70.94.030 as “the construction or modification of a stationary source . . .” The Coalition questions whether the term “installation” would add any content to the scope of Ecology's jurisdiction, but that jurisdiction was defined by the legislature, and Ecology may not add to it.

Response: The intent of this paragraph is to notify owners and operators that a new order of approval is required before modifications are made to a portable source. Portable sources are a subset of stationary sources. It is not the intent to expand the regulatory authority over those sources. No edits were made in response to this comment.

Comments on WAC 173-400-040, General standards for maximum emissions.

Coalition Comment #13. The language in the second paragraph of (1) that Ecology proposes to delete is helpful because it acknowledges that a process exists for determining when a RACT review is warranted and for establishing RACT.

Response: The original language in the first sentence of the second paragraph of (1) has been retained.

EPA Comment #10. WAC 173-400-040(2)(e) . Because these exemptions to the opacity standard are not in the SIP, Ecology will need to submit a showing when it submits this section as a SIP

revision that these exemptions do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of Title I of the CAA, as provided in CAA Section 110(1) and, as applicable, CAA Section 193.

Response: Ecology understands this requirement and will work closely with EPA as we develop the SIP materials demonstrating these exemptions from the opacity standard will not interfere with any applicable requirement of the federal CAA. Thank you for reiterating this comment.

Comments on WAC 173-400-050, Emission standards for combustion and incineration units

EPA Comment #11. WAC 173-400-050(2). This provision contains language regarding approval of alternative test methods and procedures that was added in revisions made in 2004/2005. As currently written it is unclear whether "applicable EPA" modifies both "reference method" and "procedures," or whether it modifies only "reference method." A provision that authorizes a permitting authority to approve alternatives must contain objective or replicable criteria for determining the alternative, and simply authorizing any alternative procedure does not meet this requirement.

Response: It is the intent of this sentence to make it clear that the permitting authority must approve the use of an alternative methodology. The intent is that "applicable EPA" only modifies reference method,, not "other procedures" Only one method to determine compliance with this standard is available, the one in Ecology's Source Test Manual. At this time EPA does not have a reference method specific to testing of total carbonyls, though EPA Method 320 may be suitable for this purpose. "Other procedures" could be ASTM methods, DIN methods, NCASI methods, EPA TO or IAQ methods or even methods from SW-846, none of which are EPA reference methods. Unfortunately, rather than cite the Test Manual by name, it is described as, "procedures to collect and analyze for the same compounds collected in the ecology method".

Comments on WAC 173-400-070, Emission standards for certain source categories.

EPA Comment # 12. WAC 173-400-070(1)(d)(i). The revisions to this provision seem unclear. Is the reference intended to be to WAC 173-400-040(1) and (2)? Compliance with WAC 173-400-040(2) is already required by WAC 173-400-070(1)(a). Also, this says that "Wigwam and silo burners will be considered to be in compliance with they meet the requirements contained in " It is unclear from this sentence, however, what requirements the source will be considered to be in compliance with. These aspects should be clarified.

Response: This subsection has been edited so that the visible emission requirements are cited once. Paragraph (1)(d)(i) states that the appropriate visible emission standards for wigwam and silo burners are found in WAC 173-400-040 (2), visible emissions. Section 040 had been renumbered and the confusion here stemmed from that renumbering not being corrected here.

Comments on WAC 173-400-075, Emission standards for sources emitting hazardous air pollutants.

Puget Sound Clean Air Agency. Comment #3. WAC 173-400-075. We request that Ecology add a statement such as "This section applies statewide except where an authority has its own rule regarding such sources."

Response: WAC 173-400-020, Applicability (2) states, “An authority may enforce this chapter and may also adopt standards or requirements.” This applicability statement applies to all subsections of Chapter 173-400, except for those provisions that are specifically reserved for Ecology such as WAC 173-400-118 and WAC 173-400-700 through 750.

Coalition Comment #14 and Weyerhaeuser #4. WAC 173-400-075(5). The Coalition and Weyerhaeuser commented that the revised language is difficult to follow.

Response: This sentence has been revised to provide straight forward guidance on report submittal: “Submit reports required by 40 CFR Parts 61 and 63 to the permitting authority, unless otherwise instructed.”

EPA Comment #13. WAC 173-400-075(6). This entire section WAC 173-400-075 relates to hazardous air pollutants is not currently in the SIP because it does not relate to criteria pollutants, and would again not be incorporated by reference into Federal law as part of the SIP. These provisions do have Title V implications, however, and EPA has concerns with the approach Ecology is taking with these revisions. Under the proposed revisions, Ecology is incorporating by reference MACT part 63 standards for major sources only, except for specifically identified area source MACT standards. Note that the list of area source standards in Ecology’s proposed rule omits some areas source standards for which a Title V permit is currently required under the CAA, such as Subparts MMMMM(carbon black production), NNNNNN (chromium compounds), and VVVVV (chemical manufacturing for synthetic minors). In addition, EPA is about to promulgate additional area source MACT standards in December 2010, some of which propose requiring a Title V permit for area sources. We suggest Ecology rethink this approach for incorporating federal MACT standards by reference to ensure it does not leave Ecology without authority to impose applicable requirements for area sources required to be covered by the Title V program. In combination with WAC 173-401-300(2)(b), adopting only the listed area source MACT standards would appear to leave Ecology without authority to issue Title V permits to all required sources, which would be a basis for program disapproval.

We strongly encourage Ecology to adopt part 63 standards for all sources. To the extent Ecology decides to continue to limit its adoption of MACT standards as needed for Title V approval, we suggest Ecology provide instead "(a) 40 CFR Part 63 and Appendices in effect on July 1, 2010, as they apply to major stationary sources and as they apply to areas sources, but only for such area sources for which the particular Part 63 standard requires subject area sources to have a Title V permit."

Response: Paragraph (6)(b) has been expanded to include Subparts MMMMM(carbon black production), NNNNNN (chromium compounds), and VVVVV (chemical manufacturing for synthetic minors). The MACT standards adopted by EPA in December 2010 cannot be included in this rule revision as our public review process ended before their adoption date. Those updates will have to wait for the next amendment process. Ecology has not adopted all federal MACT standards by reference as we do not have the staff to handle the work load that would come with those standards.

EPA Comment #14. WAC 173-400-075(8)(a): Note that area source drycleaners are also subject to the federal NESHAP requirements at 40 CFR Part 63, Subpart M.

Response: The current rule language in WAC 173-400-075(8)(a)(ii) states that major source dry cleaners must follow the requirements of 40 CFR Part 63, Subpart M. WAC 173-400-075 (6)(a) clearly states Subpart M as it applies to non-major sources is not adopted by reference. In WAC 173-400-075 (8)(a)(i) it is clear that the provisions of 075(8) apply to non-major dry cleaning systems using perchloroethylene.

USDOE Comment #02. WAC 173-400-075(8)(e)(i)The proposed rule language is missing any reference to Table 4 for applicable minimum inspection frequencies. Revise the proposed rule language in either WAC 173-400-075(8)(e)(i) or (ii), as appropriate, to reference Table 4.

Response: The rule language now references Table 4.

Comments on WAC 173-400-081, Startup and shutdown

Coalition Comment #15 and Weyerhaeuser Comment #5. WAC 173-400-081(1). The proposed addition of the phrases “as part of new source review” and “during a control technology determination” should be removed. These eligibility criteria simply serve to limit access to the opportunity offered by -081.

Response: In recognition of the fact that control technology determinations are not exclusive to new source review, the reference to “during new source review” and “During control technology determination” has been deleted from WAC 173-400-081 (1). It now reads:

“In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting authorities will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.”

EPA Comment #15. WAC 173-400-081. These changes help clarify that startup/shutdown procedures can only be created and modified in accordance with the procedures for creating and modifying the corresponding emission limits (primarily in new source review), and not in Title V permits. If permit limits are created in processes other than new source review, such as regulatory orders for BART, RACT or voluntarily limits on emissions under WAC 173-400-091, should those mechanisms also be mentioned here? The following language could be added after "as part of new source review or otherwise in establishing such standard." The key point is to clarify that this provision does not authorize permitting authorities to establish startup/shutdown procedures in Title V permits, which some permitting authorities had apparently been doing.

Response: See response t previous comment. The original language is retained. There is no known ambiguity that this section cannot be implemented during development of air operating permit requirements.

Comments on WAC 173-400-091, Voluntary limits on emissions

The Boeing Company letter Comment # 4, Weyerhaeuser Comment #6 and Coalition Comment #17. WAC 173-400-091(1). Permitting authorities should have the flexibility to write synthetic minor limits for emission units as well as sources. The text in WAC 173-400-091 should acknowledge that voluntary limits on potential emissions may be applied to individual emission units as well s to entire sources.

Response: Paragraph 400-091(1) has been edited. It is now includes the possibility of voluntary limits for both sources and stationary sources.

- “Upon request by the owner or operator of a new or existing source or stationary source, the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and the permitting authority with jurisdiction.”

The use of the defined term “stationary sources” allows limits to be established at the individual process unit or emission point level, providing additional flexibility.

USDOE Comment #03. WAC 173-400-091(5). The existing rule language indicates that regulatory orders issued under this section are federally enforceable once the section is approved as part of the Washington state implementation plan (SIP). It appears that this section has since been approved as part of the SIP, making this language outdated and ripe for revision. Revise the proposed rule language in WAC 173-400-091, as appropriate, to reflect the fact

Response: The phrase in WAC 173-400-091(5) “upon approval of this section as an element of the Washington state implementation plan” has been deleted as this section of the rule has been approved as part of the SIP.

Coalition Comment #18. WAC 173-400-091(4). It is not technically accurate to state that an order “must comply with” a rule.

Response: We understand the grammatical point that an order, being inanimate, cannot take an action to comply with a rule. Paragraph (4) has been edited to better reflect that these orders are subject to public involvement using the procedures in WAC 173-400-171.

Coalition Comment #19. WAC 173-400-091(5). The coalition’s proposed edits to this section reflect the fact that WAC 173-400-091 is SIP approved.

Response: Paragraph (5) has been edited to reflect the fact that WAC 173-400-091 is approved as an element of the Washington state implementation plan.

Comments on WAC 173-400-105, Records, monitoring, and reporting.

Coalition Comment #20. WAC 173-400-105 (4). The word “or” plays an important function here.

Response: “Or” has been inserted to make it clear that compliance test methods may be either approved EPA methods or procedures contained in "*Source Test Manual - Procedures for Compliance Testing.*"

EPA Comment #16. WAC 173-400-105(4). Should part 62 also be referenced? In addition, an "or" appears to be missing just after the revised July 2, 2010 date.

Response: Ecology finds that it is not appropriate to reference 40 CFR Part 62 –Approval and promulgation of state plans for designated facilities and pollutants. “or” has been inserted at the

suggested location to make it clear that compliance test methods may be either approved EPA methods or procedures contained in "*Source Test Manual - Procedures for Compliance Testing.*"

Coalition Comment #21. WAC 173-400-105(5)(g)(i). Subsection (5) lists source categories that require CEMs. New Subsection (8) sets data recovery requirements for CEMS. This sentence fits better in new subsection 8 than in subsection (5).

Response: This sentence is retained in (5). Ecology is of the opinion that it is useful to retain the clarification in this subsection.

“Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.”

Weyerhaeuser Comment # 7. WAC 173-400-105(8) Continuous emission monitoring.
A few suggested changes:

1. In subsection (a) the requirement for data recovery should mimic the averaging time of the specific pollutant emission limitation. For example, if an emission unit has a three-hour average sulfur dioxide emission limitation, the data recovery requirement should be to capture some high percent of the three-hour time periods (not “hours” as in the proposed rule) during each calendar month.
2. In subsection (a), what drove the choice of requiring 95% valid hourly data capture? The Ecology Industrial Section has generally selected 90% as the data capture requirement. Note that subsection (e)(iv) refers to the more appropriate 90% monitoring data capture requirement.
3. In subsection (a) the “periods of monitoring downtime” should recognize that routine instrument calibration procedures will result in some “lost” monitoring data (or does the language in (c) relating to “calibration draft” (note that it should be “drift”)) speak to this?
4. In subsection (c), could the statement read “Monitoring data for opacity is to be reduced to six minute clock averages”? That is, averages would be reported for clock hours 00:00 – 00:06, 00:06 – 00:12, etc.
5. In subsection (e) why are subsections (i), (ii) and (iv) tucked away under a section (8) Continuous emission monitoring systems heading? These subsections address routine reporting of emission unit performance. The information requested is not specific to emission units with continuous emission monitoring systems. Ecology should perhaps create a section (10) in WAC 173-400-105 to house these requirements.
6. In subsection (e), sub (ii) and (iv) are identical.

Response:

1. To retain consistency with equivalent federal data recovery requirements and those data recovery requirements of our local authorities, we retained the 1 hour time period. Even 3 hour average emission limitations are based on valid hourly emissions data.
2. The 95% criteria in (8)(a) reflects that, not including monitoring system downtime, the CEM system should provide valid data for at least 95% of the operating hours in the month. That is assuming there is no monitoring system downtime and continuous operation of the emission unit, data can be missing for up to 36 hours per month.
3. 90 % value in (8)(e) relates to identification of those individual days within a month where the system was off line more than 2.4 hours. It serves a different purpose than the monthly

95% data recovery requirement, in looking at the reliability of the CEM system on a daily basis.

4. Yes, monitoring system down time would include preventative maintenance, calibration and adjustments, and non-routine maintenance.
5. We have clarified that monitoring data for opacity is 6 minute block averages unless specified in an order or permit. 6 minute block averages being discrete, non-overlapping 6 minute periods that could start on the hour or off the hour.
6. The suggestion is good, but we chose to not create a new section to avoid questions about why the information is required to be submitted. We have deleted one of the duplicate sections.

Coalition Comment #22. WAC 173-400-105(8). The Coalition edits to this subsection would ensure that some set of performance specs and data recovery requirements applies to every CEMS. If the CEMS is regulated by an EPA performance standard, then you follow the performance specs and data recovery requirements of that standard. If the CEMS is not subject to EPA performance standards but it is subject to data recovery requirements imposed by a local air authority regulation, follow those rules. If neither EPA nor the local air authority has imposed data recovery requirements and performance specs for the CEMS, then follow the rules in this subsection. It is valuable to the regulated community not only to have a set of performance specs and data recovery rules for every CEMS, but to have only one set of those requirements for each monitor.

Response: Paragraph (8) has been edited to incorporate the proposed edits.

Coalition Comment #23. WAC 173-400-105(8)(c). The Coalition edits to this subsection would ensure that some set of performance specs and data recovery requirements applies to every CEMS. If the CEMS is regulated by an EPA performance standard, then you follow the performance specs and data recovery requirements of that standard. If the CEMS is not subject to EPA performance standards but it is subject to data recovery requirements imposed by a local air authority regulation, follow those rules. If neither EPA nor the local air authority has imposed data recovery requirements and performance specs for the CEMS, then follow the rules in this subsection. It is valuable to the regulated community not only to have a set of performance specs and data recovery rules for every CEMS, but to have only **one** set of those requirements for each monitor.

Response: WAC 173-400-105(8)(c) has been edited to reflect “block averages” and “calibration drift tests”.

Coalition Comment #25. WAC 173-400-105(8) (a) and (f). The proposed edits to this section align the reporting requirement with the data recovery requirement in (8)(a).

Response: There has been some confusion about the two rates of data recovery. Paragraph (a) requires data for 95% of the hours that the equipment operated each month. Paragraph (f) requires data for 90% of the hours that the equipment operated each day. These two recovery rates are for different time frames and are intended to have different data recovery rates. See the response to the Weyerhaeuser comment on this subject.

EPA Comment #17. WAC 173-400-105(8). The revisions to this section address many of our

previous concerns with this section. We have the following comments on this new language:

1. General: The proposed regulations do not clearly define what constitutes a valid hour of data other than saying in Section (8)(c) to reduce to hours containing at least 45 minutes of data to one hour averages. Does this mean the other 15 minutes of the hour do not count for availability purposes? We recommend Ecology incorporate the more specific requirements of the NSPS 40 CFR 60.13(e) and (h) for determining whether there is a valid hour of data.
2. General: We recommend including the installation criteria in 40 CFR 60.13 (f) and (g) in this rule.
3. General: Based on the applicability criteria in this rule, it appears that this provision applies to sources that are also subject to part 64 monitoring requirements. If that is not the case, this should be clarified.
4. Section (8)(c): This specifies that data after a failed QA test or audit should not be used, but does not specify when use of such data should resume. Does this mean that once a source fails a QA test or audit, no data is counted until the equipment passes the test again. This is different from Part 60 requirements. See 40 CFR 60.13(h)(2)(iv). Also, should "draft" be "drift?" Finally, unless all of Ecology's opacity rules have been converted to 6-minute averages, this should require the conversion of opacity monitoring data in a manner consistent with the applicable standard if it is intended to serve as compliance monitoring for Ecology's opacity rules.
5. Section (8)(e)(ii) and (iv): The language in these subsections appears to be identical and redundant.
6. Section (8)(e)(iii): We suggest replacing the term "equipment (required to be monitored)" with "monitored emission unit."
7. Section (8)(e)(vi): Should the requirement to report the date, time period and cause of each failure to recover valid hourly monitoring data for at least 90% of the hours be 95% to agree with the data recovery requirement in (8)(a)? It is unclear why it would be important to have notice of each day there was less than 90% availability if the monthly total is over 95%. Having different averaging times and data recovery requirements for different provisions may be confusing. If Ecology's intent is to require reporting only when the total downtime (including malfunction time) is >10%, this requirement should explicitly state that malfunction downtime be included when calculating the 90% data recovery time.

Response:

1. Unlike the NSPS criteria which require a whole hour's worth of valid data to count as a valid hour of monitoring, Ecology has chosen to accept hours with at least 45 minutes of valid data as providing a valid hour of data. This approach allows the option for routine maintenance and daily calibration to take place without losing one or two hours of data to evaluate emissions. Recall that a valid hour of data under EPA's criteria can be achieved by as little as 4 equally spaced in time emission readings per hour (1 every 15 minutes).

2. It is Ecology's opinion that the criteria in these sections are accounted for by the reference to 40 CFR Part 60, Appendix B equipment and siting criteria.
3. Sources and emission units with CEMS required by one or more listed rules are covered by the CEM data requirements imposed within those rules. Where the emitting equipment or specific pollutant is not subject to one or more of the federal rules and the CEM requirements stem entirely from NSR requirements then the criteria in this subsection applies.
4. The CEM requirements in part 64 were not intended to be covered, but to stand on their own merits with data quality requirements contained in the CEM monitoring plans. Nothing would prevent a CEM plan from referencing this rule section however.
5. The time when valid data is again being recovered after a failed audit or test has been clarified. We have been assured any number of times by equipment vendors, consultants, and source owners that COMs systems are not available that to determine compliance with the Ecology three minutes in an hour opacity standard. Additionally permit terms for opacity that require the installation of COMS, are required to comply with opacity limits of six minute averages. COMs are not used to demonstrate compliance with the state opacity standard in WAC 173-400-040, this is routinely done through visual observation.
6. Tone of the duplicate subsections has been deleted.
7. The suggestion has been included.

See response to Weyerhaeuser comment on this subject.

Comments on WAC 173-400-107, Excess emissions.

Puget Sound Clean Air Agency Comment #4. The Agency supports the revisions to WAC 173-400-107, 108 & 109.

Response: Thank you for the comment.

EPA Comment #18. WAC 173-400-107. EPA appreciates the changes that Washington has proposed to make to WAC 173-400-107. Our remaining concerns with WAC 173-400-107 are as follows:

- WAC 173-400-108(3)(c): We suggest that this provision more clearly emphasize that the burden is on the source to make the demonstration, by revising the language to provide: "Information and supporting documentation to demonstrate that the excess emissions were unavoidable under the procedures and criteria in WAC 173-400-109(3), (4), or (5).

Response: We did not make any changes to section 107 except to add the criteria about when it would no longer be in effect.

The suggestion on section 108(3)(c) was accepted and the word “any” was changed to “all.” In our view, the entirety of section 108(3) is clear that the burden of proof is on the source, not the agency.

EPA Comment #19. WAC 173-400-109(2)(b): 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. Washington's proposed language addresses this to some extent by not allowing the affirmative defense where a source causes a monitored exceedance of the NAAQS. This language should be broadened to make the affirmative defense unavailable where a source causes or contributes to a violation of PSD increments.

Response: This issue was a subject of significant stakeholder discussions which unfortunately EPA was not a part of. At this time, Ecology cannot justify the modeling burden on either a source or ecology to demonstrate that an excess emissions event did or did not cause an exceedance of either a NAAQS or a PSD increment. If monitoring indicates that a NAAQS or increment has been or is likely to have been exceeded, then Ecology or the permitting authorities will need to respond appropriately.

EPA Comment #20. WAC 173-400-1 07(4) provides an affirmative defense to a penalty action for excess emissions during startup and shutdown if certain conditions are met. It does not appear that the proposed rule revisions fully address all of the criteria in EPA's Excess Emissions Policy, including the following:

- The periods of excess emissions that occurred during startup and shutdown were short and infrequent.
- The excess emissions were not part of a recurring pattern indicative of inadequate operation or maintenance.
- At all times the facility was operated in a manner consistent with good practices for minimizing emissions.
- The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.
- All possible steps were taken to minimize the impact of the excess emissions on ambient air quality (not just that the amount and duration of emissions were minimized).

Response: the rule does not address each of the listed elements individually. Ecology sees several of these as duplicative criteria. We believe our listing of criteria will uncover all of the information that EPA believes their additional duplicative questions are necessary to uncover.

EPA Comment #21. WAC 173-400-109(4) provides an affirmative defense for excess emissions due to scheduled maintenance provided certain criteria are met. As EPA has advised Ecology on numerous occasions, 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. EPA's 1999 Excess Emissions Policy does not discuss allowing an affirmative defense for excess emissions during maintenance activities, an omission that 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.

As we have previously advised Ecology, 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, RI8-2-310 (D). Ecology had proposed similar language in a October 22, 2009 draft rule provided to EPA. EPA is disappointed to see that this language is not in the current proposal of Ecology's rule.

Response: We have heard and understand EPA's position on excess emissions that may occur during scheduled maintenance. As a result of a provision of state law we do not have the 'enforcement discretion' to address potential excess emissions arising during scheduled maintenance. RCW 70.94.431(8) requires us to have rules for excusing excess emissions from enforcement, providing the emissions are unavoidable. As a result, we need to incorporate the provision for excess emissions that might occur during scheduled maintenance within our rule. To avoid the need for such a provision and comply with EPA's opinion, we would need to require each source in the state to have either redundant emission control equipment or to shut down processes in order to perform routine maintenance. In many cases either option is not an option. It is simply unrealistic to expect an oil refinery to shut down its catalytic cracker unit and catalyst regenerator system in order to perform routine maintenance on the wet gas scrubber installed to control HAP emissions and SO₂.

To mitigate some of EPA's concerns about this subsection, we have changed the verb in the sentence of (4) from 'will' to "may" to clarify the permitting authority still has a choice on how to treat these emissions.

EPA Comment #22. WAC 173-400-1 09(4) (we assume (5) is actually the subsection meant) provides an affirmative defense to a penalty action for excess emissions due to a malfunction if certain conditions are met. It does not appear that the proposed rule revisions fully address all of the criteria in EPA's Excess Emissions Policy, including the following:

- The excess emissions were caused by a sudden, unavoidable breakdown of technology beyond the control of the operator.
- The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned for.
- 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.

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

Response: See response to EPA’s comment on section 107(4).

EPA Comment #23. 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 173-400-108 and 109 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 confirmation of this from Ecology and EPA intends to make clear in any SIP approval of such a provision that a State or local's determination on whether the affirmative defense is met is not binding on EPA or citizens.

Response: While Ecology believes the proposed rule language adequately addresses EPA’s concerns, it is clear that EPA does not share that opinion. We have directly addresses EPA’s concern by the inclusion of clarifying language from a prior draft of this section. The new text in (1) referencing “a federal enforcement action filed under 42 U.S.C. § 7413 or 7604” is a more detailed version of what we intended and understand our proposed language said.

Comments on WAC 173-400-108, Excess emissions reporting.

TBC Comment #14 WAC 173-400-108.

AOP sources are already subject to the deviation reporting requirements under WAC 173-401-615(3)(b) which are essentially the same as the requirements below. In order to avoid confusing overlap of requirements, none of the provisions below should apply to AOP sources.

Response: We have clarified the written report for operating permit sources is to be submitted per the criteria in WAC 173-401-615, if the facility wants those excess emissions to be considered unavoidable, the ‘as soon as possible’ notification criteria still has to be followed.

USDOE Comment #4. WAC 173-400-108(1). The proposed rule language requires notification to the permitting authority within 12 hours following discovery of excess emissions which represent a potential threat to human health or safety, or which the owner/operator believes to be unavoidable. The existing language in WAC 173-400-107 simply states “as soon as possible”. A 12-hr window to provide notification seems unreasonable for situations where the permitting authority offices are closed for weekend, holidays or other non-business hours. Revise the proposed rule language in WAC 173-400-108 to require a more reasonable notification timeframe (e.g. next business day) for excess emissions determined to be a potential threat or unavoidable, or provide clarification of how the permitting authority will make itself available for “12-hr” notifications during non-business hours.

Weyerhaeuser Comment #8 and Coalition Comment # 26

The Coalition and Weyerhaeuser find that there is no need to require immediate reporting of every unavoidable excess emission event.

Response: The final text has been edited to retain the 12-hour notice for emissions that pose a health threat. The time frame for reporting unavoidable emissions has been revised to “as soon as possible”, retaining the current standard of WAC 173-400-107.

Weyerhaeuser Comment #9. WAC 173-400-108 *Excess emission reporting* – Subsection (3)(a) should be deleted. For most excess emission events there will not be “properly signed, contemporaneous records documenting ... actions in response.” Equipment operators will typically be performing other functions to resolve the excess emission situation, as opposed to creating “signed, contemporaneous records.”

Response: We understand that the first and foremost action of the operations and maintenance staff is to recover from an excess emissions event. However, after the recovery from an excess emissions event, there will be records evaluated and analyses performed that discuss what happened, what the problem was, how it was rectified, and potentially how to avoid the occurrence in the future. This logging of actions taken during the event and recovery would be the contemporaneous records that would be signed or initialed by the designated staff or managers. Contemporaneous does not mean at the same instant.

Comments on WAC 173-400-109, Unavoidable excess emissions.

Weyerhaeuser Comment #10. WAC 173-400-109 *Unavoidable excess emissions* - Subsections (3)(c) and (5)(d) should be adjusted to recognize that routine instrument calibration procedures and essential instrument preventative maintenance could be other reasons why an emission monitoring system might not be capturing data coincident with an excess emission event.

Response: thank you for the concern. We believe that such information about CEM status would be part of the report describing the excess emissions event.

However, logically, if the monitor were off line for maintenance/calibration, at the time an excess emission event occurred, it couldn't be kept in operation to monitor the event, though it could be returned to operation after the necessary calibration/repair was completed and monitor emissions during the remainder of the event. Conversely if the monitor were off line and the emission event occurred and the monitor is the only method to determine emissions you wouldn't be aware of the excess emissions until the monitor returned to operation and then its operation would have to be continued unless the other criteria were met.

Comments on WAC 173-400-110, New source review (NSR) for sources and portable sources.

Coalition Comment #27. WAC 173-400-110(1) Applicability: The state and federal air acts both limit NSR to new and modified stationary sources. The term “source” is used in multiple ways in both the state and federal statutes, but not in the NSR program. RCW 70.94.152 authorizes Ecology to “require notice of the establishment of any proposed new sources . . .” RCW 70.94.030

defines a “new source” as the construction or modification of a stationary source. A “source” is a more ambiguous term than “stationary source.” For instance, mobile sources are sources but not stationary sources. The Coalition requests that Ecology limit the scope of NSR to the construction or modification of a stationary source, as authorized by the legislature.

Response: As discussed in this comment, the term “source” has several definitions in both state and federal regulations. Paragraph (1) Applicability has been edited to make it clear that this section applies to new sources and stationary sources as those terms are defined in RCW 70.94.030.

EPA Comment # 24. WAC 173-400-110. While we understand that the new language in WAC 173-400-035 clarifies that nonroad engines are not subject to NSR, we note that Ecology continues to use the term "source" in its NSR regulations. We understand that the Washington Clean Air Act uses the term "source" in conjunction with the Notice of Construction requirements. However, Congress exercised the Commerce Clause of the U.S. Constitution to preempt States from regulating certain engines, including but not limited to nonroad engines, as stationary sources. So regardless of how Washington State law defines the term "source" it can not include engines that are preempted by the Clean Air Act for purposes of any State regulatory program that would apply to stationary sources. Since this proposed language only ensures that "nonroad engines" would not be subject to NSR, for example, and not all engines at a stationary source, EPA continues to recommend that Ecology either use the term "stationary source" or revise its regulatory definition of "source" to reflect the federal preemption of nonroad and other engines.

Response: RCW 70.94.030 sets the base definition of “Source” in the Washington Clean Air Act. It is this definition that is carried forward in Chapter 173-400 WAC. Only the state legislature can change Washington State Code. Ecology and the rule advisory committee do not have the authority to amend the RCW.

Weyerhaeuser Comment # 11. WAC 173-400-110(1)(c). Is there any regulatory reason or value in using the word “establishment”? Would it be more appropriate to use “construction” simply to align with the statutory new source definition?

Response: The statutory construction in state law is “establishment”. In previous rulemakings over at least the past 20 years, we have by rule clarified that establishment is related to construction. This construction is carried forward here.

Coalition Comment #29. WAC 173-400-110(1)(c)(ii)(B): This sentence is important, because WAC 173-400-036 describes circumstances in which relocation of a portable source does not trigger NSR, but the rules need to state that NSR applies to portable sources except where exempted under 036.

Response: The new source review exemption for portable sources has been edited to make it clear that portable sources are subject to new source review except when they relocate in compliance with WAC 173-400-036.

Coalition Comment #30 and #31. WAC 173-400-110(2): This subsection outlines the criteria that govern the review of an NOC application. The basic criteria in 173-400-113 apply to every application. Other criteria, e.g. PSD, apply to some applications but not others. The Coalition recommends two basic changes to this subsection. First, Ecology should lead with the WAC 173-400-113 criteria that apply to every application. Second, Ecology should not try to summarize in

this subsection the specific rules governing the scope of major NSR review under PSD or Subpart D. It is better in this introductory section to point the reader to the specific sections that lay out in detail the applicability criteria of those programs.

Response: The title of paragraph WAC 173-400-110(2) has been edited to read, "Approval requirements." The paragraph has been modified to clarify when an order of approval is required, where to look for exemptions, and when a project is subject to review under the nonattainment rules, WAC 173-400-800 through 860.

TBC Comment #15 and 16. WAC 173-400-110(2)(a) &(b): (2)(a) See proposed 173-400-800. We need to avoid inconsistencies in applicability language.

(2)(b) See proposed 173-400-800. We need to avoid inconsistencies in applicability language.

Response: Based on input from TBC and the Coalition, we have reworded section 110(2) completely to avoid the perceived differences and inconsistencies. The rewording does not change anything, just makes the language more consistent. In short, under this subsection, every new source must apply for and receive a notice of construction order of approval unless it is categorically exempt, or exempt by rule, In addition to having to receive an order of approval , a given new source might also have to receive permits under the major source permitting programs for nonattainment areas or Prevention Of Significant Deterioration. It is possible that for a major stationary source emitting a number of air pollutants, that a permit issued under the criteria of all 3 programs might have to be obtained.

EPA Comment #26. WAC 173-400-110. Because EPA approval of Ecology's current NSR program will have the effect of changing the SIP so that Ecology's NSR program will no longer apply where a local air authority has adopted its own NSR provisions, Ecology must submit as part of the SIP revision that contains revisions to WAC 173-400-110 to -113 the NSR regulations of the local air authorities.

Response: Ecology will work closely with the local air authorities and EPA as we prepare the SIP submittal.

Coalition Comment #32 and #33. WAC 173-400-110(3): Subsection (3) addresses two requirements. Subsection (a), which addresses modifications that require an increase in a limit contained in an approval order, works fine. Subsection (b), which addresses generic changes to the conditions of an approval order, conflicts with Section 111(8). It is also legally incorrect, in that changes to an approval order do not require an NOC application unless those changes result from a modification. The Coalition proposes to retain subsection (a) and strike subsection (b). This sentence, (b), conflicts with 111(8) and exceeds Ecology's authority under RCW 70.94.152, for the reasons set forth in the preceding note.

Response: WAC 173-400-110(3) has been edited to more closely match the original requirement. Paragraph (b) has been deleted. The final language reads:

“(3) Modifications.

New source review is required for any modification to a stationary source that requires an increase in a plant-wide cap or requires an increase in an emission unit or activity specific emission limit.”

EPA Comment #27. WAC 173-400-110(3)(a). This provision should be revised to make clear that it applies notwithstanding the exemptions in subparagraphs (4) and (5). This connection is in the current version of the rule and is no longer in these proposed revisions. Also, note that certain changes to plant-wide caps and unit specific emission limitations could subject the source or unit to PSD or Part D NSR under the relaxation provisions in 52.2 1 (r)(4) and WAC 173-400-830(3).

Response: Paragraph WAC 173-400-110(3) regulates sources that have a plant-wide cap or emission limit on specific units or activities. The connection between 110(3)(a) and the de minimis emissions sources listed in (4) and (5) that EPA perceives in the current rule does not exist.

The purpose of this section is to assure that projects that require changes to plant wide caps or emission limits are afforded a proper review of the effects of increasing the limit. This may result in a change to a previously determined BACT decision, the need to apply for a major NSR permit, or other similar action. Unless the plant wide cap would have to be raised to accommodate a de minimis emission unit, this section would not have to be triggered.

EPA Comment #28. WAC 173-400-110(4). The list of exemptions must be revised to specifically state that major stationary sources and major modifications to major stationary sources are not exempt from NSR even if they fall into one of the identified categories.

Response: The rule has not been modified to make this statement clear. The de minimis sources are very small and on their own could not be a major stationary source or could not constitute a major modification to a major stationary source. A review of the listed source types would clearly demonstrate this.

USDOE Comment #05 and TBC Comment #17. WAC 173-400-110(4)(a)(x):The proposed inclusion of this new rule language is a positive development. However, use of the phrase “not related to” lacks sufficient clarity and could be interpreted very broadly. The key issue of interest is that the construction activities will not result in the establishment of a new or modified source that will subsequently be subject to regulation. Minor text revisions are recommended to provide additional clarity and ensure a more consistent application.

Revise the proposed rule language in WAC 173-400-110(4)(a)(x) to read as follows (or similar):

“Construction activities that are do not result in new or modified stationary sources or portable stationary sources subject to regulation.”

Response: The final text has been edited as follows: “Construction activities that are do not result in new or modified stationary sources or portable stationary sources.”

USDOE Comment #06 WAC 173-400-110(4)(c). A strict reading and sequential evaluation of the existing rule language appears to create a situation where a new or modified emission unit meeting the criteria in sub-sections (iv) and (v) would not qualify for these exemptions because it does not also meet the more general and restrictive criteria in (i) and the introductory language requires a new or modified emission unit to meet all criteria in (i) through (v). For example, an emission unit with natural gas (<0.5% sulfur content) fired combustion units totaling 3 million Btu/hr would qualify under (v), but could not meet the general criteria in (i) for fuels other than coal with <0.5% sulfur content (> 500,000 Btu/hr). Since not all exemption criteria are met, the new emission unit

would not qualify for the exemption. This result is not consistent with Ecology's field implementation and interpretation, or the intention to group and evaluate combustion units by specific fuel type.

Revise and clarify the existing rule language in WAC 173-400-110(4)(c)(i) to read as follows:

- $\leq 500,000$ Btu/hr using coal with $\leq 0.5\%$ sulfur or other fuels with $\leq 0.5\%$ sulfur **not specifically identified in (c)(ii) through (c)(v)**;

OR

Issue clear implementation guidance that will assist the regulated community in consistently evaluating new or modified emission units for applicability of these exemption criteria.

Response: This section is intended to address fuel standards by specific fuel type. The final text as been edited to reflect this grouping in WAC 173-400-110(4)(c) (i) to read as follows: " $\leq 500,000$ Btu/hr using coal with $\leq 0.5\%$ sulfur or other solid fuels with $\leq 0.5\%$ sulfur".

EPA Comment #29. WAC 173-400-110(5): The reference to the table as in paragraph (d) appears to be in error. Should it not be to the table in 111(5)? How does Ecology consider precursors to the pollutants listed in this definition? Note that for SIP approved programs, Ecology must consider pollutants that have been identified by the Administrator as precursors to NAAQS pollutants in determining whether the construction of new sources and modifications, both major and minor, assure attainment and maintenance of the NAAQS and, as applicable, PSD increments.

Response: Paragraph 110(5) has been edited. It refers to Table 110(5), Exemptions levels, by its name rather than referencing its (historic) location. Table 110(5), Exemption levels, lists several pollutants and their exempted emission levels. This table as with the listing of de minimis emission sources and units in (4) are trivial emission sources for our minor source permitting program. At the levels of the emission exemptions in the table, the concern about precursors for some of the pollutants is not an issue. For example the direct PM_{2.5} threshold in the table is 0.5 tons per year. For comparison, the PSD threshold for modifications to an existing major stationary source is 10 tons/year. The SO₂ and NO_x thresholds are similarly small fractions of the PSD threshold for modifications of an existing major stationary source.

Puget Sound Clean Air Agency Comment # 5. WAC 173-400-110(5).

This Agency does not adopt Ecology's NOC emission thresholds for exemption by reference and does not use them to determine NOC applicability in our jurisdiction. We recommend this proposal identify the GHG emission threshold exemption in the proposed Table -110(5) alone and delete the additional provision proposed in WAC 173-400-110(5)(b) which states "*Greenhouse gas emissions are exempt from new source review requirements except when the emission increase from the new or modified source is equal to or greater than 75,000 tons per year, CO_{2e}*". This is consistent with the view that GHG emissions are an air contaminant that may be subject to review and are not treated differently from other regulated air contaminants for NOC review purposes.

Response: Paragraph 110(5) (b) has been edited to read, "Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration." This statement makes Ecology's intent clear that greenhouse gas emissions are exempt from minor new source review at this time.

USDOE Comment #07. WAC 173-400-110(5)(b). The proposed rule language in this section introduces the term “CO₂e”. It is assumed that this term is intended to mean “carbon dioxide equivalent.” Revise the proposed rule language, as appropriate, to provide a definition for “CO₂e” as it is used in WAC 173-400-110(5)(b).

Response: The term “CO₂e” has been deleted from WAC 173-400-110(5)(b) and Table 110(5) Exemption levels.

Coalition Comment #34 and #35. The Boeing Company letter Comment # 2. WAC 173-400-110(5)(b). The Coalition appreciates Ecology’s decision to exempt GHG emission increases from minor new source review. In choosing language to achieve that result, the Coalition urges Ecology to expressly exempt those projects that do not require a PSD permit. This approach will ensure no gap in coverage between the scope of the PSD program and the scope of Ecology’s de minimus exemption. The version in the proposed rule would require Washington permitting authorities to do NSR on projects that are exempt from PSD review. Example: a new major stationary source with a GHG PTE of 80,000 tons per year (TPY) CO₂e that does not require a PSD permit for any other pollutant.

To achieve the stipulated goal of this rulemaking while providing flexibility for voluntary GHG limitations, we suggest tying the exemption thresholds directly to the PSD program language with a direct citation to the PSD rules at WAC 173-400-720.

The Coalition and Boeing recommend that the exemption language give express authority for Ecology to include synthetic minor GHG emission limits in an approval order.

Response: Paragraph 110(5)(b) has been edited to make it clear when greenhouse gas emission are subject to permitting. A new sentence has been inserted to include synthetic minor limits in an order of approval. The edited language reads: “Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emission unit, may request that the permitting authority impose emission limits and/or operation limitations for greenhouse gas in any new source review order of approval.”

Coalition Comment #36 WAC 173-400-110, Table 110(5) Exemption levels.

The exemption paragraph inserted as 110(5)(b) makes it unnecessary to include GHGs in Table 110(5).

Response: Table 110(5) has been edited as suggested. Greenhouse gas is not listed as a pollutant.

Coalition Comment #37. WAC 173-400-110(6). The exemption stated in Ecology’s version of this paragraph is broader than the exemption granted by 173-400-036. If Ecology accepts the Coalition’s proposed edits to subsection (2), this subsection becomes unnecessary.

Response: Paragraph (6) has been edited to reflect that the exemption from obtaining an order of approval is applicable only when relocating in compliance with WAC 173-400-036.

Comments on WAC 173-400-111, Processing notice of construction applications for sources, stationary sources and portable sources.

Coalition Comment #37. The Coalition states that the title of this section should reflect the limits of new source review as authorized by the legislature.

Response: The limits of new source review are limited by the criteria in WAC 173-400-110. The title of WAC 173-400-111 is not regulatory. It is informational. It lets readers know that if they have a different type of project, say a nonroad engine, this is not the process to use.

EPA Comment #30. WAC 173-400-111(1)(b). 40 CFR 51.160(c) requires that SIPs contain procedures for the submission by the permit applicant of information on the nature and amounts of emissions to be emitted by the facility or emitted by associated mobile sources as well as the location, design, construction and operation of the facility as needed to enable the permitting authority to determine that the construction or modification will not result in a violation of the control strategy or interfere with attainment or maintenance of the NAAQS. This provision does not appear to meet that requirement.

Response: Ecology and the Rule Advisory Committee that worked on the revisions to Chapter 173-400 WAC made a decision that it is not appropriate for the rule to contain a detailed list of the application requirements in this rule. Each permitting authority should have the flexibility to require the information and details that they require to make a permit decision that complies with the permitting requirements. Each permitting authority will use its own application form and information handouts developed specifically for their local permit process.

Coalition Comment #38 and 39. WAC 173-400-111(3): In WAC 173-400-110(2) Ecology plans to point applicants to various NSR approval criteria that an application might trigger. In WAC 173-400-113 Ecology plans to list substantive criteria that an NOC application must satisfy. Ecology now plans to resurrect WAC 173-400-112 and to include in it additional substantive approval criteria. It is confusing and frustrating to applicants to sprinkle approval criteria throughout the chapter. For that reason, the Coalition recommends that Ecology cover only procedural requirements in Section 111, and move all substantive criteria (like the stack height limits in 173-400-200) to WAC 173-400-113.

Response: The suggested reorganization has not been implemented. Pointers to the criteria that have to be met in order to process and issue an order of approval remain in 400-111(3).

EPA Comment #31. WAC 173-400-111(7)(a): This paragraph should clarify that extensions of these time periods for major sources or major modifications in nonattainment areas must go through notice and public comment. This is required under Ecology's current rules.

Response: The language that requires a mandatory public comment period has been retained in WAC 173-400-171(3)(m), "Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area".

Coalition Comment #40. WAC 173-400-111(8)(a). Most requests to change approval order conditions are intended to adjust unachievable BACT limits.

Response: WAC 173-400-111(8)(a) has been edited so that BACT is no longer restricted to BACT as it existed at the time of the original approval. This will allow sources to take

advantage of new pollution control methods or the actual capabilities of innovative methods that have been unable to meet the emissions control levels anticipated.

Weyerhaeuser Comment # 12. WAC 173-400-111(8)(a). *Change of conditions or revisions to orders of approval*. The existence of this Change in Conditions section represents good public policy. It creates the mechanism for correction or improvement on NSR permitting determinations.

Unfortunately though, having subsection (a)(i) say that a Change of Conditions cannot “cause the source to exceed an emissions standard” places an unnecessary damper on the utility of this section. This occurs as permitting authorities have chosen to interpret this language in a literal and stringent manner.

Weyerhaeuser requests that subsection (a)(i) either be eliminated or a more liberal interpretation of the phrase be explicitly recognized. This outcome would not materially affect the application of -111(8) as the remaining criteria to gain a Change of Condition are very robust and protective of public interests. Elimination of the subsection or a more relaxed regulatory interpretation would allow for some targeted problem solving.

Response: We agree that based on the definition of ‘emission standard’, this historical requirement may be unnecessarily restrictive. In response to this comment we have clarified what emission standards can’t be exceeded by inserting the phrase “set by regulation or rule” after “emission standards” to identify which standards cannot be exceeded.

Coalition Comment #41. WAC 173-400-111(8)(c). NOC applications are limited by statute to construction of a new source or modification of an existing one. Changing the conditions in an approval order is neither of those actions. Current WAC 173-400-110(10) states that “This rule does not prescribe the exact form that such requests must take.” Ecology should retain that language here. WAC 173-455-120(3)(b) already authorizes recovery of costs for modifying an approval order, and it does not assume that the request will take the form of an NOC application.

Response: This paragraph has been deleted. Fee collection is implemented through the fee rule, Chapter 173-455 WAC.

Comments on WAC 173-400-112, Requirements for new sources in nonattainment areas.

EPA Comment #32. WAC 173-400-112. The provisions that were in sections WAC 173-400-112 (2)(a) through (c) that applied to minor sources need to be retained in the final rule.

Response: These provisions have been retained.

Comments on WAC 173-400-113, Requirements for new sources in attainment of unclassifiable areas.

Weyerhaeuser Comment #13. WAC 173-400-113 *Requirements for new sources*. A minor point, but why the choice of term to “establish a new source” vs. to “construct a new source”?

Response: See response to same question by Weyerhaeuser on section 173-400-110(1)(c)(i).

Weyerhaeuser Comment #14. WAC 173-400-113. Section (3) should be eliminated. It seems to address the same regulatory topic addressed by Section (4), but in a more ambiguous way. Section

(4) imposes requirements on new sources/modifications in attainment/unclassified areas that could impact nonattainment areas, and provides numeric benchmarks to support a regulatory determination.

Alternatively, section (3) could probably be fixed by a proper reinsertion of the “This requirement will be considered to be met if the projected impact of” language.

Response: WAC 173-400-113(3) is to require an evaluation of the emissions from the facility against the NAAQS. This is how the permitting authorities have been implementing the first sentence of subsection 113(3).

Subsection (4) implements a requirement in 40 CFR 51.165 for major sources to evaluate its impacts on nonattainment areas. We have clarified in subsection (4) that the requirement applies to major stationary sources and major modifications, not minor sources or minor modifications.

TBC Comment #18, 19, & 20. WAC 173-400-113(3): Federal law does not require this burdensome NAAQS test for minor sources or modifications. See 40 CFR 51.165(b). As written this section could be read to require modeling for all projects – whether minor or major.

What is the authority for this “delay the attainment” language? Federal law does not appear to require this test for minor or major NSR (as compared to transportation conformity), and the RCW also does not appear to authorize this requirement (See RCW 70.94.152(4)).

Separating this language from the SILs below, raises the possibility that even if the SILs are met, the new source or modification could still be considered to cause or contribute to a NAAQS exceedance, making the WA law more stringent than it currently is more stringent than federal law.

Response: See response to previous comment. The comment on “delay the attainment” language is pre-existing language and has been deleted. The criteria in subsection 113(4) is separate from the NAAQS test in (3). The subsection 113(4) test is exclusively to assure that major stationary sources located outside of a nonattainment area do not cause or contribute to the nonattainment area or delay the ability for the area to come into attainment. It also requires sources that do cause or contribute to the nonattainment area (by having impacts above the listed levels) must offset their impacts.

The Boeing Company letter Comment #5 and Coalition Comment #43 and 44. WAC 173-400-113(3). This requirement should be limited to major projects, as specified in 40 CFR 51.165(b)(1). It is problematic because it restates the “cause or contribute” formulation in the next sentence, without providing any objective test of when a project “delays the attainment date” for a nonattainment area. In order to maintain parity with the federal requirements and avoid unduly burdening economic development in Washington, proposed WAC 173-400-133(3) should be amended.

Response: Paragraph (3) has been edited in response to this comment. The reference to delay of the attainment date has been deleted.

EPA Comment #33. WAC 173-400-113(3). The deletion of the last sentence of this paragraph makes it unclear as to whether offsets could be used to mitigate the impact of a new source or modification if it contributed to a new violation in an attainment/unclassifiable area. As we have suggested in our previous comments, Ecology should expand paragraphs (4)(a) and (b) so that

offsets can be used to mitigate a source's impacts whenever the permitting analysis would show that it would cause or significantly contribute to any NAAQS violation.

Response: Subsection 113(4)(b) as proposed made it clear that offsets would be required to mitigate a source's impacts.

The Boeing Company letter Comment #6. WAC 173-400-133(3) & (4). Under the proposal, a source's impact might be below the table values in (4), but the rule as proposed provides no way to demonstrate that these lower emissions do not "cause or contribute" to nonattainment of standards in another area. We ask that Ecology restore the explicit linkage between the "cause or contribute" test and the threshold value.

Response: We have chosen to not make this linkage. We had a staff person that was not involved with the rule development review this section with the suggested revision. The review indicated that adding this suggestion actually cause more confusion about what was required

Coalition Comment #45. WAC 173-400-113(4)

The edits to this paragraph come almost verbatim from 40 CFR 51.165(b)(2). They are important to the Coalition, because they provide an objective test for when the ambient impact of a project causes an unacceptable impact in a nonattainment area.

Response: Paragraph (4) has been edited in response to this comment. The insertion of "major stationary" makes it clear that these sources are subject to regulation.

Weyerhaeuser Comment # 15. WAC 173-400-113. (4)(a) would seemingly require each Notice of Construction for a minor new source review/modification to accomplish a modeling exercise to assess increment consumption in non-attainment areas (per Table 4a). Could Ecology add screening criteria to reduce the applicability of this requirement, perhaps based on distance from a non-attainment area or an emission below some threshold amount?

Response: We have edited this subsection to make it clear that only major stationary sources and major modifications are required to make this evaluation. The table is the evaluation criteria for determining if the impact would cause or contribute to nonattainment in the affected nonattainment area. This section is unrelated to increment consumption under the PSD program.

Coalition Comment #46 and EPA Comment #34. WAC 173-400-113 Table 4a.

This table should be updated to include all of the current EPA SILs, and to delete the one hour SIL for SO₂ which has no EPA counterpart. The latest version of this table appears in the October 20, 2010 Federal Register notice that adopted PM 2.5 increments and SILs.

Response: Table 4a has been updated to include threshold values for PM_{2.5}. The 1-hour average value for SO₂ is retained. It was always our intent that the PM_{2.5} entries would be included.

Coalition Comment #47. WAC 173-400-113(6)

Inert new language for (6): The project must not violate the stack height and dispersion limitations in WAC 173-400-200.

Response: This language was retained in WAC173-400-111. See response to Coalition Comment #39.

Comments on WAC 173-400-115 Standards of performance for new sources

USDOE Comment #08. WAC 173-400-115(1)(a). The provided informational list of 40 CFR 60 subparts that are “blank or reserved” as of the updated July 1, 2010 date is inaccurate and needs to be updated. As an example, Subpart JJJJ, which has been issued and was in effect on July 1, 2010, is included on the list as “blank or reserved.” Verify the correct list of 40 CFR 60 subparts that were either blank or reserved as of July 1, 2010 and revise the rule language in WAC 173-400-115(1)(a) accordingly.

Response: This listing in (1)(a) of blank and reserved subparts was originally provided for informational purposes. We find that the listing has become out of date. It has been deleted.

Comments on WAC 173-400-116, Increment protection.

EPA Comment #35. WAC 173-400-116: Note that EPA's PSD requirements at 40 CFR 51.166(a)(4) also require the State to periodically review the adequacy of its PSD plan.

Response: The rule language states we will periodically review increment consumption. This increment consumption review will indicate whether there is a need for a more extensive review of the overall plan for adequacy to protect or correct overconsumption of increment.

TBC Comment #21 and Coalition Comment #48. WAC 173-400-116(2).

Was this date intended to reflect EPA’s October 20, 2010 PM 2.5 increment final rule? It is important to pick up the new PM2.5 increments and SILs.

Response: The reference adoption date for PSD increments has been edited to reflect October 20, 2010.

TBC Comment #22 and 23. WAC 173-400-116(3)(a) & (b).

Edits are required to preserve alignment with the federal regulations. See 40 CFR 51.166(f)(1)(i) & (ii).

Response: Ecology intentionally did not include all of the options EPA would allow. We do not have to include every item on EPA’s list of activities that can be considered to not consume increment in our list. Note that EPA does not exempt anything from increment consumption in their FIP language at 40 CFR 52.21.

EPA Comment #36. WAC 173-400-116(3): If Ecology wishes to obtain full delegation of the PSD program prior to receiving a SIP-approved PSD program, subsection (3) must be revised to provide that the exclusions from increment analysis will take effect with respect to PSD sources as a matter of state law only upon EPA approval of Washington's PSD program as part of the SIP. 40 CFR 52.21, the federal PSD program administered by EPA, does not provide the exemptions from increment consumption set forth in 40 CFR 51.166(t).

Response: Ecology understands the issue and instead of delaying the implementation of the exemptions from increment consumption, we have instead delayed implementation of all of section 116 until it is approved in to the SIP by EPA. This action maintains the status quo on increment consumption.

Comments on WAC 173-400-131, Issuance of emission reduction credits.

TBC Comment #24. WAC 173-400-131(2). This timing limitation should be eliminated or substantially relaxed from the 180 days, so as to encourage sources to create and sustain these reductions. As long as the credit is applied for and the emission reduction is properly verified before the credit is to be used or transferred, there is no justification for an application deadline.

Response: The 180 day timeframe is the existing requirement. The issue of changing the timeframe after shutdown to file the request was not discussed during the stakeholder process. The requested change is substantively different from the existing language and has not been made.

Weyerhaeuser Comment #17. WAC 173-400-131(2). Permitting authorities have had a variety of interpretations for the Section (2) Time of Application phrase “after the emission reduction has been accomplished.” The policy choice should be to broadly recognize and credit emission reductions. Given the conditions proposed in (3)(c) requiring permanence, quantification, and federal enforceability, the implication is that 180 days starts with the issuance/modification of an underlying permit or order that locks in the emission reduction. As such, subsection (2) could be amended to say

“...after the emission reduction has been recognized in a federally-enforceable order/permit.”

Response: The requested change is substantively different from the existing language and has not been made.

EPA Comment #37. WAC 173-400-131(3)(a): Shouldn't the end of the new sentence say "representative of normal operations"?

Response: The third sentence does contain the suggested phrase. No change made.

The Boeing Company letter Comment # 7. WAC 173-400-131(3)(a).

The rule should allow for baseline emission to be determined based on the last two reported years rather than the previous 24 months. Insert:

“A source subject to WAC 173-400-105(1) or an authority’s equivalent annual emission inventory reporting requirement may use the average emissions rate occurring during the two most recent annual reporting periods.”

Response: Ecology has not made the suggested change. The option to use the most recent 2 years of inventory data is an option available to demonstrate the emissions over the most recent 24 months, or an alternative period as provided for in the last sentence of this subsection.

TBC Comment #25: WAC 173-400-131(3)(c). See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA’s PSD and NNSR regulations); and the use of the phrase “legally enforceable” in the NNSR provisions proposed herein. We recognize, however that the Federal CAA requires federal enforceability for reductions used as offsets under NNSR.

Response: Ecology recognizes the issue with federal enforceability. The primary use of emission reduction credits is for either offsets in nonattainment areas or documenting contemporaneous emission reductions in major source net emissions calculations. To avoid duplicate paperwork when using emission reduction credits as offsets in a nonattainment area, Ecology has chosen that these orders be federally enforceable at their initial issuance.

TBC Comment #26: WAC 173-400-131(3)(d). This test should not be more stringent than the generally accepted requirement that the reduction be “quantifiable.” C.f., OH Admin Code 3745-111-01 (E) [<http://codes.ohio.gov/oac/3745-111>] (“‘Quantifiable’ means that the amount, rate and characteristics of emissions and emission reductions can be determined or measured through a reliable and replicable method established by an applicable law or approved by the director.”); and North Carolina ERC guidance at <http://daq.state.nc.us/permits/erc/ercinfo.shtml> (“Emission reductions are considered quantifiable if the amount, rate and characteristics of the emission credit can be estimated through a reliable, reproducible method approved by the Division”)

Response: Ecology has not made the suggested any change to the text.

TBC Comment #27& 28: WAC 173-400-131(3)(e). We believe that this provision is intended to apply only when the project nets out of PSD or NNSR, not when the project actually goes through PSD permitting. See, e.g., the North Carolina ERC guidance at <http://daq.state.nc.us/permits/erc/ercinfo.shtml> (“The following are not considered surplus ... 1. Emission reductions which have previously been used to avoid 15A NCAC 2D .0530 or .0531 (new source review) through a netting demonstration”). The last clause is already covered by (3)(c), above.

Response: The language of the federal major NSR requirements limit the future use of reductions that have been used in a netting action and there was a PSD permit issued that involved the use of the reductions in the determination of a significant net emission increase. The language has not been changed from proposal.

EPA Comment #38. WAC 173-400-131(3)(f): This new provision should also include reductions used to demonstrate reasonable progress goals in a regional haze SIP as well as reasonable further progress in an attainment SIP.

Response: Ecology has asked EPA to further explain the basis for this comment. The reply received did not demonstrate that additional text would be required to our proposed amendment.

TBC Comment #30. EPA Comment #39, and Weyerhaeuser Comment # 18. WAC 173-400-131(5)(b). Three companies commented on the emission reduction credit provisions in (5)(b). They expressed concern over authorizing unlimited confiscation of emission reductions, suggested establishing criteria for how much the credit can be reduced, and queried if the language is a typographical error. Did Ecology really mean to say that the ERC amount will not be more than the emission reduction achieved?

Response: State law (RCW 70.94.850) requires that emission reduction credits be issued for “less than the emissions reduction” achieved by the source. The lack of such a statement in the current regulation is an omission that the added test is to correct. During the stakeholder process the issue of whether or not to set a quantity less than the reduction was discussed. As with internal discussions at the time, the consensus was that quantification was not necessary. However, in

response to these comments we have added a metric to determine the size of what “less than the reduction’ is to be.

TBC Comment #31. WAC 173-400-131(5)(c). Limiting the effective life of ERCs will discourage emission reductions. ERCs should not expire except in connection with the termination of the underlying emission reductions. See North Carolina ERC Guidance at <http://daq.state.nc.us/permits/erc/ercuse.shtml> (“Certified ERCs are permanent until withdrawn by the owner or until withdrawn by the Director of the DAQ.”).

Response: The requirement here only adds that the certificate issued will contain not just the issuance date, but also the expiration date of the credits in the certificate. This is to inform the owner that the certificate and emission reduction credits it contains exist for a limited time.

Comments on WAC 173-400-136, Use of emission reduction credits (ERC).

TBC Comment #32. WAC 173-400-136(1).

How is this “creditable emission reduction” any different than using the ERC in the determination of “net emissions increase”?

Response: “Creditable emission reduction” is the term used in the federal major NSR programs to describe emission reductions that can be used in determining whether a significant net emission increase has occurred.

EPA Comment #40. WAC 173-400-136(1): Since this provision already provided for the use of ERC's in the determination of " net emission increase," it's not clear what the purpose is of the new language regarding "creditable emission reduction" under WAC 173-400-720. If this is something different than creditable reductions for netting purposes, please explain. Also, why wouldn't the same be allowed for creditable emission reduction in non attainment areas?

Response: While the new text in subsection 136(1) may be duplicative, at this time we cannot remove the text.

TBC Comment #33. WAC 173-400-136(3). NNSR offsets need only be in the required ratio and from the same non-attainment area as the proposed project; the offsets need not fully counter the impact of the project’s emissions at all receptors at all times.

Response: The text is existing text. The fine-tuning that might be warranted by the commenter is outside of the scope of this current proposal.

TBC Comment #34. WAC 173-400-136(4). Why is there a 30 day time limit? This should be allowed at any time before the new owner want to use the ERC.

Response: The text being commented on is existing text that will be retained. The notification is to change the name of the owner of the certificate, record that it has been transferred to a new owner and to assist us in assuring that a given credit is not used by more than one company.

Weyerhaeuser Comment #19 and TBC Comment #35. WAC 173-400-136(5). Limiting the effective life of ERCs with a static expiration period unrelated to a termination of the underlying emission reductions will discourage emission reductions. If there is any expiration period, it

should not be less than 10 years. Other states like North Carolina and Ohio do not impose a static expiration period. Access to ERC's will become an important factor in supporting new economic development in non-attainment areas. Ecology should promote a pro-growth philosophy with timely and competent new source review permitting. The agency should broadly credit emission reductions and then work to facilitate new and responsible economic growth.

Response: The proposed reduction to 5 years has not been made and the current emission reduction credit lifetime of 10 years has been retained. Ecology views these reductions as valuable to use, but not to hold indefinitely. We want the credits generated to be used promptly to foster new economic growth rather than be held as 'investments.'

Weyerhaeuser Comment #20 and TBC Comment #36. WAC 173-400-136(6). This subsection should be deleted. It unfairly and prematurely judges that "controls on operating sources" will need to be added to regain ambient air quality standard attainment. Industrial sources in Washington generally have modern-day BACT technologies in use, with MACT in-place or on the way. The state emission inventory indicates that industrial sources contribute <15% of the criteria pollutant load to ambient air. If Ecology must offer criteria to allow discounting of ERCs it is sufficient to rely on proposed (a)(i) and (a)(iii).

The risk of discounting will discourage the creation of ERCs and the underlying emissions reductions. As this section is worded, persistent nonattainment would justify the discounting of 100% of all ERCs rendering them worthless. In this situation, no new ERCs will be created and offsets for new projects will be very difficult to find, stifling economic development. Depending on whether ERCs will expire and, if so, what their life span will be, there should be a maximum discount. For example, if the life span is limited to five years as proposed, there should no discounting allowed. If the life span is 10 years, the maximum discount should be 10%, etc.

Response: The referenced section is based on provisions in 40 CFR 51.165. The new text is a rewrite in short sentences and bullets of the existing text that is being deleted. The ability to discount issued emission reduction credits if necessary to assure attainment with a NAAQS in a nonattainment area is a requirement of the federal rules. As with federal rule, the opportunity to discount credits is an occurrence not to be taken lightly or as the first action in working to achieve attainment. This is an action of last resort. This is why the criteria are listed and that there must be a public process to discount the credits. Until we are

EPA Comment #41. WAC 173-400-136(6). This provision should also include the ability to discount credits if necessary to meet the reasonable progress goals of the regional haze SIP.

Response: EPA was asked to provide a legal basis for this comment and has not produced such a basis. As noted above, the condition is derived from a nonattainment NSR program requirement. We have not made a change

Comments on WAC 173-400-171, Public notice.

Coalition Comment #49. Insert, "This section applies statewide except that a local air authority may apply its own public notice requirements in lieu of those set forth in this section for an action to be taken by the authority." This change is important. Local air authorities apply their own public notice requirements, and many of those rules are SIP approved. See, e.g. Southwest Clean Air Agency Section 400-171, Northwest Clean Air Agency Section 301 and PSCAA

Regulation I, Section 6.06. Neither permit applicants nor local air authorities with their own public notice rules should be required to follow two different sets of public notice requirements, and an action taken by an authority should not be subject to challenge for failure to follow WAC 173-400-171.

Response: WAC 173-400-020 Applicability, states in paragraph (2), "An authority may enforce this chapter and may also adopt standards or requirements." This applicability statement applies to all subsection of Chapter 173-400, except for those provisions that are specifically reserved for Ecology such as WAC 173-400-118 and WAC 173-400-700 through 750.

EPA Comment #42. WAC 173-400-171(1)(a): Some words appear to be missing in the last line. Should it be, "Compliance with the public notification requirements of WAC 173-400-740 in such cases is required"?

Response: Paragraph (1)(a) has been edited as suggested. It reads, "(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-720. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required."

EPA Comment #43. WAC 173-400-171(2)(c): It would be more clear if this provision specified that the "public may request a public comment period on the proposed action by submitting a request to the permitting authority in writing via letter, or electronic mail within 15 days of the initial posting"?

Response: Ecology made the editorial decision that it is better to restrict the number of requirements in each sentence. Paragraph (c) lets the reader know that they can request a public comment period. Paragraph (d) gives details on the timing of that request.

EPA Comment #44. WAC 173-400-171(2)(e). WAC 173-400-171(2)(e): Should the reference at the end of that section be to the "fifteen-day internet posting period" rather than "fifteen-day comment period"?

Response: The sentence has been edited as suggested. Communications are more direct when consistent language is used.

EPA Comment #45. WAC 173-400-171(3). This list must include extensions of the deadline to begin actual construction of a major stationary source or major modification in a nonattainment area. Redoing a LAER determination is no less important, and arguably more important, than redoing a BACT determination in an extension, and for which Ecology's rules require public involvement. This provision is currently in Ecology's rules at WAC I 73-400-171 (2)(a)(xii), but appears to be proposed for deletion.

Response: The language that requires a mandatory public comment period has been retained in WAC 173-400-171(3) (m), "Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area".

Coalition Comment #50. WAC 173-400-171(3). The Coalition urges Ecology to retain the current version of this paragraph. The difference between the current version and the proposed replacement is that the current version requires public notice prior to Ecology's approval of various listed applications, whereas the proposed version would require public notice of the filing

of the application itself. The comment opportunity should be provided for Ecology's proposed action, and the current version ensures that.

Response: The original rule language has been retained. "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:".

TBC Comment #37. WAC 173-400-171(3)(b). A source should not have to perform an AISL demonstration to avoid triggering public comment if its TAP emissions are below the applicable small quantity emissions rates.

Response: If a source has toxic air pollutant emissions below the small quantity emission rates, they have already demonstrated compliance with the ASILs.

Coalition Comment #51. WAC 173-400-171(4). Delete "applications or other" from this sentence: "The notice must be published before any of the applications or other actions listed in subsection (3) of this section are approved or denied." This is important. Ecology should not be required to publish notice of the receipt of an application. The notice should be provided for Ecology's proposed decision on the application.

Response: Paragraph (3) uses several terms in its listing of "things" subject to a mandatory public comment period including: application, order, action, use of a model, and extension of deadline. The words "applications or other" have been retained as they include the variety of actions addressed in (3). There is no intent that the application is subject to a public comment period and later, after a permitting decision is made the decision be subject to a public comment. The intent is that the application be posted as a notification of application received. Only if the resulting permit requires public notice or a member of the public requests a public comment period would the permit decision be subject to public comment.

Puget Sound Clean Air Agency: Comment 6. WAC 173-400-171. The Agency requests that the existing requirements for a public notice be retained unchanged.

Response: Ecology finds that the two requirements added to the list of required components are essential for providing adequate information concerning a project. The new requirements are:

WAC173-400-171(6) (a) (iii) *A description of the air contaminant emissions including the type of pollutants and quantity of emissions;*

And

WAC173-400-171(6) (a)(viii) *The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information...unless the information is exempt from disclosure;*

We acknowledge that there may be added costs when this information is included in the legal notice, but we find that this information is required to give sufficient information about a proposed air permit.

Coalition Comment #52. WAC 173-400-171(10). The requirement to provide 30 days' notice of a public hearing has no basis in EPA's minimum public notice requirements, 40 CFR 51.161. It has the practical effect of increasing the public comment period to 75 days in every instance in which someone requests a public hearing in their comments filed on the 30th day. An agency should have the ability to schedule a public hearing on shorter notice than 30 days, so that the comment period can be limited to close to the 30 day period envisioned by 171(7).

Response: The current rule language in WAC 173-400-171(4) requires a thirty day public notice. The Rule Advisory Committee reviewed the public notice section but did not discuss the status quo of a thirty day notice. This proposed change of the length of notice is outside the scope of topics discussed with the Rule Advisory Committee. The permitting authority still retains the decision whether to grant a request for a public hearing.

EPA Comment # 46. WAC 173-400-171(12)(b): Is the cross-reference to subsection (10) the correct cross-reference?

Response: The reference to subsection (10) is correct.

Comments on WAC 173-400-560, General order of approval.

EPA Comment # 47. WAC 173-400-560. This provision is not currently in the SIP and must be accompanied by a demonstration that issuing permits under this provision will comply with the requirements for SIP approved minor NSR programs in 40 CFR 51.160-161 and meet the requirements for SIP revisions in Section 110(1) of the CAA, and as applicable, CAA Section 193. It may also possibly require Region 10 to undertake the SIP consistency review involving Headquarters and the other Regions. Note that a provision requiring general permits to contain a provision authorizing the state to deny coverage for cause on a case-by-case basis and to require a source-specific construction permit would facilitate the demonstration of consistency with Clean Air Act requirements.

Response: Ecology will include the required demonstrations will be included in the overall SIP submittal. The ability to deny coverage for facilities that do not meet the approval criteria in a General Order already exists.

EPA Comment # 48. WAC 173-400-560(1)(f). We do not understand the cross-reference to 173-400-830 in subsection (1)(f) because the -800 series now appears to apply exclusively to major nonattainment NSR and subsection 4(a)(iii) states that coverage under general permits is not available to major stationary sources or major modifications subject to WAC 173-400-830 or 173-400-720.

Response: The cross reference has been deleted.

TBC Comment # 38. WAC 173-400-560(1)(f). Section 173-400-830 sources are excluded from general permitting below in 173-400-560(4)(a)(iii), making this requirement to comply with -830 inapt. However, we believe that appropriate general permitting should be available even though a proposed new source or modification to be covered by a general permit would be subject to -830 (NNSR) – 720 (PSD) or -113 (NSR for sources in attainment areas impacting nonattainment areas). General permitting for PSD could be especially valuable for sources or modifications that would be subject to this program solely because of their greenhouse gas emissions. Thus, this

provision should require compliance with all of these programs, as applicable, and 173-400-560(4)(a)(iii), below should be deleted.

Response: The cross reference to section 830 has been deleted. The views on general permits for greenhouse gases are reasonable and may be pursued at a future date. The intent of section 560 is specifically to provide a permitting option for small sources that do not trigger a major NSR requirement or air operating permit program applicability.

TBC Comment # 39. WAC 173-400-560(4)(a)(iii). PSD and NNSR sources/modifications should not be excluded from general permitting. We need general permits to deal with greenhouse gases as a regulated pollutant under PSD (and perhaps, in the future, under NNSR).

Response: The intent of section 560 is specifically to provide a permitting option for small sources that do not trigger a major NSR requirement or the addition of the emission unit covered by the General Order would not make the source subject to the air operating permit program. General permits for greenhouse gases may be pursued at a future date.

TBC Comment #40. WAC 173-400-560(4)(a)(iv). There is no reason why the need to obtain or modify an operating permit should preclude streamlined construction permitting. This provision would exclude all existing operating permit major sources from general permitting even for insignificant changes, since the conditions of the general order of approval would need to eventually be incorporated into the operating permit!

Response: Nothing would preclude an air operating permit source from using a General Order to install a new emission unit, provided the new emission unit would not trigger a required reopening (significant change) of its air operating permit.

EPA Comment #49. WAC 173-400-560(7). This appears to contain a typo. Should it state "*in violation of WAC 173400-110 if a decision to grant coverage ...* "

Response: The suggested change has been made.

Comments on WAC 173-400-720, Prevention of significant deterioration (PSD).

EPA comment WAC 173-400-710. While we understand that this section is not open for public comment, EPA wishes to go on record that the language of -710(1) is problematic for SIP approval. The language appears to establish a preference for definitions in WAC 173-400-030 over the definitions in the federal PSD rules adopted by reference in WAC 173-720. EPA believes that the language in WAC 173-400-030(1) is sufficient, in and of itself, to establish the relationship between the definitions in 030 and definitions provided elsewhere in the chapter. As such, this definition section should simply state that the definitions in -710 apply for purposes of -700 through -750 (-710 should in turn reference the definitions adopted by reference in -720. In order for EPA to evaluate this provision for purposes of SIP approval, we request that Ecology provide EPA with an explanation of which definitions in -030 it will use in -700 through -750, and specifically, whether definitions in 40 CFR 52.21 (b) or in WAC 173-400-030 will be where Ecology has drafted State regulatory provisions in 700 through -750 and is not relying on the substantive provisions of 40 CFR 52.21 (e.g., the "reasonable possibility" provisions in WAC 173-400-720(4)(b)(iii).

Response: We believe that EPA is misreading the order of preference for definitions used in the 700-750 portions of our rules. The definitions in section 030 govern unless a given term is defined differently in the definitions of 40 CFR 52.21(b), which are adopted by reference. Where there is a definition for a term in 40 CFR 51.21(b), that term governs. The definitions in WAC 173-400-030 address all other terms defined there and not defined by EPA.

EPA Comment #49. WAC 173-400-720. This section needs to incorporate by reference the provisions of 40 CFR 52.21 (p)(1) and (4) with respect to adverse impacts on Air Quality Related Values (AQRV's).

Response: The change has been made. The exclusion is a historical oversight by Ecology and EPA.

Coalition Comment #53 and 54. WAC 173-400-720(4). Delete paragraphs (4) (iii), (iv), and (v). This subsection addresses requirements with which a PSD permit must assure compliance. Paragraphs (iii) and (iv) of this subsection described permit processing requirements, but they are not requirements that will be implemented through a permit.

The increment protection requirements in WAC 173-400-115 are not new source review permit processing requirements. The obligation of a PSD permit applicant to show that the project will not cause increment exceedances is found in 40 CFR 52.21(k).

Response: To better clarify PSD requirements, paragraphs (4) (iii), (iv), and (v) were deleted and this language inserted:

“The proposed major new source or major modification will comply with all applicable new source performance standards (40 CFR Part 60), national emission standards for hazardous air pollutants (40 CFR Part 61), and emission standards adopted under chapter 70.94 RCW that have been incorporated into the Washington state implementation plan”.

Ecology interprets this sentence to be composed of two parts. First, the owner of the stationary source has to comply with the 40 CFR Part 60 and 61 requirements that apply to it. Second, the source also has to comply with those emission standards adopted under RCW 70.94 that have been adopted by EPA into the Washington SIP.

Coalition Comment #55. WAC173-400-720(4)(a)(iv). The definitions that follow are not used in the nonattainment major NSR rules.

Response: Yes. There are separate definitions that apply in the nonattainment major NSR rules.

Coalition Comment #56. WAC173-400-720(4)(a)(iv). Delete “Sections not listed above are adopted elsewhere in this rule, reserved, stayed, not part of the 40 CFR 51.166 requirements, or are not delegable.” This statement is explanatory in nature, and should not be included in the rules.

Response: The advisory language has been deleted.

EPA Comment #54. WAC 173-400-720(4)(a)(v). The statement at the end of the list of the sections of 40 CFR 52.21 incorporated by reference is not appropriate for inclusion in the state regulation or in the SIP.

Response: See prior response

The Boeing Company letter Comment #10. WAC 173-400-720(4)(b). Under the complex method used by EPA in “tailoring” major source rule applicability for greenhouse gases, a future New Source Performance Standards addressing greenhouse gases will undo the tailored applicability thresholds for PSD and operating permit sources. To avoid the unintended result in the Washington rule, the following provision should be added to WAC 173-400-720(4)(b) (iii) : “(C) 40 CFR 52.21 (b)(50)(ii) Any pollutant other than GHG that is subject to any standards under section 111 of the Act.”

TBC Comment #42. WAC 173-400-720(4)(b)(iii)(C). Insert: 40 CFR 52.21 (b)(50)(ii) “Any pollutant other than GHG that is subject to any standard under section 111 of the Act.”

This is needed to prevent a situation where the first NSPS to regulate GHGs undoes the Tailoring Rule. The Tailoring Rule tweaks the meaning of the “subject to regulation” prong of the definition of “regulated NSR pollutant” in 40 CFR 52.21(b)(50)(iv), but if GHGs are regulated under an NSPS they will become a regulated NSR pollutant under 40 CFR 52.21(b)(50)(ii) at the statutory (un-tailored) major source/major modification levels. We have notified EPA of this time bomb threatening the Tailoring Rule.

Response: While this might be a useful change to make, Ecology is not making this change to EPA’s definitions at this time.

At such time as they issue a final NSPS rule addressing greenhouse gas emissions, EPA may need to amend 40 CFR 52.21(b)(50) in the suggested or a similar manner. We leave this for EPA to address in their rulemaking efforts.

EPA Comment #55. WAC 173-400-720(4)(b)(i): A few additional references need to be added to this section setting forth the provisions in 40 CFR 52.21 for which the term "Administrator" must continue to mean the Administrator of EPA: 40 CFR 52.2 1 (b)(37)(i) and (b)(51).

Response: We have made the suggested additions.

EPA Comment #56. WAC 173-400-720(4)(b)(iii)(C). Although we understand that Ecology has intentionally broadened the scope of this requirement, this provision needs to be revised to include revisions made to 40 CFR 52.2 1 (r)(6) in response to the court remand.

Response: Ecology has made additional adjustments to its text to reflect changes EPA made to their version of this subsection. We have chosen to not implement the full breadth of the changes EPA made.

Comments on WAC 173-400-730, Prevention of significant deterioration application processing procedures.

EPA Comment #57. WAC 173-400-730(1)(a): The use of the term "adequate" here is inconsistent with the language of 40 CFR 52.21 (n), incorporated by reference in -720, which uses the term "necessary".

Response: While Ecology did not propose any changes to the text portions of section 730, we have made the suggested word change for consistency and approvability.

USDOE Comment #09 and EPA Comment #58. WAC 173-400-730(1)(c). The proposed rule language references WAC 173-400-720(4)(b)(iii) for additional direction on processing and submittal of PSD applications. This does not appear to be the correct reference. Verify the correct intended reference for this section of the proposed rule, and revise the rule language, as appropriate, to reflect the correct regulatory citation.

Response: The correct reference is WAC 173-400-720(4)(b)(iii). The formatting of this section has been changed to improve its readability.

Coalition Comment #58. WAC 173-400-720(2)(d). The rule that a PSD permit is effective 30 days after issuance comes from 40 CFR 124.15, the EPA permit processing rules. The 30 day waiting period prevents commencement of construction until the EAB appeal period has run. PSD permits issued by a SIP approved State program are not appealable to the EAB, and there is no automatic stay of a permit under RCW 70.94.152. 40 CFR 124.1(d) states expressly that “Part 124 does not apply to PSD permits issued by an approved State.” The Coalition requests that PSD permits issued by Ecology take effect immediately, so that the long waiting period imposed on any project that requires a PSD permit can be minimized.

Response: Paragraph (2)(d) has been edited to read:

“Once the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a determination will be either the date of issuance of the final determination, or a later date if specified in the final determination.

Until the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a final determination is one of the following dates:”

EPA Comment #59. WAC 173-400-730(5): These provisions regarding construction time limitations are inconsistent with similar provisions in 40 CFR 52.21 (r)(2), which is incorporated by reference.

Response: We have solved the inconsistency by not adopting 40 CFR 52.21(4)(2). This section is based on unofficial federal guidance from Region 10 on extensions of PSD applications and reflects Ecology’s longstanding implementation of that guidance.

Comments on WAC 173-400-750, Revisions to PSD permits.

Coalition Comment #59. WAC 173-400-750(1)(d). This requirement that the revised limit continue to require BACT as defined in the original permit makes no sense, given that many applications to revise PSD permits seek to revise unachievable BACT determinations.

Response: The vast majority of the PSD revision requests we receive and process do not seek to change emission limits to reflect the capability of the installed BACT control technology. WAC

173-400-750(1)(d) has been edited so that BACT is no longer restricted to BACT as it existed at the time of the original approval. This will allow sources to take advantage of new pollution control methods or the actual capabilities of innovative methods that have been unable to meet the emissions control levels anticipated.

USDOE Comment #10. WAC 173-400-750(1)(e). The existing rule language includes a reference to WAC 173-400-112(2) which does not appear to be valid anymore with the proposed removal of WAC 173-400-112.

Response: A few paragraphs of WAC 173-400-112 have been retained. The reference pointer has been corrected.

EPA Comment #60. WAC 173-400-750(3)(c) and (d): As EPA has previously commented, these two provisions are not SIP approvable as currently drafted. While certain revisions to compliance monitoring methods could be done as administrative revisions (see 40 CFR Part 70 for an example), a provision that allows any provision of a PSD permit to be revised administratively based on a determination by an unspecified party using unspecified criteria provides too broad of a director's discretion to be approved by EPA into a PSD SIP.

Response: Ecology disagrees with EPA on its interpretation of the breadth of the referenced subsections. Compliance monitoring methods in a PSD permit must be changed in the PSD permit, not an Air Operating Permit that contains the PSD.

The determination of a proposed change is administrative or not is made by the Ecology PSD permit writers and Air Quality Program Management. The criteria given are clear. There is opportunity for latitude but the underlying criteria of equivalency stringency or ability to determine compliance has to be maintained. The criteria that EPA and third parties have to be able to determine that compliance is being maintained and that emission limit stringency is not reduced provides a backstop against which changes are evaluated.

While it would be nice to be able to list in detail all of the changes that might be considered to be an administrative change or not, neither Ecology nor EPA have adequate prescience to devise a list that will serve all situations now and into the future.

Comments on WAC 173-400-800 – 860.

EPA Comments #61 and 62. WAC 173-400-800 to -850. Global comment: We recommend that Ecology conduct a global search of the WAC-175-400 rule making package to make sure that "reviewing authority" is changed to "permitting authority" as appropriate, and that the term "source" is changed to "stationary source" as appropriate.

Response: Ecology has endeavored to make this change, though still has added a definition that "reviewing authority" means the same as "permitting authority".

Comments on WAC 173-400-810, Major stationary source and major modification definitions.

EPA Comment #63. WAC 173-400-810. As discussed in the comments above on WAC 173-400-710, the language of this section indicates a preference for the definitions in WAC 173-400-030 over the definitions actually contained in this section or adopted by reference in the PAL provisions (WAC 173-400-850). We suggest that the introductory language of this section be revised as suggested in our comment on 710 above.

Response: The language has been revised slightly to clarify Ecology's preference on the order of definitions. For purposes of the nonattainment NNSR program (and similarly for the PSD program) the definitions of section 030 are to be used unless a defined term is defined differently in section 810. For the nonattainment program one additional criterion exists for the Plant wide applicability limit process, which is based on the adopting the text in 40 CFR Part 51, Appendix S.

TBC Comment #44. WAC 173-400-810(3). The idea that vessel emissions might be considered to be a "building, structure facility or installation" might be better addressed through guidance rather than this departure from the language in the federal regulations. If this limitation on the exclusion of vessel emissions remains, then the PSD and minor NSR definitions should also be revised, and clarifications for nonroad engines (See Virginia Regulations 9 VAC 5-80-1110) motor vehicles and other mobile sources should also be included.

Response: No changes were made in response to this comment.

TBC Comment #47. WAC 173-400-810(16). Although the proposed language is taken verbatim from 40 CFR 51.165, it does not make sense without some clarifying tweaks. See WAC 173-400-030(19)(b).

Response: This is the federal definition at 51.165(1)(ii), which will govern in the nonattainment program provisions we are implementing. As EPA has drafted this definition, a vessel cannot be part of the stationary source. We did not propose to adjust this definition and have not made any changes here.

TBC Comment #48. WAC 173-400-810(17)(b). While the proposed language is taken verbatim out of 40 CFR 51.165's definition of net emission increase, it does not seem to make sense. In 40 CFR Part 51 Appendix S's definition of net emission increase, the contemporaneous period runs from 5 years before the commencement of construction of the project at issue and until the date that the increase from that project occurs.

Response: The boundaries of the contemporaneous period are in subsection WAC 173-400-810(17)(c). The one year period is part of the state program that is currently approved into the state SIP.

TBC Comment #49. WAC 173-400-810(17)(c)(i). This one year limitation is unreasonably short. In 40 CFR Part 51 Appendix S's definition of net emission increase, the contemporaneous period runs from 5 years before the commencement of construction of the project at issue and until the date that the increase from that project occurs.

Response: This is the period existing in our current regulation that has been approved into the SIP. This one year period only applies to emission reductions for which an emission reduction credit has not been requested and received. If the reduction has been documented in an emission reduction credit, then the reduction could have occurred up to 10 years earlier. The text is unchanged.

TBC Comment #50. WAC 173-400-810(17)(c)(ii). We believe the intent of this provision is that this exclusion only applies to decreases in circumstances where credit for the reduction has been taken in a offset transaction and not when the reduction is used to net out of new source review. See, e.g., December 29, 1889 EPA Memo from John Calcagni Re: Use of Netting Credits [<http://www.epa.gov/region7/air/nsr/nsrmemos/netting.pdf>] ("There are situations, such as when a source nets out of review, when the permitting authority does not rely on creditable emissions increases or decreases.")

Response: Boeing portrays Ecology's longstanding understanding and application of this provision and the similar provision in the PSD program.

TBC Comment #51. WAC 173-400-810(17)(e)(iii). I believe the intent is that this exclusion only applies to decreases when credit for the reduction has been taken in a offset transaction and not when the reduction is used to net out of new source review. See, e.g., December 29, 1889 EPA Memo from John Calcagni Re: Use of Netting Credits [<http://www.epa.gov/region7/air/nsr/nsrmemos/netting.pdf>] ("There are situations, such as when a source nets out of review, when the permitting authority does not rely on creditable emissions increases or decreases".)

Response: Boeing portrays Ecology's longstanding understanding and application of this provision and the similar provision in the PSD program.

TBC Comment #52. WAC 173-400-810(17)(f). See 40 CFR 51.165's definition of net emission increase.

Response: Ecology has separated the 2 sentences of 40 CFR 51.165(a)(1)(vi)(F). No change is made.

TBC Comment #53. WAC 173-400-810(18). See 40 CFR 51.165(a)(i)(xxx). Appendix S itself is not implemented through a SIP.

Response: This is the definition in 40 CFR 51.165(a)(1)(xxx). No change made.

TBC Comment #54. WAC 173-400-810(24)(a) (iii)(C). Edit to read: “Nitrogen oxides are presumed to be precursors to PM2.5 in all PM2.5 nonattainment areas, unless the State demonstrates to the EPA’s satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM2.5 concentrations.”

See 40 CFR 51.165 (a)(1)(xxxvii).

Response: Ecology’s work developing the Regional Haze SIP demonstrated that that nitrogen oxides emissions from point, mobile and area sources are a significant contributor to the fine particulate concentrations impairing visibility in Washington’s Class I areas.

Based on this information Ecology made a policy determination to delete the text suggested to be added.

EPA Comment #64. WAC 173-400-810(24)(b). We suggest that this last sentence be amended to read:

"Applicability determinations for PM2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850, and made without accounting for condensable particulate matter shall not be considered in violation of this section. "

Response: While EPA’s requested change may be important technically, it does not have any practical application on the anticipated effective date of this rule or the anticipated SIP approval of this nonattainment NSR program revision. The suggested clarifying addition has been made.

Comments on WAC 173-400-820, Determining if a new stationary source or modification to a stationary source is subject to these requirements.

EPA Comment #65. WAC-173-400-820(5). A citation appears to be incomplete in the definition of reasonable possibility. The first sentence should read "*Except as provided in (f)(11), of this subsection, ...* "

Response: The correction has been made.

TBC Comment #55. WAC 173-400-820(5)(b) and (d). The EPA regulations only require that this information be submitted to the permitting authority for EUSGUs.

Response: We have chosen to make the ‘reasonable possibility’ requirements of the nonattainment NSR program identical to the requirements for the PSD permit program in Washington. This simplifies the application of this requirement for all major stationary sources.

TBC Comment #57. WAC 173-400-820(6). In light of the fact that the reporting requirements, as proposed, go beyond the federal requirements by applying to non-EUSGUs, what projects would this section apply to?

Response: It is possible under the construction of Washington state law and regulations for a facility to have a modification project that is exempt from state minor new source review requirements, but still may be subject to federal major NSR requirements. This subsection is to

address that very small opportunity. The text in this subsection is identical to the state PSD program regulation text on this subject.

Comments on WAC 173-400-830, Permitting requirements.

TBC Comments #58, 59, & 60. WAC 173-400-830(1)(e), (f), (g). Insert “Major stationary” and “major modification” in several places. The introductory language in this section indicates that the entire section is limited to new major stationary sources and major modifications of existing major stationary sources.

Response: Thank you. We have endeavored to make all the corrections..

Comments on WAC 173-400-840, Emission offset requirements.

EPA Comment #66. WAC 173-400-840. We suggest that the Ecology rules include specific language in this section (and in 173-400-830 as well) that clearly indicates that the requirement for LAER and offsets apply to the precursors of ozone and PM2.5.

Response: We have made changes to the definitions and to the criteria in WAC 173-400-820 to address precursor requirements. We did not make parallel clarifying changes to this section, and instead rely on the clarifying text in sections 810 and 820.

TBC Comment #61. WAC 173-400-840 (1). Set ratio of emission reduction to emission increase at 1:1. See 40 CFR 51.165(a)(9)(i).

Response: In EPA’s rule on the elements of an approvable nonattainment NSR program, EPA sets recommended minimum offset ratios. In order to achieve emission reductions to return an area to attainment status, we have chosen to use a 1.1 to 1 offset ratio in the past. This ratio was set by policy statement in the context of an individual permit action. The statement in rule sets the requirement up front so that an applicant is clear on its offset obligation under this section.

TBC Comment #62. WAC 173-400-840 (2) Insert edit to clarify that the ozone nonattainment areas of concern are those that are subject to sections 181-185B of the Federal Clean Air Act. See 40 CFR 51.165(a)(9)(ii).

Response: The suggestion is reasonable and part of the original federal language. The change has been made.

TBC Comment #63. WAC 173-400-840 (4). Set ratio of VOC emission reduction to VOC emission increase at 1:1. See 40 CFR 51.165(a)(9)(ii).

Response: See response to comment on WAC 173-400-840(1).

EPA Comment #67. WAC 173-400-840(5): Under this emission offset requirement section, paragraph 5 states: *"The requirements of this section applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area."*

We believe this paragraph should be moved into section -840 because it is directly referencing the broader permitting requirements in 40 CFR 51.165(a)(1 0).

Response: thank you. We have relocated this provision to WAC 173-400-830(1)(j).

TBC Comment #64. WAC 173-400-840 (6). Why are there no provisions for inter-precursor trading as contemplated in 40 CFR 51.165(a)(ii)?

Response: During stakeholder discussions the subject was discussed and the consensus of the discussions was to not allow interpollutant trading between precursors or between precursors and primary pollutants. Allowing inter-pollutant trading would entail a demonstration that we could develop and implement defensible trading ratios.

TBC Comments #66 and 67. WAC 173-400-840 (8)(a), (8)(b)(ii). Change the baseline date for determining emission reduction credit and existing fuel combustion source from the date that the NOC is considered complete to the date that the NOC is filed. See 40 CFR 51.165(a)(3)(i). The use of the completeness date is also inconsistent with other provisions in these offset regulations that use the filing date.

Response: We understand that there are inconsistencies with the usage of NOC completeness or filing date. In the situation of this subsection, we are attempting to be consistent on the date. This date also allows the length of time that can occur between the application filing (submittal) date and the date that the permit is determined to be complete. We are retaining the proposed text.

EPA Comment #68. WAC-173-400-840(8)(b)(iii)(II). There appear to be two typos in paragraph (II). The seventh line apparently should read"*explicitly includes the pre-shutdown or pre- curtailment emissions*".

Response: Thank you. We have made the suggested change.

TBC Comment #70. WAC 173-400-840 (8)(b)(vi). Edit to clarify that the intent is that this exclusion only applies to decreases when credit for the reduction has been taken in an offset.

Response: The suggested change is not part of the underlying federal requirement in 40 CFR 51.165(a)(3)(ii)(G). We have not made the suggested change.

Comments on WAC 173-400-860 Public involvement procedures.

TBC Comment #71. WAC 173-400-860. Which permits are subject to WAC 173-400-171?

Response: The text has been edited to read, "Any permit issued pursuant to WAC 173-400-830 or 173-800-850 must comply with WAC 173-400-171."

Comments on WAC 173-400-930, Emergency engines.

EPA Comment #69. WAC 173-400-930: This rule must make clear that emergency engines at major stationary sources or that are part of a major modification to a major stationary source are not eligible for coverage under this section.

Response: This new section was proposed as a method of addressing the toxic air pollutants emitted from diesel generators. The analysis focused on diesel emissions impact on ambient air quality and their health impact irrespective of their location. The suggested change has not been made.

USDOE Comment #11. WAC 173-400-930 General: Revise the rule language throughout WAC 173-400-930, as necessary, to allow this new section to apply to compression or spark-ignition emergency engines using any type of fuel.

Response: This new section was proposed as a method of addressing the toxic air pollutants emitted from diesel generators. The analysis focused on diesel emissions impact on ambient air quality and their health impact. It did not consider emissions from other engine types or fuels such as gas, propane and natural gas. The inclusion of spark ignition engines would be outside the scope of the proposal and analysis. The suggested change has not been made.

Qwest Comment #1, USDOE Comment #12. Revise the proposed rule language in WAC 173-400-930 (2)(c) and applicable portions of (3), as appropriate, to allow a total of 100 hours of operation annually for maintenance and testing, and include provisions for up to 50 hours of non-maintenance/testing operation annually in compliance with federal regulations.

Response: The Federal Clean Air Act and Washington's Clean Air Act regulate different air contaminants. Washington regulates approximately 400 toxic air pollutants in addition to the criteria and hazardous air pollutants regulated by EPA. Taking into consideration these toxic air pollutants and the criteria in WAC 173-460, Ecology finds that the operating time allowed in the NSPS would not protect public health from the toxic air pollutants emitted by these engines. As a result, it is necessary to limit the hours of maintenance and testing operation to fifty hours per year to be protective of human health.

USDOE Comment #13. WAC 173-400-930(3)(a): The proposed definition of emergency engine appears to be restricted to "new engines" instead of "new or modified engines". Since the primary purpose of this proposed new section is to serve as an alternate new source review approach, it should be applicable to new engine sources, which by definition could include modified engines.

Revise the proposed rule language in WAC 173-400-930(3)(a) to clarify that the definition of an emergency engine for purposes of this rule includes both new and modified emergency engine sources.

Response: This provision is written expressly for engines with emissions that comply with EPA's tier II or higher emission standards. This provision is not intended to be used for older engines that do not meet the specified EPA emission standards. These standards are applicable to all new nonroad engines specific for the year that the emergency engine is put into operation. Engines that are unable to meet at least the Tier III standard are not protective of the ambient air quality or human health, through meeting the requirements of WAC 173-460. The requested change has not been made.

AT&T Comment #5.

AT&T's engine fleet consists primarily of emergency backup engines that are used infrequently and for short periods of time. As such, our facilities' fuel supplies are depleted slowly. In fact, some facilities may go more than a year between fuel additions, and it is common for fuel to be added no more than once per year. This low usage level simply will not allow AT&T to deplete its existing inventory of low sulfur diesel (LSD) prior to finalization of the proposed rule. Unless an exemption is included in the final rule, AT&T will have to drain its many tanks at great expense and waste of otherwise usable fuel. At a minimum, AT&T requests that DOE clarify that any facility that pulls fuel from a tank that, after finalization of WAC 173-400-930, only receives deliveries of ULSD will be deemed to use compliant fuel. This would allow facilities like AT&T to convert to ULSD by adding the fuel directly into its existing fuel supply, instead of requiring that the tanks be emptied and cleaned. Such an approach would balance the dual goals of converting emergency engines to ULSD and allowing facilities to deplete existing fuel supplies. DOE should adopt this position for emergency engines given their infrequent usage and low fuel throughput.

Response: This provision applies to new engines brought to a facility. It does not restrict the type of fuels used in existing engines. If a new engine is brought in, it must use only ultra low sulfur fuel. Understandably, a new engine may be connected to an existing fuel tank and it is not our intention that existing fuel reserves be discarded. The suggested edit has been inserted into WAC 173-400-930 as it clarifies the intent of the section.

AT&T Comment #6.

WAC 173-400-930(2)(c) restricts usage of the emergency engines to a maximum of 50 hours per year for maintenance and testing.

AT&T asserts that this limitation of 50 hr/yr is too restrictive and instead believes 100 hr/yr., consistent with the federal regulations for CI RICE, 40 CFR 60 Subpart IIII and 40 CFR 63 Subpart ZZZZ, is more appropriate. (Emphasis added.)

Response: See response to USDOE Comment #13.

As provided in WAC 173-400-930 (1) (d), an applicant may choose to submit a notice of construction application to obtain approval of operations that cannot meet the criteria of WAC 173-400-930.

AT&T Comment #7 and Qwest Comment #2: Qwest and AT&T believe that when an electric utility suspends electric power to a critical telecommunications facility in order to perform repair and maintenance work, that this constitutes an emergency beyond the control of the consumer. AT&T and Qwest operate emergency engines to maintain continuous operation of wireless and wireline telecommunications systems. AT&T and Qwest request that Ecology remove WAC 173-400-930 (c) (iii) from the rule.

Response: The intent of WAC 173-400-930 is to provide a simplified process for emergency engines during crisis situations. This provision is not written to allow generation of power that is sold back to the utility, to allow the use of generators instead of the power grid when the cost for electrical power rises unexpectedly, or to provide a source of power that could be distributed outside the facility. We believe that this restriction is clearly stated in WAC 173-400-930(3)(b), the definition of emergency use.

The requested edit has been made. This provision has been deleted: “Provide electric power for the facility when the electric utility provider takes its power distribution equipment offline to service that equipment for any reason that does not qualify as an emergency use”.

Engine Manufacturers Association Comment #1: EMA essentially agrees with the proposed new regulation at WAC 173-400-930 - Emergency Engines that would allow owners and operators to comply with operating requirements for emergency engines in lieu of filing a notice of construction application under WAC 173-400-110. However, the Department needs to make one important change to the regulation. The proposed regulation states that new emergency engines should comply with the emissions standards for nonroad engines contained in 40 CFR Parts 89 and 1039. That is not a correct regulatory reference. Rather, the language should state that the emergency engines should comply with the emissions standards for stationary emergency engines in 40 CFR Part 60 Subpart IIII – Standards of Performance for Stationary Compression Ignition Internal Combustion Engines.

Response: In response to your comment we double checked this reference with staff at EPA’s Region X office. We found that the correct citation for Tier 1, 2, 3, and 4 engines is: 40 CFR Part 89.112 Table 1 and 40 CFR Part 1039.102 Tables 6 and 7, as applicable for the year that the emergency engine is put in operation. See also response to USDOE comment #13 above.

Engine Manufacturers Association (EMA) Comment #2: EMA recommends that the program be applicable to all emergency stationary engines including those larger than 2000 hp. Manufacturers must certify all stationary compression ignition engines to the NSPS emission standards, so there is no need for a regulatory distinction related to size in the Department’s regulation.

Response: Washington State regulates not only NSPS emission standards, but also toxic air pollutant emissions through Chapter 173-460 WAC. The emergency engine provision in WAC 173-400-930 considers cancer risk from long-term exposure to Diesel Engine Exhaust Particulate, a toxic air pollutant. Based on risk analyses conducted by California Air Resources Board (CARB) and on our own experience permitting banks of large emergency diesel engines at data centers, we can surmise that the cancer risks posed by projects consisting solely of emergency engines with cumulative brake horsepower (BHP) rating from 500 to 2000 BHP would likely be considered acceptable under Chapter 173-460 WAC.

This provision is not being expanded to include emergency engines greater than 2000 BHP. This is an engine size where Ecology analysis indicated that operational restrictions such as are contained in this section would not assure compliance with the state’s toxic air pollutant regulation. We determined that single engines or groups of engines above 2000 BHP need to be evaluated on an individual basis for compliance with Chapter 173-460 WAC requirements. This provision is not being expanded to include emergency engines greater than 2000 BHP.

Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s).

Name, Affiliation, Address	Comment	Page Number
Cynthia Manheim AT&T PO Box 97061 Redmond, WA 98073	AT&T #1-7	18, 19, 62
Jan Whitefoot Concerned Citizens of the Yakama Reservation 80 North Ave. Harrah, WA 98933	Concerned Citizens of the Yakama Reservation #1	13
Joseph L. Suchecki Engine Manufacturers Association 333 W. Wacker Drive, Suite 810 Chicago, IL 60606	Engine Manufacturers Association #1 - 2	63
Mark K. Smith KOWA American Corp. 55 East 59 th Street, 19 th Floor New York, NY 10022	KOWA #1	16
Laurie S. Halvorson Puget Sound Clean Air Agency 1904 Third Avenue, Suite 105 Seattle WA USA 98101	PSCAA #1 - 7	15, 17, 20, 22, 29, 37, 49
Robin Seguin Qwest 1801 California ST. Suite 1160 Denver, Colorado 80202	Qwest #1 - 2	61, 62
Matthew Cohen Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101	Coalition #1 - 59	14, 15, 16, 17, 18, 21, 23, 24, 25, 26, 27, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 47, 48, 49, 52, 54
David Moore The Boeing Company PO Box 3707 Seattle, WA 98124-2207	TBC # 1-71 and TBC letter # 1 - 13	13, 15, 16, 24, 32, 35, 36, 38, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 56, 57, 58, 59, 60
Tom Beam, Mission Support Alliance, LLC United States Department of Energy Hanford, WA	USDOE #1 - 13	13, 17, 24, 25, 32, 36, 37, 42, 53, 55, 61
Debra Suzuki United States Environmental Protection Agency Region 10 1200 Sixth Avenue, Suite 900 Seattle, WA 98101-3140	USEPA #1 - 69	14, 15, 16, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60
Ken Johnson Weyerhaeuser CH 1L32, PO Box 9777 Federal Way, WA 98063-9777	Weyerhaeuser # 1 - 20	15, 23, 24, 26, 32, 33, 34, 39, 40, 42, 44, 46, 47

Appendix A: Copies of all written comments

From: jan whitefoot [jafoot72@embarqmail.com]
Sent: Wednesday, October 13, 2010 4:16 PM
To: Whitcher, Linda (ECY); Whitcher, Linda (ECY)
Subject: Is Concentrated Animal Feeding Operation pollution being addressed with Ecology?

Is Concentrated Animal Feeding Operation pollution being addressed with Ecology? If not, why not, and when? Jan Whitefoot

--

Concerned Citizens of the Yakama Reservation
80 North Ave.
Harrah, WA 98933
509-848-2539
<jafoot72@embarqmail.com>



Cynthia Manheim
General Attorney
Regulatory

PO Box 97061
Redmond, WA 98073

425-580-8112 Phone
425-580-8652 Fax
cindy.manheim@att.com

November 12, 2010

Linda Whitcher,
State of Washington
Department of Ecology Air Quality Program
PO Box 47600
Olympia WA 98504-7600

e-mail: linda.whitcher@ecy.wa.gov
Fax: (360)407-7534

Re: AT&T Comments on Proposed Rule Making to amend the rules for new source review into compliance with EPA regulations

Dear Ms. Whitcher:

AT&T Services, Inc. (AT&T) submits the following comments on the October 6, 2010, proposed revisions to Chapter 173-400 of the Washington Administrative Code (WAC).¹

Background

AT&T operates a number of emergency stationary and temporary reciprocating internal combustion engines (RICE) in Washington. Such engines are used to maintain our infrastructure and services in the event of commercial power loss.

It is AT&T's long-standing policy to operate and provide products and services in an environmentally responsible and sustainable manner, and we are committed to working with government agencies and other stakeholders to shape sound environmental, health and safety policies, laws and regulations. We are equally committed to ensuring that our communications networks and services – which are a critical component of our nation's infrastructure – are robust and able to respond effectively to disasters – both natural and man-made. Both to be prepared in the event of disasters, and in recognition of the increasingly over-taxed and sometimes unpredictable national energy grid, AT&T has, among other things, deployed hundreds of RICE in Washington. We have done this to maintain the reliability of our network, regardless of the nature of the power outage. Additionally, AT&T has facilities throughout Washington in which we have a fleet of portable engines on vehicles or trailers that are deployed to AT&T sites for maintenance and repair activities.

The State of Washington Department of Ecology (DOE) proposed revisions to WAC 173-400 on October 6, 2010. Comments on the proposed revisions are due on November 12, 2010. Several of the proposed rule revisions will directly impact AT&T

¹ Proposed rule revisions available at:
<http://www.ecy.wa.gov/laws-rules/wac173400/0901.html>

operations in the State of Washington at our stationary source facilities and staging areas. AT&T has prepared the following comments on the proposed rule revisions.

1. WAC 173-400-035, Non-Road Engines – Inapplicability to Storage Locations/Staging Areas

Proposed WAC 173-400-035 is applicable to non-road engines with a cumulative maximum rated brake horsepower (BHP) of more than 500 at a site. If a facility's total BHP from non-road engines is greater than 500 and less than or equal to 2,000, the facility is required by WAC 173-400-035(3)(a) to submit a notification of intent to operate before operations begin.

AT&T has a number of portable, non-road engine staging areas which are classified as work centers/garages. The facilities are the deployment point for trucks and trailers containing small non-road engines (engines are typically less than 20 BHP). The trucks and trailers are dispatched from the work centers/garages daily for usage in repair and maintenance activities at other AT&T sites (i.e., cell towers). AT&T interprets the proposed WAC 173-400-035 to not be applicable to the work centers/garages since the non-road engines are merely parked at these locations.

AT&T does not believe it was the DOE's intent to require AT&T and similar regulated sources to submit a notice of intent to DOE each time an engine is brought to a staging area since such engines are not considered by AT&T to be installed and operated at such sites. Given the nature of the staging area, merely for the storage and maintenance of engines, such submittals would be onerous and of little environmental benefit. In order to clarify that the notification requirements do not apply to staging areas, AT&T requests that a clause specifically exempting these types of operations be added to WAC 173-400-035(1) as follows:

(f) Engines that are stored in work centers/garages or engine pool sites prior to being dispatched to the field for use and do not provide back-up power at the work center/garage or pool location. Such engines may be utilized at these facilities only for the purpose of engine maintenance, testing, and repair.

2. WAC 173-400-035(4), Non-Road Engines – Emergency Usage Exemption

Proposed WAC 173-400-035 is applicable to non-road engines with a cumulative maximum rated brake horsepower of more than 500. If a facility's total non-road engine BHP is greater than 2,000, the facility is required by WAC 173-400-035(4)(a)-(b) to submit a notification of intent to operate before operation of the engine(s) begins. The notification must include "sufficient information to enable the permitting authority to determine that the operation will comply with the national ambient air quality standards [NAAQS]." Approval from the permitting authority, which can take 15 days or longer from receipt of a complete notice of intent to operate, is required prior to commencement of operation of the engine.²

² The permitting authority must issue the approval to operate OR notify the applicant that operation must not start until specific operating conditions have been established by the permitting authority.

AT&T requests that the DOE provide an exemption for emergency use of non-road engines. Requiring approval to operate from the DOE (or other permitting authority) prior to commencing operation of engines at sites with greater than 2000 BHP from non-road engines essentially renders any emergency use of non-road engines a violation of the rule since such usage is required immediately to maintain the availability of the wireless and wireline telecommunications systems.

Further, the proposed rule's requirement that the permittee provide sufficient information for the permitting authority to assess compliance with the NAAQS is cause for concern. It might not even be possible to permit larger portable, temporary replacement non-road engines for usage in emergency situations in light of the NAAQS for nitrogen dioxide (NO₂) and/or sulfur dioxide (SO₂). Meeting the 1-hour NO₂ and/or SO₂ NAAQS for large engines often requires substantial stack heights for air dispersion purposes, and the non-road engines typically exhaust vertically at the height of the trailer. Thus, requiring non-road emergency engines to demonstrate compliance with the NAAQS would mean that non-road engines would have to be equipped with stack extensions or have the ability to be tied into the existing stationary engines' stacks before they could be permitted and used. Again, this could result in an effective ban on portable temporary replacement engines during emergency situations. This is not in the best interest of any stakeholder.

3. WAC 173-400-035(3)(b)-(c) & 4(c), Non-Road Engines – Off-Site Records Storage

WAC 173-400-035(3)(b)-(c) and (4)(c) require that the owner or operator maintain the required records at each site.

While this requirement may be appropriate for the majority of affected facilities, a number of AT&T's sites are unmanned and do not have any practical storage area on-site for maintaining records. Therefore, AT&T requests that a clause be added to allow for records to be maintained in a readily available format at an off-site location for engines located at a source where it would be unreasonable to maintain those records on-site. AT&T recommends that WAC 173-400-035(3)(b)-(c) (which are referenced by (4)(c)) be revised as follows:

(b) Recordkeeping. ~~At~~ For each site, the owner or operator must record the following information, **which can be stored off-site if records can be readily available upon request by the agency**,...

(c) Record retention requirements. The owner or operator must keep ~~on-site the records of the current engine and equipment activity. The owner or operator may keep all other records at the main office~~ **each record readily accessible in hard copy or electronic form. These records can be maintained on-site or off-site for the required retention period.** Records must be kept for at least five years and be readily available to the permitting authority on request.

4. WAC 173-400-036, Relocation of Portable Sources.

Proposed new section WAC 173-400-036 would establish relocation standards and procedures for "portable sources." WAC section 173-400-030 defines "portable source" as a "type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations."

(Emphasis added.) Because this definition limits “portable source” to a “type of stationary source,” it appears nonroad engines are outside the scope of this definition since they are not stationary sources and hence not subject to proposed section WAC 173-400-036. However, to avoid potential confusion (particularly since certain nonroad engines are sometimes regulated and/or referred to as “portable engines”), AT&T recommends that DOE clarify in the regulatory text that engines subject to WAC 173-400-035 are not “portable sources” subject to WAC 173-400-036.

5. WAC 173-400-930(2)(b), Emergency Engines – ULSD Fuel Usage

WAC 173-400-930(2)(b) requires emergency engines to “be fueled by ultra low sulfur diesel [ULSD] or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.”

AT&T operates numerous compression ignition (CI) RICE throughout Washington. These CI RICE provide critical backup power to wireless and wireline telecommunications systems in the event of a commercial power loss. For adequate protection, AT&T needs to ensure that fuel inventory levels are maintained at or above minimum thresholds, typically around 50 percent capacity.

AT&T’s engine fleet consists primarily of emergency backup engines that are used infrequently and for short periods of time. As such, our facilities’ fuel supplies are depleted slowly. In fact, some facilities may go more than a year between fuel additions, and it is common for fuel to be added no more than once per year. This low usage level simply will not allow AT&T to deplete its existing inventory of low sulfur diesel (LSD) prior to finalization of the proposed rule. Unless an exemption is included in the final rule, AT&T will have to drain its many tanks at great expense and waste of otherwise usable fuel. At a minimum, AT&T requests that DOE clarify that any facility that pulls fuel from a tank that, after finalization of WAC 173-400-930, only receives deliveries of ULSD will be deemed to use compliant fuel. This would allow facilities like AT&T to convert to ULSD by adding the fuel directly into its existing fuel supply, instead of requiring that the tanks be emptied and cleaned. Such an approach would balance the dual goals of converting emergency engines to ULSD and allowing facilities to deplete existing fuel supplies. DOE should adopt this position for emergency engines given their infrequent usage and low fuel throughput.

In addition, AT&T also seeks clarification on how DOE intends to address fuel mixing that will invariably result from the switch over from LSD to ULSD (since ULSD will likely be added to tanks that contain residual LSD). The proposed rule requires that emergency engines “use” ULSD. Thus, the possibility exists that any engine that uses diesel with a sulfur content higher than 15 parts per million (ppm)—which, again, is likely to happen when ULSD is mixed with LSD—could be deemed in noncompliance with WAC 173-400-930. The only way a company like AT&T could ensure that all fuel pulled from onsite storage tanks that currently store LSD meets the 15 ppm limit would be for it to empty and clean each of its many tanks. This process would be extremely expensive and time consuming, and provide only a marginal, if any, environmental benefit.

Finally, in the event that DOE rejects the above recommendations, it should at least recognize ULSD fuel waivers granted by EPA. EPA’s RICE NSPS allows owners and operators of stationary CI RICE to petition EPA for a waiver from the ULSD requirement:

40 C.F.R. §60.4207(c). Owners and operators of pre-2011 model year stationary CI ICE subject to this subpart may petition the Administrator for approval to use remaining non-compliant fuel that does not meet the fuel requirements of paragraphs (a) and (b) of this section beyond the dates required for the purpose of using up existing fuel inventories. If approved, the petition will be valid for a period of up to 6 months. If additional time is needed, the owner or operator is required to submit a new petition to the Administrator.

Without a parallel State provision, an EPA waiver would be meaningless and would not provide the relief intended by this section.

6. WAC 173-400-930(2)(c), Emergency Engines – Non-Emergency Hours

WAC 173-400-930(2)(c) restricts usage of the emergency engines to a maximum of 50 hours per year for maintenance and testing.

AT&T asserts that this limitation of 50 hr/yr is too restrictive and instead believes 100 hr/yr., consistent with the federal regulations for CI RICE, 40 CFR 60 Subpart IIII and 40 CFR 63 Subpart ZZZZ, is more appropriate. (Emphasis added.)

40 CFR 60.4211(e) specifies: "Emergency stationary ICE may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State, or local government, the manufacturer, the vendor, or the insurance company associated with the engine. **Maintenance checks and readiness testing of such units is limited to 100 hours per year.** There is no time limit on the use of emergency stationary ICE in emergency situations. Anyone may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year."

40 CFR 63.6640(f)(1)(ii) specifies that for existing emergency RICE at area sources (all AT&T sites are area sources), existing emergency RICE ≤ 500 BHP at major sources or new emergency RICE > 500 BHP at major sources: "You may operate your emergency stationary RICE for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. **Maintenance checks and readiness testing of such units is limited to 100 hours per year.** The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency RICE beyond 100 hours per year."

AT&T is concerned that the proposed 50 hr/yr limit for maintenance and testing of emergency engines could be exceeded in certain situations. Emergency engines are typically operated approximately 20 hr/yr for maintenance and up to an additional 60

hr/yr every 5 years during switchgear testing.³ Should an engine failure occur, however, AT&T would need to conduct rigorous readiness testing at various loads upon completion of the engine repair to ensure that the critical telecommunication system infrastructure can be maintained during future emergency situations. An allowance of 100 hr/yr for non-emergency usage and maintenance activities should be sufficient and is consistent with the federal regulations.

7. WAC 173-400-930(3)(c)(iii), Emergency Engines – Definition of Maintenance and Testing

The definition of maintenance and testing under the proposed WAC 173-400-930(c) indicates that such operations include operating an emergency engine to “provide electric power for the facility when the electric utility provider takes its power distribution equipment offline to service that equipment for any reason that does not qualify as an emergency use.”

AT&T believes that such a scenario should be considered emergency use rather than maintenance and testing since such a scenario is always beyond the control of the electric utility consumer. If the utility takes its power distribution equipment offline, AT&T will be required to operate the emergency engine to maintain the continuous operation of their wireless and wireline telecommunication systems. Such scenarios meet the definition of emergency use per WAC 173-400-930(3)(b)(i). Therefore, AT&T requests that DOE remove WAC 173-400-930(3)(c)(iii) from the proposed rule.

~~~~~

Thank you for your consideration of AT&T’s comments on the proposed revisions to WAC 173-400-035 and WAC 173-400-930. If you have any questions, please contact Barbara Patton at 205-663-8951 or bp5986@att.com.

Sincerely,

*Cynthia Manheim by Doc with permission*

Cynthia Manheim  
General Attorney

sent via e-mail and fax

---

<sup>3</sup> Switchgear testing is recommended by National Electric Testing Association (NETA), NFPA70B (National Fire Prevention Association NFPA 70B: Recommended Practice for Electrical Equipment Maintenance) and many insurance carriers. AT&T’s maintenance personnel typically require a up to 60 hours of run time to adequately perform the switchgear testing. This testing requires extraction of switch gear breakers, testing the breaker, reinsertion of the breaker into the switchgear, and then performance testing of the system. It is sophisticated testing performed by specialized, licensed technicians. It is in AT&T’s interest to do this testing as quickly and efficiently as possible because of the labor and fuel costs associated with the work.



**Qwest**  
1801 California St, Suite 1160  
Denver, Colorado 80202  
Phone 303 992-7091  
Email: [robin.seguin@qwest.com](mailto:robin.seguin@qwest.com)

November 3, 2010

Linda Whitcher,  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

E-Mail: [linda.whitcher@ecy.wa.gov](mailto:linda.whitcher@ecy.wa.gov)

RE: Comments on Draft Rule proposal for Ch. 173-400 WAC, General Regulations for Air Pollution Sources

Dear Ms. Whitcher:

We are writing to provide comments on the Draft Rule proposal for Ch. 173-400 WAC, General Regulations for Air Pollution Sources. The enclosed comments are timely provided. Qwest Corporation, as an owner and operator of emergency generators, is strongly committed to environmental compliance and appreciates the opportunity to comment on these draft rules. Qwest's specific comments to the Draft Rule focus on two key points:

1. The current Draft Rule under WAC 173-400-930 under (2) (c) only allows an Emergency Generator to, "Operate a maximum of fifty hours per year for maintenance and testing." Conversely, emergency stationary Ignition Internal Combustion Engines under the Federal Clean Air Act 40 CFR 60.4211 (e) allows, "Maintenance checks and readiness testing of such units up to 100 hours per year."

1

It is unclear why the WA DOE is not proposing the same amount of hours, 100, for maintenance and testing of emergency generators as is specified in the federal rule.

2. Under the Draft Rule in WAC 173-400-930 (c) (iii), the proposed definition of maintenance and testing currently includes operating an emergency engine to:

2

"Provide electric power for the facility when the electric utility provider takes its power distribution equipment offline to service that equipment for any reason that does not qualify as an emergency use;"

Qwest believes that under circumstances when an electric utility suspends providing electric power to a critical telecommunications facility in order to perform repair and maintenance work, this would constitute emergency operation of our generators in order to maintain critical communications services to the community. Therefore, Qwest believes that generator run hours recorded in these circumstances should not be included in the 50 hour run limit as currently proposed in WAC 173-400-930 (c) (iii).

Thank you for your time in reviewing these comments. We hope that WA DOE will carefully consider these comments and the other comments submitted by industry. Please do not hesitate to call me at (303 992-7091) if you have any questions.

Sincerely,

Robin Seguin  
Staff Director-Environmental, Health and Safety

November 16, 2010

**Via E-mail**

Ms. Linda Whitcher  
Washington Department of Ecology  
P. O. Box 47600  
Olympia, WA 98504

Re: **Proposed Changes to Rule 173-400 WAC**

Dear Ms. Whitcher:

The Engine Manufacturers Association (EMA) is the trade association representing the major manufacturers of internal combustion engines including those used in both mobile and stationary sources. EMA represents our member companies on emissions and air quality issues, and we work closely with both the US EPA, California Air Resources Board, and various state agencies on regulations affecting emissions from their products.

I am writing regarding proposed changes to Chapter 173-400 WAC that affect stationary emergency diesel generators. Unfortunately, we have just become aware of the proposed regulation and understand that the official deadline for comments recently passed on November 12th. I ask that you consider our comments in finalizing the proposed rules.

EMA essentially agrees with the proposed new regulation at **WAC 173-400-930 - Emergency Engines** that would allow owners and operators to comply with operating WAC 173-400-110. However, the Department needs to make one important change to the regulation. The proposed regulation states that new emergency engines should comply with the emissions standards for nonroad engines contained in 40 CFR Parts 89 and 1039. That is not a correct regulatory reference. Rather, the language should state that the emergency engines should comply with the emissions standards for stationary emergency engines in **40 CFR Part 60 Subpart III – Standards of Performance for Stationary Compression Ignition Internal Combustion Engines**.

Although EPA's NSPS for compression ignition engines referenced above essentially adopts the emissions standards for nonroad engines, there are a number of critical and technical differences including certification requirements, more appropriate stationary engine test procedures, certain implementation delays necessary for fire-pump engine testing and certification, and different emissions standards for stationary emergency engines compared to Tier 4 nonroad mobile engines and prime power engines. In addition, the NSPS requires engine manufacturers to certify their stationary emergency compression ignition engines to 40 CFR Part 60 and **not** 40 CFR Part 1039.

*Bringing Cleaner Power to the World Since 1968®*

We ask that the Department incorporate this critically important revision into the final regulation. It simply is incorrect to reference the federal nonroad mobile source standards when the CI NSPS is the correct governing regulatory standard.

Also, beyond the needed change in the reference to the correct federal regulation, EMA recommends that the program be applicable to all emergency stationary engines including those larger than 2000 hp. Manufacturers must certify all stationary compression ignition engines to the NSPS emission standards, so there is no need for a regulatory distinction related to size in the Department's regulation.

Again, we would appreciate your consideration of our comments even though the official deadline has passed. It is important for engine manufacturers as well as owners and operators of emergency engines in Washington that the final regulation references the correct federal regulation and emission standards. Otherwise, there will be no certified emergency engines available in the State of Washington.

Please do not hesitate to contact me if you have any questions.

Sincerely,

*Joe Suhecki*

Joe Suhecki  
Director, Public Affairs

October 20, 2010

Ms. Linda Witcher  
Washington Dept. of Ecology  
P.O. Box 47600  
Olympia, WA 98504

RE: Request to exempt Dimethyl Carbonate (DMC) as a VOC in Washington State  
Comments on proposed Rule Ch. 173-400 WAC

Dear Sirs,

1

Kowa American Corp. would like to ask the Washington Department of Ecology to exempt the solvent Dimethyl Carbonate as a VOC in your state. We feel DMC being VOC exempt will allow your local businesses a much greater degree of flexibility in meeting the more stringent VOC restrictions moving forward. We also think that with the increasingly strict VOC regulations that having additional VOC exempt solvent is a form of regulatory relief that your constituents will welcome.

Kowa American is the original petitioner to the federal government requesting they exempt Dimethyl Carbonate as a VOC. The exemption request was submitted in July 2004 and approved in January 2009 after a number of years of intense scrutiny on not only its Ozone reducing values but on its environmental, toxicity and safety profiles. Dimethyl Carbonate (along with possibly methyl acetate) is unique in that it has perhaps the lowest MIR value of any liquid organic chemical, which means it will produce less ozone in the air than any other solvent.

Kowa understands that your Air Management also takes into account factors beyond a chemical's photo reactivity. Your air district and citizens also interested in a chemical's toxicity, worker safety, and environmental fate when evaluating exemption petitions. DMC's profile in these endpoints is highly favorable and represents an environmentally friendly compound. Environmental fate data show DMC to be readily biodegradable, have a low potential to bioaccumulate, and have low toxicity to fish, daphnia, or bacteria (Environmental modeling suggests that that the material may possibly be harmful to algae). An internet search on DMC reveals a large number of articles and patent references that describe the substance as a *green chemical* with very favorable safety health, and environmental properties. These references characterize DMC as a highly desirable replacement for a number of chemicals including dimethyl sulphate, methyl chloride, MEK, MIBK, n-butanol, xylene.

We enclose our material safety data sheet (MSDS) on DMC which shows that the compound has a favorable toxicity profile. DMC has very low acute toxicity when tested via oral, dermal, inhalation routes of exposure. In addition, the compound was not found to be irritating to the skin and only slightly irritating to the eyes. DMC was also found to be non-mutagenic in *in vitro* testing.

Workers generally respond favorably to working with DMC, since the compound is only a non-irritating or only slightly irritating chemical. A key concern is that DMC does not have an objectionable odor to workers or neighbors. Finding a VOC exempt solvent with an agreeable odor is difficult since a number of the exempt (or proposed VOC exempt) compounds have very pungent odors, which would be especially bothersome to neighbors of factories or shops using these VOC exempt solvents.

DMC is flammable with a flashpoint of 63 °F (16 °C) and has a similar toxicity profile as Methanol, one of DMC's primary metabolites in the body. For these reason DMC should be used in solely in industrial, automotive, outdoor or shop settings. The DMC producer's recommended 8 hour workplace PEL of 100 ppm for DMC has been established using the toxicity profile of DMC and the toxicity of its main metabolite methanol. DMC has a much safer toxicity profile and much higher recommended PEL than p-Chlorobenzotrifluoride or PCBTF (PEL = 20 ppm) that is used extensively as a VOC exempt solvent in the USA.

Even with this flammable liquid flashpoint of 63°F, DMC still represents a safer alternative to two existing VOC exempt solvents widely used in the U.S., acetone and methyl acetate, both with flashpoints of 15° F. We believe customers would prefer and, therefore, adopt DMC immediately as a replacement for acetone and methyl acetate. Such a change would result in less flammable products and/or safer working environments.

We think the exemption of Dimethyl Carbonate as a VOC by the State of Washington would be a step forward in air pollution control, especially allowing your constituents and businesses the opportunity to use additional VOC exempt solvents in order to meet their air pollution reduction obligations.

Sincerely,

Mark K. Smith  
Sales Manager

Encl:

DMC MSDS

|                   |
|-------------------|
| 1 HEALTH          |
| 3 FLAMMABILITY    |
| 1 PHYSICAL HAZARD |

# MATERIAL SAFETY DATA SHEET

## Kowa American Corporation

CHEMTREC 24-HOUR EMERGENCY NUMBER (800) 424-9300

### SECTION 1

#### CHEMICAL PRODUCT AND COMPANY IDENTIFICATION

**Product Name:** Dimethyl carbonate  
[DMC]

**Distributor's Name and Address in United States:** Kowa American Corporation  
55 East 59<sup>th</sup> Street, 19<sup>th</sup> Floor  
New York, NY 10022  
Telephone: (212) 303-7800  
Facsimile: (212) 310-0101

**CHEMTREC 24-HOUR Emergency Number:** (800) 424-9300

**Date Prepared:** March 24, 2010  
[previous version: August 25, 2009]

### SECTION 2

#### COMPOSITION AND INFORMATION ON INGREDIENTS

| <u>Ingredient</u>  | <u>CAS Registry No.</u> | <u>Weight %</u>              | <u>Exposure Limits</u>                                |
|--------------------|-------------------------|------------------------------|-------------------------------------------------------|
| Dimethyl carbonate | 616-38-6                | 99.0% (min.)<br>99.7% (typ.) | 100 ppm TWA <sup>1</sup>                              |
| Methanol           | 67-56-1                 | < 0.1%                       | 200 ppm TWA (OSHA, ACGIH)<br>(260 mg/m <sup>3</sup> ) |
| Water              | 7732-18-5               | < 0.05%                      | Not Established                                       |

Notes on Composition and Information on Ingredients

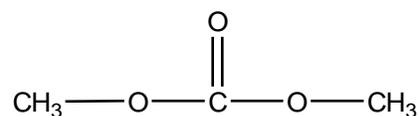
<sup>1</sup> Although there are no occupational exposure limits established by OSHA or ACGIH for dimethyl carbonate, the 100 ppm PEL occupational exposure limit recommended by Kowa American is based on the rapid metabolism of dimethyl carbonate to methanol and the toxicity profiles of both DMC and methanol.

## OTHER PRODUCT INFORMATION

**Chemical Name:** Carbonic acid dimethyl ester (9CI)

**Synonym:** Methyl carbonate

**Chemical Structure:**



**Molecular Formula:** C<sub>3</sub>H<sub>6</sub>O<sub>3</sub>

**Molecular Weight:** 90.1

### SECTION 3 HAZARDS IDENTIFICATION

#### \*\*\*Emergency Overview\*\*\*

Clear colorless liquid with pleasant odor. Highly flammable. Keep container in a well ventilated place. Avoid all ignition sources. No smoking. Wear eye, skin, and respiratory protection. In case of contact with skin or eyes, rinse with water. Overdose or over exposure should be treated as methanol poisoning. Avoid release to the environment. Readily biodegradable. Not expected to bioaccumulate. Partially water-soluble.

## POTENTIAL HEALTH EFFECTS

**EYES:** Slightly irritating to the eyes. More serious effects may result if exposure is not treated. Vapors may irritate eyes.

**INHALATION:** Vapors may be slightly irritating to the upper respiratory tract (including nasal tissues). Prolonged exposure may be harmful and cause adverse effects including labored breathing and drowsiness, as well as damage to the upper respiratory tract and eyes.

**SKIN:** Generally not expected to be irritating to the skin. Prolonged or excessive exposure may result in adverse effects. The irritancy of this material varies from person to person.

**INGESTION:** Oral toxicity of this material is expected to be moderate. Serious adverse effects from over exposure may occur and include central nervous system effects, blindness, and possibly death.

**CHRONIC EFFECTS/CARCINOGENICITY:** Not regulated as a carcinogen. No long-term chronic effects or carcinogenicity data are known or available on this product.

NTP: *Not listed*

IARC: *Not listed*

OSHA: *Not listed*

**MUTAGENICITY:** This compound was found to be negative in two *in vitro* mutagenicity assays.

**TERATOGENICITY (birth defects):** Teratogenic effects were observed at very high doses (3,000 ppm) in one mouse assay. No effects were observed at any of the lower dose levels.

**REPRODUCTIVE TOXICITY:** No reproductive data are available on this material.

**MEDICAL CONDITIONS AGGRAVATED BY EXPOSURE:** None known.

**INCOMPATIBILITY:** Not known.

**SIGNS AND SYMPTOMS OF EXPOSURE:** Slight eye and respiratory tract irritation; labored breathing and drowsiness; loss of coordination possible if exposed to high concentrations.

## SECTION 4 FIRST AID MEASURES

### FIRST AID MEASURES

**SKIN:** Wash with plenty of water, then with soap and water for 15 minutes. Discard contaminated clothing and shoes. Call physician immediately if exposed to large quantities and/or if contact is prolonged.

**EYES:** Immediately flush with a continuous water stream for at least 20 minutes. Washing immediately after exposure is expected to be effective in preventing damage to the eyes. Get immediate medical attention.

**INHALATION:** Remove to fresh air. If not breathing give artificial respiration. If there is breathing difficulty, give oxygen. Get immediate medical attention.

**INGESTION/SWALLOWED:** Do not induce vomiting. Dilute by giving 1 or 2 glasses of milk or water. Nothing by mouth if unconscious. Get immediate medical attention.

**NOTE TO HEALTH CARE PROFESSIONALS:** Overdose or over exposure to this material should be treated as methanol poisoning since methanol is expected to be the primary metabolite of this product.

## SECTION 5 FIRE FIGHTING MEASURES

**FLASH POINT:** 63 °F / 17 °C [closed cup]

**EXPLOSION/FLAMMABLE LIMITS:** Not known

**AUTOIGNITION TEMPERATURE:** 458 °C

**EXTINGUISHING MEDIA:** Use dry chemical, foam, carbon dioxide, and water spray/fog as needed. For large fires alcohol resistant foams are preferred.

**SPECIAL FIRE FIGHTING PROCEDURES:** This material is highly flammable. As in any fire, wear a self-contained breathing apparatus pressure demand (MSHA/NIOSH approved or equivalent) and full protective gear. Toxic vapors may evolve. Fight fires from a safe distance or protected areas. Fire hoses with fog nozzles may be used for controlling fires. Use of large volumes of water may produce run-off that could be harmful to aquatic life and/or pose a hazardous waste disposal problem. This substance is partially water-soluble and therefore the use of water during fire fighting is expected to be relatively effective. Water will dilute the compound, without the formation of an appreciable surface slick, and is not expected to spread flaming.

**UNUSUAL FIRE AND EXPLOSION HAZARDS:** This material is highly flammable. Sealed containers can explode in the heat of fire. Vapors may travel to ignition source. Run off may create an explosion, fire, and environmental hazard.

## SECTION 6 ACCIDENTAL RELEASE MEASURES

**SPILL/RELEASE AND CLEANUP PROCEDURES:** In case of spill, evacuate the area and remove all ignition sources. Dike and contain spill with vermiculite, clay-based absorbents, or other absorbent materials such as polyethylene fiber and polypropylene fiber products. Do not discharge the washings and other effluents into ponds, streams, or lakes. Wear appropriate respiratory and protective clothing as described in Section 8 during any cleanup and response activities. In the event of an uncontrolled release of this material, the user should determine if the release is reportable under applicable laws and regulations. This substance is partially water-soluble and is not expected to form an appreciable surface slick.

## SECTION 7 HANDLING AND STORAGE

**PRECAUTIONS TO BE TAKEN IN HANDLING AND STORAGE:** This material must be stored in an area free of heat and all ignition sources. Store in a cool dry place.

**OTHER PRECAUTIONS:** Do not drop. Keep away from fire, heat, open flames, lights, and all other ignition sources. Wear goggles and gloves when handling. Avoid breathing vapors. Eye-wash stations and emergency showers need to exist in areas where the material is handled, especially areas where loading and unloading operations occur. Wash hands thoroughly after handling and before eating, drinking, or smoking. Keep out of reach of children. Ground all containers when transferring the material.

Do not contaminate water, food, or feed by storage or disposal. Keep the product in original containers. Store in cool, dry, well ventilated, low fire risk area away from sunlight. Keep containers closed. Store only in approved containers, under approved conditions. Avoid pressure build-up in containers. An automatic water spray device should be immediately available. A spill control and containment plan should be provided. Storage area should not be subject to rapid temperature changes as such changes may cause increased internal pressure. Isolate from toxic materials or substances that may release corrosive, toxic, or flammable fumes on reaction.

|                                                                       |
|-----------------------------------------------------------------------|
| <b>SECTION 8</b><br><b>EXPOSURE CONTROLS AND PERSONNEL PROTECTION</b> |
|-----------------------------------------------------------------------|

**RESPIRATORY PROTECTION:** Respirators equipped with organic vapor cartridges are anticipated to provide adequate respiratory protection during short-term exposures to low vapor concentrations of the material. Workers should wear a supplied-air respirator or self-contained breathing apparatus any time exposure is above low levels or during extended exposure periods. Use MSHA/NIOSH-approved respiratory equipment. Respirators should be selected based on the form and concentration of the contaminant in the air and in accordance with OSHA (29 CFR 1910.134). Handle only in the presence of adequate ventilation.

**PROTECTIVE GLOVES:** Wear chemical resistant gloves appropriate to the conditions to prevent skin exposure. Gloves made of **BUTYL RUBBER** are anticipated to afford adequate hand protection. (Gloves made of PVC, nitrile, and neoprene may not provide adequate hand protection.) Rinse and remove gloves immediately after use, and wash hands thoroughly with soap and water. Gloves should be removed and replaced immediately if there are any signs of degradation or breakthrough.

**PROTECTIVE CLOTHING:** Wear protective clothing and boots impervious to the product for the duration of the anticipated exposure if there is a potential for skin contact. An emergency shower should be readily accessible. Discard any contaminated clothing.

**EYE PROTECTION:** Chemical safety goggles meeting the specifications of ANSI Standard Z87.1 should be worn whenever there is the possibility of contact with the eyes. Spectacle type safety glasses do not provide satisfactory protection. An eyewash fountain should be readily accessible. Wear plastic face shield in addition to safety goggles where there is a danger of splashing.

**AIR MONITORING:** No information is available.

**EXPOSURE GUIDELINES:** Although there are no occupational exposure limits established by OSHA or ACGIH for dimethyl carbonate, the 100 ppm PEL occupational exposure limit recommended by Kowa American is based on the rapid metabolism of dimethyl carbonate to methanol and the toxicity profiles of both DMC and methanol.

**SECTION 9**  
**PHYSICAL AND CHEMICAL PROPERTIES**

|                                          |                                      |
|------------------------------------------|--------------------------------------|
| <b>Appearance:</b>                       | Clear colorless liquid               |
| <b>Odor:</b>                             | Pleasant odor                        |
| <b>Boiling Point:</b>                    | 90 °C (760 mm Hg)                    |
| <b>Specific Gravity:</b>                 | 1.0706 (20 °C)                       |
| <b>Vapor Pressure:</b>                   | 42 mm Hg (20 °C)<br>55 mm Hg (25 °C) |
| <b>Refractive Index (n<sub>D</sub>):</b> | 1.3687 (20 °C)                       |
| <b>Acidity (pH):</b>                     | 6.4 - 6.8                            |
| <b>Viscosity:</b>                        | 0.625 cps (20 °C)                    |
| <b>Freezing Point:</b>                   | 2 - 4 °C                             |
| <b>Solubility in Water:</b>              | 13.9 g/100 g water                   |
| <b>Color (APHA):</b>                     | ≤ 20                                 |
| <b>Surface Tension:</b>                  | 3.1925 x 10 <sup>-2</sup> N/m        |
| <b>Volatile (%):</b>                     | 100%                                 |

Notes on Physical and Chemical Properties

None

**SECTION 10**  
**STABILITY AND REACTIVITY**

**STABILITY:** Stable under normal conditions.

**CONDITIONS TO AVOID:** Avoid heat, fire, open flames, direct light, ignition sources, and UV radiation.

**INCOMPATIBILITY/MATERIALS TO AVOID:** Oxidizing and reducing agents.

**HAZARDOUS DECOMPOSITION OR BYPRODUCTS:** Not expected under normal conditions.

**HAZARDOUS POLYMERIZATION:** Hazardous polymerization will not occur.

**SECTION 11**  
**TOXICOLOGICAL INFORMATION**

**ACUTE TOXICOLOGICAL DATA:**

| <b>Test</b>                     | <b>Result</b>     |
|---------------------------------|-------------------|
| Oral Rat LD <sub>50</sub>       | 12,900 mg/kg      |
| Oral Mouse LD <sub>50</sub>     | 6,000 mg/kg       |
| Dermal Rat LD <sub>50</sub>     | > 2,500 mg/kg     |
| Dermal Rabbit LD <sub>50</sub>  | 5,000 mg/kg       |
| Inhalation Rat LD <sub>50</sub> | > 140 mg/liter    |
| IP Mouse LD <sub>50</sub>       | 800 - 1,600 mg/kg |

**OTHER ACUTE DATA:** Rats exposed to up to 5,000 mg/kg showed clinical signs of hypoactivity, ataxia, redness around the eyes and nose, and loss of righting reflex. Duration of exposure was not reported. Separately, the primary expected metabolite of this compound is expected to be methanol. Methanol has been shown to be poorly tolerated in man with over exposure resulting in serious effects including central nervous system effects, blindness, and possibly death. These adverse effects have been reported even at low levels of methanol exposure.

**EYE IRRITATION DATA:** This compound produced slight eye irritation when tested in rabbits.

**SKIN IRRITATION DATA:** This compound did not cause skin irritation when tested in rats and rabbits.

**SKIN SENSITIZATION DATA:** No data are available.

**SUBCHRONIC DATA:** No data are available.

**REPRODUCTIVE TOXICITY:** No data are available.

**TERATOGENICITY (birth defects):** Pregnant female CD-1 mice were exposed by inhalation to 0, 300, 1000, or 3000 ppm during gestational days (GD) 6 through 15. Maternal body weights, clinical observations, and food consumption were recorded throughout gestation. At scheduled euthanization on GD 18, fetuses were weighed, sexed, and examined for external, visceral, and skeletal alterations. There were no treatment-related deaths or clinical findings. Maternal body weights and body weight gains were significantly reduced at 3000 ppm. Food consumption was also significantly reduced in the 1000 and 3000 ppm groups. Gestational parameters affected at 3000 ppm included post-implantation loss due to increased resorptions and altered sex ratio (decreased males). Fetal body weights per litter were reduced at 3000 ppm, with increased number of stunted fetuses. Total incidences of fetal malformations (external, visceral, and skeletal) were significantly increased at 3000 ppm and included cleft palate, microtia, low set ears, multiple skull bone malformations, and fused vertebral arches. There was also a treatment-related increase in skeletal variations at 3000 ppm. The NOEL for maternal and developmental toxicity was 1000 ppm.

Results from the above teratology testing of dimethyl carbonate are similar to and consistent with those reported for methanol since dimethyl carbonate is expected to rapidly metabolize to methanol. The NOEL for methanol in teratology testing has been reported to be approximately 1000 ppm.

**MUTAGENICITY:** This compound was found to be negative in the *in vitro* Ames test. The compound was also negative in the Comet Assay which evaluates DNA damage and repair at the cellular level. There are no *in vivo* mutagenicity data on this compound.

**CHRONIC EFFECTS/CARCINOGENICITY:** No data are available.

|                                                    |
|----------------------------------------------------|
| <b>SECTION 12</b><br><b>ECOLOGICAL INFORMATION</b> |
|----------------------------------------------------|

**SUMMARY OF ECOLOGICAL DATA:** Not expected to be toxic to fish, Daphnia, or bacteria. Modeling data suggest that this compound may be harmful, possibly toxic, to algae. Low potential to bioaccumulate; readily biodegradable.

**ECOTOXICOLOGICAL DATA:**

| Test                                                     | Result           |
|----------------------------------------------------------|------------------|
| Fish NOEC <sub>50</sub> 96-hour<br>[OECD 203]            | 1,000 mg/liter   |
| Daphnia LC <sub>50</sub> 48-hour<br>[estimated by model] | 2,920 mg/liter   |
| Algae EC <sub>50</sub> 96-hour<br>[estimated by model]   | 9 mg/liter       |
| Bacteria EC <sub>50</sub><br>[OECD 209]                  | > 1,000 mg/liter |

**ENVIRONMENTAL FATE DATA:** This compound was found to be greater than 90% biodegradable after 28 days under OECD 301C. The BCF is estimated to be 3.16 and as such is not expected to bioaccumulate. Distribution in the environment is expected to be roughly equal across water, air, and soil media with half-lives on the order of hundreds of hours.

**PHYSICAL/CHEMICAL PROPERTIES:** The computer-modeled Log  $K_{ow}$  was found to be 0.23. The Henry's Law constant is modeled to be  $6.2 \times 10^{-4}$  atm · m<sup>3</sup>/mol. Partially soluble in water. The computer-modeled  $k_{oc}$  is predicted to be 8.25.

|                                               |
|-----------------------------------------------|
| <b>SECTION 13<br/>DISPOSAL CONSIDERATIONS</b> |
|-----------------------------------------------|

**RCRA CLASSIFICATION:** If discarded in its manufactured form, this product is a characteristic hazardous waste under RCRA. However, it is the responsibility of the user to determine at the time of disposal whether a material containing the product or derived from the product should be classified as a hazardous waste.

**SPECIAL INSTRUCTIONS:** Do not discharge effluent containing this product into municipal sewers or open bodies of water. This material is soluble in water. This substance may be a characteristic hazardous waste under RCRA. All recovered material should be packaged, labeled, transported, and disposed of in conformance with applicable laws and regulations. Incinerate the wastes in an approved facility that complies with local, state, and federal regulations. For disposing of the container, completely empty the container. Rinse empty container with water and dispose of the container in a sanitary landfill or by incineration.

|                                             |
|---------------------------------------------|
| <b>SECTION 14<br/>TRANSPORT INFORMATION</b> |
|---------------------------------------------|

**U.S./INTERNATIONAL SHIPPING INFORMATION UNDER DOT, IMO/IMDG, ICAO, IATA, AND UN REGULATIONS:**

|                              |                             |
|------------------------------|-----------------------------|
| <b>Label/Placard:</b>        | Flammable liquid            |
| <b>Proper Shipping Name:</b> | Dimethyl carbonate          |
| <b>Hazard Class:</b>         | Class 3, Packaging Group II |
| <b>UN or ID No.:</b>         | UN 1161                     |

Notes on Transport Information

None

**SECTION 15**  
**REGULATORY INFORMATION**

**REGULATORY STATUS:** All chemical substances contained within this product either are listed on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or exempt under TSCA. The chemical substances contained within this product, including its impurities, may be subject to specific reporting/notification, recordkeeping, and/or testing requirements under: TSCA, EPCRA/SARA III, RCRA, CERCLA, CAA, SDWA, and CWA.

The table below shows the international chemical inventory status of DMC:

| <u>Country</u> | <u>Inventory</u> | <u>Listed</u> | <u>Not Listed</u> | <u>Notes</u>                                   |
|----------------|------------------|---------------|-------------------|------------------------------------------------|
| Australia      | AICS             | √             |                   |                                                |
| Canada         | DSL              | √             |                   |                                                |
|                | NDSL             |               |                   | Not applicable                                 |
| China          | IECS             | √             |                   |                                                |
| European Union | REACH            | √             |                   | Intermediate List of Pre-Registered Substances |
| Japan          | ENCS             | √             |                   | 2-2853                                         |
| New Zealand    | NZIoC            | √             |                   | HSNO approval                                  |
| Philippines    | PICCS            | √             |                   |                                                |
| South Korea    | ECL              | √             |                   | KE-11278                                       |
| U.S.           | TSCA             | √             |                   |                                                |

**EPCRA SECTION 313 SUPPLIER NOTIFICATION:** This product contains no chemicals at or above *de-minimis* levels subject to the reporting requirements of Section 313 of the Emergency Planning and Community Right-to-Know Act.

**CALIFORNIA PROPOSITION 65:** This compound contains no chemicals known to the State of California to cause cancer or reproductive toxicity.

**STATUS UNDER THE CLEAN AIR ACT:** Under the Clean Air Act, DMC is no longer regulated by the U.S. Environmental Protection Agency as a volatile organic compound (VOC) for purposes of meeting the national ambient air quality standard for ozone. 74 Fed. Reg. 3437; January 21, 2009. The link for this rule is available at: <http://edocket.access.gpo.gov/2009/pdf/E9-1150.pdf>. In addition, DMC is not regulated as a hazardous air pollutant (HAP) or ozone depleting substance (ODS).

For stationary source VOC compliance, depending on the individual state, the VOC excluded status of DMC may be automatically added to a state's list of VOC excluded compounds or may require that a state take specific action to add the compound. To determine the status of DMC as VOC exempt in each state, contact Kowa American. To date over 30 states are VOC exempt, and all states besides California should be exempt by the late fall of 2010. California requires each of its Air Management Districts (AMD) to exempt DMC as a VOC for stationary source and coatings, printing & adhesive applications.

This federal VOC exemption for DMC allows it to be used immediately in most coatings and other products to meet the national VOC rules found at 40 CFR part 59 for: auto refinish coatings (subpart B), consumer products (subpart C), architectural coatings (subpart D), and aerosol coatings (subpart E). This exemption does not apply to states that have more stringent VOC rules than the federal government, the states where this federal VOC exemption does not apply include: California, Massachusetts, New York, and Rhode Island. DMC may be used in Aerosol coatings in California and soon for the rest of the USA using its ultra low MIR values for the weighted average VOC calculations.

The table below provides the Maximum Incremental Reactivity (MIR) values for DMC and three other VOC exempt compounds, methyl acetate, ethane, and acetone.

**Table of MIR Values**

|                            | <b>DMC</b>   | Methyl acetate | Ethane | Acetone |
|----------------------------|--------------|----------------|--------|---------|
| grams ozone / grams<br>VOC | <b>0.056</b> | 0.068          | 0.27   | 0.35    |
| grams ozone / moles<br>VOC | <b>5.045</b> | 5.037          | 8.12   | 20.33   |

**SECTION 16  
OTHER INFORMATION**

**DISCLAIMER:** The information presented herein is believed to be factual. However, none of this information is to be taken as a warranty or representation for which Kowa American Corporation, its affiliates, the chemical manufacturer, or the preparer bears legal responsibility. The user should review any recommendation in the specific context of the intended use to determine whether it is appropriate.

Sent via E-mail and US Mail

November 10, 2010

Ms. Linda Whitcher, Air Quality Program  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Re: Comments from Puget Sound Clean Air Agency  
Proposed Rule Making Amendments to WAC 173-400  
General Regulations for Air Pollution Sources

**EXECUTIVE DIRECTOR**

Craig T. Kenworthy

**BOARD OF DIRECTORS**

**BREMERTON**

Patty Lent, Mayor

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Paul Roberts, Board Chair

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Dow Constantine, Executive

**KITSAP COUNTY**

Charlotte Garrido,  
Commissioner

**PIERCE COUNTY**

Pat McCarthy, Executive

**PUBLIC AT LARGE**

Marina Cofer-Wildsmith

**SEATTLE**

Mike McGinn, Mayor

**SNOHOMISH COUNTY**

Stephanie Wright,  
Councilwoman

**TACOMA**

Jake Fey, Councilman

Dear Ms. Whitcher:

The Puget Sound Clean Air Agency (Agency) would like to thank you and the Ecology staff for the opportunity to participate in the stakeholder committee work that led up to this proposal. We respectfully offer the following comments on the proposed amendments to WAC 173-400:

**Comment 1 – WAC 173-400-035**

The proposal separates elements of the existing rule into two sections – “Nonroad Engines” and “Relocation of Portable Sources”. The proposed language for WAC 173-400-035 deletes an important provision regarding applicability of this rule. The current rule states “*This section applies statewide except where an authority has its own rule regarding such sources. [WAC 173-400-035(2)]*”. We strongly urge Ecology to restore that language to the proposed amendments to this rule.

The Agency currently exempts all nonroad compression ignition engines subject to 40 CFR Part 89 from Notice of Construction (NOC) review. The Ecology proposal would result in a significant amount of additional work for our staff if it applied in our area, with limited air quality benefits.

In addition, the proposal may overlook some procedural requirements related to the State Environmental Policy Act (SEPA). The proposal allows for an approval with conditions, yet it intends that this approval not constitute a notice of construction approval. This seems to conflict with SEPA regulations which indicate that minor new construction projects which require a “*license governing emissions to the air or discharges to water*” are not categorically exempt (WAC 197-11-800 Categorical Exemptions).

**Comment 2 – WAC 173-400-036**

The agency supports the qualifying language in this proposal that requires a permitting authority to adopt these rules in order to participate in an inter-jurisdictional relocation process with a source. At this time, we do not plan on adopting this provision, but support the language which clarifies its applicability.

**Comment 3 – WAC 173-400-075**

This section of the existing regulation appears to clarify Ecology's intention with respect to implementing various EPA NESHAP regulations. The proposed amendments further address policy choices recommended by Ecology staff. However, this section (and the proposed amendments) does not reflect the EPA NESHAP program choices and regulations previously adopted by the Agency and could lead to confusion for sources and other agencies. To address this potential confusion, we request that Ecology add a statement such as *"This section applies statewide except where an authority has its own rule regarding such sources."*

**Comment 4 – WAC 173-400-107, -108, 109**

The Agency supports these proposals, especially the provisions which clearly state that WAC 173-400-107 remains in effect until EPA approves the entirety of the proposed WAC 173-400-108 and -109. This should help avoid the confusion of which rules are in effect and prevent selective approvals by EPA.

**Comment 5 – WAC 173-400-110(5)**

The proposal to create a special exemption provision for greenhouse gases (GHGs) in the NOC emission thresholds appears, on the surface, to be inconsistent with existing rules and other Ecology guidance. For example, Ecology has rules regarding GHGs and mitigation for certain power projects. In addition, Ecology is proposing GHG emission reporting rules that are similar to those finalized by EPA. Also, Ecology's draft working paper on GHG emissions indicates that Best Available Control Technology (BACT) for GHGs will become another tool for large stationary sources under the federal and state Clean Air Acts beginning in January 2011. External stakeholders do not all recognize the limitations of the programs above, taking the view that Reasonably Available Control Technology (RACT) requirements apply to GHG emissions, too.

This Agency does not adopt Ecology's NOC emission thresholds for exemption by reference and does not use them to determine NOC applicability in our jurisdiction. We recommend this proposal identify the GHG emission threshold exemption in the proposed Table -110(5) alone and delete the additional provision proposed in WAC 173-400-110(5)(b) which states *"Greenhouse gas emissions are exempt from new source review requirements except when the emission increase from the new or modified source is equal to or greater than 75,000 tons per year, CO<sub>2e</sub>."* This is consistent with the view that GHG emissions are an air contaminant that may be subject to review and are not treated differently from other regulated air contaminants for NOC review purposes.

**Comment 6 - WAC 173-400-171**

There are numerous edits in this section and the Agency supports Ecology's change to clarify that proposed NOC approvals which exceed the ASIL (e.g. involves a Tier II or Tier III decision) are the criteria for mandatory public notice rather than exceeding a "small quantity emission rate" as in the present rule.

In the proposed WAC 173-400-171(6), the Agency requests that the existing requirements for a public notice (presently in WAC 173-400-171(3)(b)) be retained unchanged. When we publish a

public notice for a comment period on a proposed action, we try to convey the required information and specific elements that would allow someone to find information or contact someone for additional information. We also try to limit the size of the legal notices published in the newspapers because they are expensive to publish and seldom read. Even though we try to use the most effective and informative methods to share information (sharing more rather than less), the legal notices in newspapers are one of the least effective methods we use to communicate with the public. Sources are required to pay for the cost of publication under our regulations and a relatively simple notice can approach several thousand dollars depending on the newspaper and day it is published. Adding additional required elements to be published will only increase the cost to others for the least effective means of communication.

**Comment 7 – PM-2.5 Definition and Terms**

There appear to be some inconsistencies between the sections of the proposed rules with respect to the term “PM-2.5 emissions”, especially regarding methods for “condensable” particulate matter. The proposed WAC 173-400-030(72) states “*in accordance with Part 53*” as a way of clarifying the method reference. That reference is an ambient air provision with ambient air monitoring methods. In the proposed WAC 173-400-810(24), the major source/modification definitions for nonattainment new source review consider condensable emissions by stating “*On or after January 1, 2011 (or any earlier date established in the upcoming EPA rulemaking codifying emission test methods for condensable particulate matter), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emission limitations*”.

We understand the challenge created by the fact the EPA has not finalized a PM-2.5 emission test method to be used for their new source review programs. However, clarity is needed on what definitions/methods will be used and where it will be cited when EPA finalizes its test method decisions. Also, to the extent possible, definitions/methods should be consistent between NOC, PSD, and nonattainment new source review transactions..

Again, we appreciate the opportunity to offer these comments and look forward to the conclusion of this effort. Please feel free to contact me if you have any questions about these comments.

Sincerely,



Laurie S. Halvorson  
Director of Compliance and Legal

cc: Stu Clark, Department of Ecology  
Craig Kenworthy, PSCAA  
Steve Van Slyke, PSCAA

**From:** Beam, Thomas G [Thomas\_G\_Beam@RL.gov]  
**Sent:** Friday, November 12, 2010 12:32 PM  
**To:** Whitcher, Linda (ECY)  
**Cc:** Jackson, Dale E.; Beam, Thomas G; Peterson, Kirk A  
**Subject:** Comments on Proposed Revision to WAC 173-400 "General Regulations for Air Pollution Sources"  
**Attachments:** final Hanford comment package-WAC 173-400 rule revision.pdf

Ms. Linda Whitcher  
Air Quality Program  
State of Washington  
Department of Ecology

Dear Linda,

Attached for your consideration, in accordance with Washington State Register (WSR) Item 10-20-151 (dated 10/6/2010), are comments on Ecology's proposed revision of WAC 173-400 "General Regulations for Air Pollution Sources". Mission Support Alliance (MSA), in cooperation with the Department of Energy (DOE) and other Hanford Site contractors, is submitting these comments as DOE's integrating contractor on the Hanford Site. We appreciate the opportunity to provide comments on the proposed rule, as well as Ecology's willingness to allow representatives of DOE and the Hanford Site contractors to play an active role on the advisory committee that assisted Ecology in the development of this proposed rule revision.

We commend Ecology staff for their extensive efforts the past two years in developing a comprehensive proposal that addresses numerous and varied interests. A large-scale revision to WAC 173-400 was long overdue and important to ensure relevance with changing conditions, as well as to satisfy Ecology commitments to the U. S. Environmental Protection Agency (EPA). This draft revised rule is an improvement over the existing rule in many areas. Ideally, we would have preferred a broader review and revision of the categorical NSR exemptions in WAC 173-400-110(4), but recognize the resource limitations that made it difficult to incorporate that objective into this revision process.

In particular, we believe the following items represent key improvements that will make the rule more practical, as well as reduce permitting and regulatory burdens on both Ecology and the regulated community...while still providing appropriate protection of human health and the environment:

- Addition of an improved regulatory framework for non-road engine sources [WAC 173-400-035]
- Elimination of provisions requiring notice of construction applications (NOCAs) for almost all sources subject to federal rules, thus allowing expanded use of the minor NSR exemptions to ensure scarce permitting resources are focused on new sources that can potentially impact the environment [WAC 173-400-110(2)(b)]
- Elimination of provisions requiring notification to the permitting authority for new sources with de minimis emissions, thus reducing unnecessary expenditure of staff resources [WAC 173-400-110(5)(b) and (c)]
- Addition of a simplified NSR approach for emergency engines [WAC 173-400-930]

The incremental changes suggested by our comments should provide additional clarification and streamlining to help the regulated community maintain compliance with this rule. We look forward to

receiving Ecology's responses to our comments. If you have questions or would like to discuss any of them further, please give me a call at the number below. Thanks.

Sincerely,

Tom Beam, Manager  
Environmental Mission Integration  
Mission Support Alliance, LLC  
509-376-4876

PS. Reply confirmation of your receipt of these comments to meet Ecology's 11/12/2010 deadline would be much appreciated. Thanks.

| <b>Comment Number</b> | <b>Proposed Rule Section/Citation</b> | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Recommended Action(s)/ Requested Change(s)<br/>(Proposed text additions;<br/>proposed text deletions)</b>                                                          |
|-----------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| USDOE-01              | WAC 173-400-035(1)(c)-(e)             | The proposed rule language in these paragraphs is unnecessarily redundant. Internal combustion engines meeting the criteria identified in these paragraphs are already excluded from the definition of non-road engines per WAC 173-400-030(57). Therefore, these engines would already be excluded from the applicability statement in WAC 173-400-035(1) since they are not non-road engines. The inclusion of this redundant exclusionary language reduces the clarity of the proposed rule. | Delete the proposed rule language in WAC 173-400-035(1)(c), (1)(d) and (1)(e).                                                                                        |
| USDOE-02              | WAC 173-400-075(8)(e)(i)              | The proposed rule language is missing any reference to Table 4 for applicable minimum inspection frequencies.                                                                                                                                                                                                                                                                                                                                                                                   | Revise the proposed rule language in either WAC 173-400-075(8)(e)(i) or (ii), as appropriate, to reference Table 4.                                                   |
| USDOE-03              | WAC 173-400-091(5)                    | The existing rule language indicates that regulatory orders issued under this section are federally enforceable once the section is approved as part of the Washington state implementation plan (SIP). It appears that this section has since been approved as part of the SIP, making this language outdated and ripe for revision.                                                                                                                                                           | Revise the proposed rule language in WAC 173-400-091, as appropriate, to reflect the fact that this section of the rule has already been approved as part of the SIP. |
| USDOE-04              | WAC 173-400-108                       | The proposed rule language requires notification to the permitting authority within 12 hours following discovery of excess emissions which                                                                                                                                                                                                                                                                                                                                                      | Revise the proposed rule language in WAC 173-400-108 to require a more reasonable notification timeframe (e.g. next business day) for excess                          |

| Comment Number | Proposed Rule Section/Citation | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Recommended Action(s)/ Requested Change(s)<br><i>(Proposed text additions; proposed text deletions)</i>                                                                                                                                                                                                                                            |
|----------------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                |                                | <p>represent a potential threat to human health or safety, or which the owner/operator believes to be unavoidable. The existing language in WAC 173-400-107 simply states “as soon as possible”. A 12-hr window to provide notification seems unreasonable for situations where the permitting authority offices are closed for weekend, holidays or other non-business hours.</p>                                                                                                          | <p>emissions determined to be a potential threat or unavoidable, or provide clarification of how the permitting authority will make itself available for “12-hr” notifications during non-business hours.</p>                                                                                                                                      |
| USDOE-05       | WAC 173-400-110(4)(a)(x)       | <p>The proposed inclusion of this new rule language is a positive development. However, use of the phrase “not related to” lacks sufficient clarity and could be interpreted very broadly. The key issue of interest is that the construction activities will not result in the establishment of a new or modified source that will subsequently be subject to regulation. Minor text revisions are recommended to provide additional clarity and ensure a more consistent application.</p> | <p>Revise the proposed rule language in WAC 173-400-110(4)(a)(x) to read as follows (or similar):</p> <ul style="list-style-type: none"> <li>• Construction activities that are do not related to result in new or modified stationary sources or portable stationary sources subject to regulation.</li> </ul>                                    |
| USDOE-06       | WAC 173-400-110(4)(c)          | <p>A strict reading and sequential evaluation of the existing rule language appears to create a situation where a new or modified emission unit meeting the criteria in sub-sections (iv) and (v) would not qualify for these exemptions because it does not also meet</p>                                                                                                                                                                                                                  | <p>Revise and clarify the existing rule language in WAC 173-400-110(4)(c)(i) to read as follows:</p> <ul style="list-style-type: none"> <li>• <math>\leq 500,000</math> Btu/hr using coal with <math>\leq 0.5\%</math> sulfur or other fuels with <math>\leq 0.5\%</math> sulfur not specifically identified in (c)(ii) through (c)(v);</li> </ul> |

| Comment Number | Proposed Rule Section/Citation | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Recommended Action(s)/ Requested Change(s)<br><i>(Proposed text additions; proposed text deletions)</i>                                                                                                |
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|                |                                | <p>the more general and restrictive criteria in (i) and the introductory language requires a new or modified emission unit to meet all criteria in (i) through (v). For example, an emission unit with natural gas (&lt;0.5% sulfur content) fired combustion units totaling 3 million Btu/hr would qualify under (v), but could not meet the general criteria in (i) for fuels other than coal with &lt;0.5% sulfur content (&gt; 500,000 Btu/hr). Since not all exemption criteria are met, the new emission unit would not qualify for the exemption. This result is not consistent with Ecology's field implementation and interpretation, or the intention to group and evaluate combustion units by specific fuel type.</p> | <p>OR</p> <p>Issue clear implementation guidance that will assist the regulated community in consistently evaluating new or modified emission units for applicability of these exemption criteria.</p> |
| USDOE-07       | WAC 173-400-110(5)(b)          | <p>The proposed rule language in this section introduces the term "CO<sub>2</sub>e". It is assumed that this term is intended to mean "carbon dioxide equivalent." However, it does not appear to be defined anywhere within WAC 173-400 and there do not appear to be any cross references to direct the reader to an appropriate definition in either WAC 173-441 or 40 CFR 98.</p>                                                                                                                                                                                                                                                                                                                                             | <p>Revise the proposed rule language, as appropriate, to provide a definition for "CO<sub>2</sub>e" as it is used in WAC 173-400-110(5)(b).</p>                                                        |
|                |                                | The provided informational list                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Verify the correct list of 40 CFR                                                                                                                                                                      |

| Comment Number | Proposed Rule Section/Citation | Comment                                                                                                                                                                                                                                                                                                                                                                                                    | Recommended Action(s)/ Requested Change(s)<br><i>(Proposed text additions; proposed text deletions)</i>                                                                          |
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| USDOE-08       | WAC 173-400-115(1)(a)          | of 40 CFR 60 subparts that are “blank or reserved” as of the updated July 1, 2010 date is inaccurate and needs to be updated. As an example, Subpart JJJJ, which has been issued and was in effect on July 1, 2010, is included on the list as “blank or reserved.”                                                                                                                                        | 60 subparts that were either blank or reserved as of July 1, 2010 and revise the rule language in WAC 173-400-115(1)(a) accordingly.                                             |
| USDOE-09       | WAC 173-400-730(1)(c)          | The proposed rule language references WAC 173-400-720(4)(b)(iii) for additional direction on processing and submittal of PSD applications. This does not appear to be the correct reference. WAC 173-400-720(4)(b) appears to be a section on exceptions to the adoption by reference of portions of 40 CFR 52.21, with no applicable requirements related to submittal or processing of PSD applications. | Verify the correct intended reference for this section of the proposed rule, and revise the rule language, as appropriate, to reflect the correct regulatory citation.           |
| USDOE-10       | WAC 173-400-750(1)(e)          | The existing rule language includes a reference to WAC 173-400-112(2) which does not appear to be valid anymore with the proposed removal of WAC 173-400-112.                                                                                                                                                                                                                                              | Revise the rule language in WAC 173-400-750(1)(e) to remove the incorrect reference to WAC 173-400-112(2).                                                                       |
| USDOE-11       | WAC 173-400-930<br>General     | The addition of this new section is an effective and efficient alternative approach to satisfy Ecology new source review (NSR) requirements for emergency internal combustion engines, and is much more consistent with the approach taken by federal regulations for emergency engines. However, this                                                                                                     | Revise the rule language throughout WAC 173-400-930, as necessary, to allow this new section to apply to compression or spark-ignition emergency engines using any type of fuel. |

| Comment Number | Proposed Rule Section/Citation           | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Recommended Action(s)/ Requested Change(s)<br><i>(Proposed text additions; proposed text deletions)</i>                                                                                                                                                                                      |
|----------------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                |                                          | <p>streamlined NSR approach should not be limited solely to diesel-fueled compression ignition emergency engines. It is recognized that the primary driver for development of this new section is a desire to lessen the burden associated with regulation and permitting of emergency diesel engines due to the restrictive emission limits for diesel engine particulate as a toxic air pollutant in WAC 173-460. However, since other fuel-type spark ignition emergency engines (e.g. propane, natural gas or gasoline) produce even fewer emissions of regulated pollutants, they should also be eligible for this streamline NSR approach.</p> |                                                                                                                                                                                                                                                                                              |
| USDOE-12       | WAC 173-400-930(2)(c), (3)(a) and (3)(b) | <p>For better consistency with various federal regulations in 40 CFR 60 and 63 applicable to emergency engines, the total allowable hours of operation for maintenance and testing should be limited to 100 hours annually instead of the current proposed 50 hours. It would also be reasonable to include provisions that allow for up to 50 hours annually for non-maintenance or testing activities, provided the total hours of operation remain below 100 hours. This would allow for more efficient operation (vs. bringing in a</p>                                                                                                          | <p>Revise the proposed rule language in WAC 173-400-930 (2)(c) and applicable portions of (3), as appropriate, to allow a total of 100 hours of operation annually for maintenance and testing, and include provisions for up to 50 hours of non-maintenance/testing operation annually.</p> |

| Comment Number | Proposed Rule Section/Citation | Comment                                                                                                                                                                                                                                                                                                                                       | Recommended Action(s)/ Requested Change(s)<br><i>(Proposed text additions; proposed text deletions)</i>                                                                                             |
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|                |                                | portable generator from a commercial vendor) for those facilities who can make use of installed emergency backup engines to meet short term power needs during planned outages                                                                                                                                                                |                                                                                                                                                                                                     |
| USDOE-13       | WAC 173-400-930(3)(a)          | The proposed definition of emergency engine appears to be restricted to “new engines” instead of “new or modified engines”. Since the primary purpose of this proposed new section is to serve as an alternate new source review approach, it should be applicable to new engine sources, which by definition could include modified engines. | Revise the proposed rule language in WAC 173-400-930(3)(a) to clarify that the definition of an emergency engine for purposes of this rule includes both new and modified emergency engine sources. |
| USDOE-14       | WAC 173-400 General            | Due to the complexity and size of this rule, it is difficult to know which terms/words have specific definitions in WAC 173-400-030. A mechanism to highlight these words, terms or phrases would be useful.                                                                                                                                  | Revise the presentation of the rule language to bold (or other clearly distinguishing presentation) those words, terms and/or phrases for which there is a definition in WAC 173-400-030.           |



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November 12, 2010

Linda Whitcher  
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Dear Ms. Whitcher:

Enclosed are comments offered by Weyerhaeuser NR Company on the proposed revisions to WAC 173-400 *General Regulation for Air Pollution Sources*.

1 **WAC 173-400-030(42) Greenhouse gases** – WAC 173-400 will house the Washington state requirements for new source review arising from increased emission of GHG’s. In order to avoid confusion with EPA’s requirements for major source new source review, this WAC 173-400 definition should mirror the EPA definition of greenhouse gases.<sup>1</sup> If Washington’s GHG Reporting rule wants to leave open the possibility of requiring reporting on “any other gas or gases designated by the department in chapter WAC 173-441 WAC,” that is fine.

2 **WAC 173-400-030(54) New Source** – Ecology proposes to add the words “installation” and “establishment” as subjects in this definition. The regulatory value of this proposed modification is not obvious. Unless it is compelling, it would be better for Ecology to retain the new source definition appearing in the Washington Clean Air Act.<sup>2</sup>

3 **WAC 173-400-030(57) Nonroad engine and WAC 173-400-035 Nonroad engines** – These rule sections necessarily work together, but are cumbersome and confusing. Ecology’s objectives are reportedly to:

1. provide for regulation of portable electric generation units, and
2. not regulate emissions resulting from internal combustion engines used for transportation purposes or from nonroad engines or nonroad vehicles as defined in section 216(11) of the federal Clean Air Act.

The -030(57) definition starts by offering examples of nonroad engines. Features/examples of nonroad engines include self-propelled and dual purpose equipment (e.g., tractors, bulldozers, cranes, lawnmowers), and portable and transportable equipment as indicated by the incorporation of wheels, skids, etc. The subsection -035 applicability language begins by referring to the -030

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<sup>1</sup> See 40 CFR 51.166(b)(48)

<sup>2</sup> See RCW 70.94.030(17) *New source*

definition and then expressly excludes equipment that is self-propelled or serves a dual purpose, etc.

There is an opportunity for Ecology to be more efficient in drafting rule language to accomplish the stated regulatory purposes. An improvement might be to simply eliminate the -030(57) *nonroad engine* definition. With some minor adjustments -035 would be sufficient as a self-contained section.

4

**WAC 173-400-075(5) *Emission standards for sources emitting hazardous air pollutants*** – This is an oddly worded subsection. Could it be restated to say

(5) Submit reports required by 40 CFR Parts 61 and 63 to the permitting authority, unless otherwise instructed.

5

**WAC 173-400-081 *Startup and shutdown*** – The proposed addition of the phrases “as part of new source review” and “during a control technology determination” should be removed. These eligibility criteria simply serve to limit access to the opportunity offered by -081. Several reasons support this request:

1. There appears to be no explicit direction in RCW 70.94 for layering on the “new source review” or “during a control technology determination” criteria into -081. What is the public policy reason to qualify use of the -081 provisions?
2. While the number of source owner/permitting authority transactions using -081 has probably been limited in the past, it seems likely that source owners will see more value in exploring startup/shutdown technology determinations in the future. Air permitting authorities are increasing their scrutiny of emissions during startup, shutdown and process malfunction periods. Source owners will be inclined to seek customized short-term, technology-based emission limits for startup/shutdown periods to avoid any periods of “non-compliance.”<sup>3</sup> Where source owners and permitting authorities have generally relied on provisions in -107 *Excess emission* to address startup and shutdown emission performance in the past, reliance on this section to address startup/shutdown may be constrained in the future.<sup>4</sup>
3. There are emission units subject to pre-1993 technology-based determinations made under Washington Clean Air Act authority that may benefit from the opportunity

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<sup>3</sup> In retrospect, technology determinations completed under Washington Clean Air Act authority may not have adequately recognized the inherent limitations of emission control equipment during startup or shutdown periods. The classic example is with an electrostatic precipitator controlling particulate on a combustion source emission. To avoid physical damage and chemical corrosion, ESP manufacturers specify the unit not be energized until the exhaust gas stream is above the dew point. During the warm-up or cool-down period, the control device would not be energized and compliance with a strict opacity limit may not be possible.

<sup>4</sup> Ecology is proposing new sections -108 and -109 in this rule amendment process, both of which amend the former applicability of section -107.

provided by -081 *Startup and shutdown*.<sup>5</sup> Adding these new criteria narrows the eligibility to use -081 to a relatively few emission units. The regulatory value of -081 is not to address future events (new source review brought on by physical change/change in the method of operation, or a BART or RACT determination). In each of these transactions there will be a fresh opportunity to create startup/shutdown emission limitations. Rather, the value of this regulation section is to address past permitting actions where the technology-based emission limit determinations are subsequently recognized as not reasonably accommodating emissions during startup/shutdown periods.

4. Ecology should preserve a broad ability for permittees to seek reasonable adjustments to technology-based emission limitations. The current -081 language is much preferable to the proposed amendments.

6 **WAC 173-400-091(1) *Voluntary limits on emissions*** – This subsection could be adjusted to acknowledge that voluntary emission limits might be requested on an “emission unit,” and not the “source.” The definition of source means “all of the emission units including quantifiable fugitive emissions...”. The scope of this action will likely be much broader than either an owner/operator or permitting agency would want to take on.

7 **WAC 173-400-105(8) *Continuous emission monitoring*** – A few suggested changes:

1. In subsection (a) the requirement for data recovery should mimic the averaging time of the specific pollutant emission limitation. For example, if an emission unit has a three-hour average sulfur dioxide emission limitation, the data recovery requirement should be to capture some high percent of the three-hour time periods (not “hours” as in the proposed rule) during each calendar month.
2. In subsection (a), what drove the choice of requiring 95% valid hourly data capture? The Ecology Industrial Section has generally selected 90% as the data capture requirement.<sup>6</sup> Note that subsection (e)(iv) refers to the more appropriate 90% monitoring data capture requirement.
3. In subsection (a) the “periods of monitoring downtime” should recognize that routine instrument calibration procedures will result in some “lost” monitoring data (or does the language in (c) relating to “calibration draft” (note that it should be “drift”)) speak to this?
4. In subsection (c), could the statement read “Monitoring data for opacity is to be reduced to six minute clock averages”? That is, averages would be reported for clock hours 00:00 – 00:06, 00:06 – 00:12, etc.

<sup>5</sup> WAC 173-400-081 was first adopted in 1993

<sup>6</sup> See Weyerhaeuser – Longview NR Air Operating Permit 000012-4, Facility-Wide General Requirements, #11. “Ecology recognizes that monitoring data may be lost for legitimate reasons. The permittee shall make every reasonable effort to acquire, maintain, and recover valid monitoring data. Except where an applicable requirement contains more stringent provisions, permittee shall recover valid monitoring data and recordkeeping for at least 90% of the averaging periods during each month or, if no averaging period is used, collected during each month, in which this permit requires monitoring of a process or parameter. The 10% allowance is contingent on the permittee providing an acceptable explanation for the loss of monitoring data. [WAC 173-401-615]”

5. In subsection (e) why are subsections (i), (ii) and (iv) tucked away under a section (8) *Continuous emission monitoring systems* heading? These subsections address routine reporting of emission unit performance. The information requested is not specific to emission units with continuous emission monitoring systems. Ecology should perhaps create a section (10) in WAC 173-400-105 to house these requirements.
6. In subsection (e), sub (ii) and (iv) are identical.

8

**WAC 173-400-108 Excess emission reporting** – Weyerhaeuser NR endorses the comments on sections -107, -108, and -109 to be submitted by Matt Cohen on behalf of several clients.

There are provisions in proposed -108 worthy of separate comment. In section (1), Weyerhaeuser strongly objects to the proposed requirement that an owner/operator report an excess emission “as soon as possible” solely because it is “believe(d) to be unavoidable.” This is an illogical and unnecessary requirement. In the absence of an immediate threat to public health/safety, there is little regulatory value in a permitting authority learning of an excess emission “as soon as possible” simply because it was deemed “unavoidable.”<sup>7</sup>

Weyerhaeuser agrees that excess emissions which represent a “potential threat to human health or safety” should be reported to the permitting authority “as soon as possible.” This obligation is logical and consistent with other federal and state regulatory programs. For example, immediate reporting to state and local emergency response authorities is demanded under EPCRA/CERCLA for any release of a hazardous substance above a “reportable quantity.” These requirements take no interest on whether the release event was avoidable or unavoidable.

The same regulatory concept exists in Washington’s Air Operating Permit regulation where the requirement for “prompt” reporting occurs if there are “deviations” which represent a “potential threat to human health or safety.”<sup>8</sup> “Prompt” means “as soon as possible.” Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered. Again, the direction to report promptly is driven by human health/safety considerations and includes no consideration on whether the deviation was avoidable or unavoidable.

Ecology should adjust the proposed -108(1) to eliminate immediate reporting based on whether the excess emission was judged to be unavoidable.

9

**WAC 173-400-108 Excess emission reporting** – Subsection (3)(a) should be deleted. For most excess emission events there will not be “properly signed, contemporaneous records documenting ... actions in response.” Equipment operators will typically be performing other functions to resolve the excess emission situation, as opposed to creating “signed, contemporaneous records.” The best information defining an owner/operator response might

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<sup>7</sup> A typical excess emission from Weyerhaeuser experience will be a 22%, six minute average, opacity excursion from a combustion unit that has a 20%, six minute average, emission limit. Will it be important for the Dept of Ecology to receive a report of that event “as soon as possible” solely because Weyerhaeuser felt the event was unavoidable?

<sup>8</sup> See WAC 713-401-615(3)

well be from data loggers reporting adjustments to process equipment and the resulting performance. This information is typically recovered and becomes part of the information package supplied in response to the (new) subsection (2). Subsection (2) requires an owner/operator to present the “what, why, where, when, how” to support an excess emission claim. The owner/operator will be motivated to provide complete information and the permitting authority can certainly challenge that information, ask for more information, etc.

10 **WAC 173-400-109 *Unavoidable excess emissions*** - Subsections (3)(c) and (5)(d) should be adjusted to recognize that routine instrument calibration procedures and essential instrument preventative maintenance could be other reasons why an emission monitoring system might not be capturing data coincident with an excess emission event.

11 **WAC 173-400-110(1)(c)** -- Is there any regulatory reason or value in using the word “establishment”? Would it be more appropriate to use “construction” simply to align with the statutory new source definition?

12 **WAC 173-400-111(8)(a) *Change of conditions or revisions to orders of approval*** – The existence of this Change in Conditions section represents good public policy. It creates the mechanism for correction or improvement on NSR permitting determinations.

Unfortunately though, having subsection (a)(i) say that a Change of Conditions cannot “cause the source to exceed an emissions standard” places an unnecessary damper on the utility of this section. This occurs as permitting authorities have chosen to interpret this language in a literal and stringent manner.

Weyerhaeuser requests that subsection (a)(i) either be eliminated or a more liberal interpretation of the phrase be explicitly recognized. This outcome would not materially affect the application of -111(8) as the remaining criteria to gain a Change of Condition are very robust and protective of public interests. Elimination of the subsection or a more relaxed regulatory interpretation would allow for some targeted problem solving.

A real-world example relates to the need for appropriate technology-based emission limitations during periods of startup or shutdown.<sup>9</sup> Consider a combustion unit controlled by an electrostatic precipitator and with a current emission limitation of 20% opacity, not to be exceeded for more than six consecutive minutes in any 60 minute period. A Change of Conditions request might be:

“20% opacity, not to be exceeded for more than six consecutive minutes in any 60 minute period. This limit will apply when the electrostatic precipitator is energized; i.e., when combustion unit exhaust gas is above the ambient dew point. Provide continuous measurement and report exhaust gas temperature.”

A request of this nature should not be dismissed from consideration based on an interpretive judgment that it “would exceed an emission limit.”

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<sup>9</sup> Please refer to comments in this letter addressing section WAC 173-400-091 *Startup and Shutdown*

13

**WAC 173-400-113 Requirements for new sources** – A minor point, but why the choice of term to “establish a new source” vs. to “construct a new source”?

14

**WAC 173-400-113 Requirements for new sources in attainment or unclassified areas** – Section (3) should be eliminated. It seems to address the same regulatory topic addressed by Section (4), but in a more ambiguous way. Section (4) imposes requirements on new sources/modifications in attainment/unclassified areas that could impact nonattainment areas, and provides numeric benchmarks to support a regulatory determination.

Alternatively, section (3) could probably be fixed by a proper reinsertion of the “This requirement will be considered to be met if the projected impact of” language.

15

**WAC 173-400-113 Requirements for new sources in attainment or unclassified areas** – Subsection (4)(a) would seemingly require each Notice of Construction for a minor new source review/modification to accomplish a modeling exercise to assess increment consumption in non-attainment areas (per Table 4a). To create an example, as presently worded would an NOC project located in Shelton and proposing to emit 26 tpy of PM10 be expected to assess its possible annual and 24-hour average impacts on the Tacoma/Puyallup PM10 non-attainment area?

Could Ecology add screening criteria to reduce the applicability of this requirement, perhaps based on distance from a non-attainment area or an emission below some threshold amount?

16

**WAC 173-400-116 Increment protection** – Weyerhaeuser NR Company supports the comments submitted by The Boeing Company on this section.

17

**WAC 173-400-131 Issuance of emission reduction credits** – Permitting authorities have had a variety of interpretations for the Section (2) *Time of Application* phrase “after the emission reduction has been accomplished.” Here are several options/scenarios:

- 180 days from when the emission reduction physically occurred (e.g., an emission unit was permanently shut down), or
- 180 days from when the owner/operator notified the permitting authority, or
- 180 days from when the permitting authority acknowledged the shutdown/emission reduction in a modified regulatory order or air operating permit?
- An owner/operator announces a “curtailment” of manufacturing operations due to poor market conditions but continues to pay annual registration or AOP fees. Four years later the owner/operator formally announces the permanent closure of the source. Presumably the 180 day clock begins with the permanent closure announcement.

The policy choice should be to broadly recognize and credit emission reductions. Given the conditions proposed in (3)(c) requiring *permanence, quantification, and federal enforceability*, the implication is that 180 days starts with the issuance/modification of an underlying permit or order that locks in the emission reduction. As such, subsection (2) could be amended to say

“...after the emission reduction has been recognized in a federally-enforceable order/permit.”

18 **WAC 173-400-131 *Issuance of emission reduction credits*** – Subsection (5)(b) inexplicably states that the ERC amount must be less than the amount of emission reduction achieved by the source. We assume this represents a typographical error and that Ecology really meant to say that the ERC amount will not be more than the emission reduction achieved.

If this is not a typo, Ecology should summarize the policy discussion and basis for this decision, and then provide an opportunity for public comment.

19 **WAC 173-400-136(5) *Redemption period*** – Why a reduction from ten to five years? Access to ERC’s will become an important factor in supporting new economic development in non-attainment areas. Ecology should promote a pro-growth philosophy with timely and competent new source review permitting. The agency should broadly credit emission reductions and then work to facilitate new and responsible economic growth. A policy choice to constrain the use of ERC’s goes in the wrong direction. Ecology should establish a minimum 10 year redemption period.

20 **WAC 173-400-136(6)(a)(ii) *Discount due to SIP*** – This subsection should be deleted. It unfairly and prematurely judges that “controls on operating sources” will need to be added to regain ambient air quality standard attainment. Industrial sources in Washington generally have modern-day BACT technologies in use, with MACT in-place or on the way. The state emission inventory indicates that industrial sources contribute <15% of the criteria pollutant load to ambient air. If Ecology must offer criteria to allow discounting of ERCs it is sufficient to rely on proposed (a)(i) and (a)(iii).

Thank you for considering these comments.

Sincerely,

Ken Johnson  
Corporate Environmental Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
AIR, WASTE AND TOXICS

November 17, 2010

Ms. Linda Whitcher  
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Dear Ms. Whitcher:

Thank you for the opportunity to review and comment on Ecology's proposed rule revisions, dated October 6, 2010. Our comments on these revisions follow:

### General Comments

In submitting these comments, EPA's review focused on the changes to regulations proposed in this rulemaking. Ecology made substantive changes to WAC Ch. 173-400 in 2004/2005 that EPA reviewed during the public comment period for those changes. Ecology did not, however, submit those 2004/2005 revised rules to EPA as a SIP revision and EPA has not reviewed the current rules out for public comment to determine whether the revisions made in 2004/2005 are consistent with Clean Air Act requirements. Importantly, provisions of current regulations not open for comment in this rulemaking may affect the approvability of the regulation changes in this proposed rulemaking.

Please also note that these comments contain our current views based on a preliminary review of the proposed rule. These views should not be considered EPA's final position, which we will reach only through notice and comment rulemaking after the state has submitted a rule for our approval as a SIP revision.

The replacement of "shall" with "must," "will," or "can" is inconsistent throughout this regulation and is confusing. "Shall" is retained in numerous places where it means "has a duty to." Ecology should confirm that, as used in these rules, "shall" and "must" mean the same thing—a legal duty, requirement, or obligation. The replacement of "will" for "shall" in some places is also inconsistent and confusing. Care should be taken to use "will" only where there is not legal obligation to take an action. Please note that replacing "shall" with "will" could be a potential SIP disapproval issue depending on the context. We have tried to point out these concerns, in our comments, but request that Ecology look closely at this issue in taking final action on these rule revisions.

1           **WAC 173-400-030(27):** A comma appears to be missing between "equipment" and "work practice."

2           **WAC 173-400-030(28):** How does Ecology consider precursors to the pollutants listed in this definition? Note that for SIP approved programs, Ecology must consider pollutants that have been identified by the Administrator as precursors to NAAQS pollutants in determining whether the construction of new sources and modifications, both major and minor, assure attainment and maintenance of the NAAQS and, as applicable, PSD increments.

3           **WAC 173-400-030(42):** To the extent this definition authorizes the inclusion of “any other gases designated by Ecology in WAC 173-441,” it is problematic for purposes of delegation or SIP approval of the PSD program. As EPA has stated, “We caution that a definition [of GHG in a SIP PSD program] that includes more gases than the 6 identified above could prove to be less stringent in certain ways because it could allow greater opportunities for a source of different gases to net out of PSD.” 75 Fed. Reg. 53892, 53902 (September 2, 2010). Note that relying on the definition of GHG in 40 CFR 52.21(b) for implementation of the PSD program does not fully address this concern because the definition of GHG will also be needed for purposes of issuing PSD avoidance permits (specifically, netting conditions in minor source construction permits) and Title V permits.

4           **WAC 173-400-030(45):** Should the 2<sup>nd</sup> and 3<sup>rd</sup> sentences of subsection (b) be a new paragraph such that they apply to both (a) and (b)?

5           **WAC 173-400-030(72):** Should the reference to 40 CFR Part 53 be to 40 CFR Part 51?

6           **WAC 173-400-030(96):** Ecology’s definition of VOC does not appear to be consistent with EPA’s definition in 40 CFR 51.200(s). The revision adds in “tertiary-butyl acetate” to section (a)—which is an exclusion—but then omits 40 CFR 51.200(s)(5), which states that that chemical has to be counted for recordkeeping, reporting, and modeling but not for an emission limit. So it appears that EPA provided a limited exclusion for this chemical whereas Ecology is proposing a complete exclusion.

7           **WAC 173-400-036:** This provision must make clear that a portable source that qualifies as a major source or a major modification to an existing major source is subject to the provisions of WAC 173-400-700 to -750 and 173-400-800 to 850 and not to the provisions of this section. In addition, this section must clarify that it applies only to sources that locate “temporarily” at a certain location.

8           **WAC 173-400-036(1)(b):** This provision appears to authorize permitting authorities to reach agreements amongst themselves regarding the criteria for the relocation and new source review permitting of portable sources and would be outside of the SIP. As discussed in EPA’s comments on WAC 173-400-110, because EPA approval of Ecology’s current minor NSR program will have the effect of changing the SIP so that a minor NSR permit is not required from Ecology at all locations in the State, Ecology must submit as part of the SIP revision, the minor NSR regulations of the local air authorities. Similarly, the SIP revision must include any relocation provisions of the local air authorities as part of Ecology’s submission of this provision. As currently written, this provision is not appropriate for inclusion in the SIP because it could be interpreted to allow the requirements in this section to be changed without EPA approval.

9           **WAC 173-400-036(3)(b):** The relocation notice provision should specifically state the information required in the notice, such as the new location and the intended duration at the new location. We also recommend that a source be required to notify the permitting authority when it is leaving the jurisdiction of that permitting authority.

10          **WAC 173-400-040(2)(e):** As we previously advised Ecology, because these exemptions to the opacity standard are not in the SIP, Ecology will need to submit a showing when it submits this section as a SIP revision that these exemptions do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of Title I of the CAA, as provided in CAA Section 110(l) and, as applicable, CAA Section 193.

11           **WAC 173-400-050(2):** This provision contains language regarding approval of alternative test methods and procedures that was added in revisions made in 2004/2005. As currently written it is unclear whether “applicable EPA” modifies both “reference method” and “procedures,” or whether it modifies only “reference method.” A provision that authorizes a permitting authority to approve alternatives must contain objective or replicable criteria for determining the alternative, and simply authorizing any alternative procedure does not meet this requirement. In addition, the current version of the Washington source test manual will need to be submitted by Ecology when it submits its next SIP revision.

12           **WAC 173-400-070(1)(d)(i):** The revisions to this provision seem unclear. Is the reference intended to be to WAC 173-400-040(1) and (2)? Compliance with WAC 173-400-040(2) is already required by WAC 173-400-070(1)(a). Also, this says that “Wigwam and silo burners will be considered to be in compliance with they meet the requirements contained in...” It is unclear from this sentence, however, what requirements the source will be considered to be in compliance with. These aspects should be clarified.

13           **WAC 173-400-075(6):** This entire section WAC 173-400-075 relates to hazardous air pollutants, is not currently in the SIP because it does not relate to criteria pollutants, and would again not be incorporated by reference into Federal law as part of the SIP. These provisions do have Title V implications, however, and EPA has concerns with the approach Ecology is taking with these revisions. Under the proposed revisions, Ecology is incorporating by reference MACT part 63 standards for major sources only, except for specifically identified area source MACT standards. Note that the list of area source standards in Ecology's proposed rule omits some areas source standards for which a Title V permit is currently required under the CAA, such as Subparts MMMMM(carbon black production), NNNNNN (chromium compounds), and VVVVV (chemical manufacturing for synthetic minors). In addition, EPA is about to promulgate additional area source MACT standards in December 2010, some of which propose requiring a Title V permit for area sources. We suggest Ecology rethink this approach for incorporating federal MACT standards by reference to ensure it does not leave Ecology without authority to impose applicable requirements for area sources required to be covered by the Title V program. In combination with WAC 173-401-300(2)(b), adopting only the listed area source MACT standards would appear to leave Ecology without authority to issue Title V permits to all required sources, which would be a basis for program disapproval.

We strongly encourage Ecology to adopt part 63 standards for all sources. To the extent Ecology decides to continue to limit its adoption of MACT standards as needed for Title V approval, we suggest Ecology provide instead “(a) 40 CFR Part 63 and Appendices in effect on July 1, 2010, as they apply to major stationary sources and as they apply to areas sources, but only for such area sources for which the particular Part 63 standard requires subject area sources to have a Title V permit.”

14           **WAC 173-400-075(8)(a):** Note that area source drycleaners are also subject to the federal NESHAP requirements at 40 CFR Part 63, Subpart M.

15           **WAC 173-400-081:** These changes help clarify that startup/shutdown procedures can only be created and modified in accordance with the procedures for creating and modifying the corresponding emission limits (primarily in new source review), and not in Title V permits. If permit limits are created in processes other than new source review, such as regulatory orders for BART, RACT or voluntarily limits on emissions under WAC 173-400-091, should those mechanisms also be

mentioned here? The following language could be added after “as part of new source review *or otherwise in establishing such standard.*” The key point is to clarify that this provision does not authorize permitting authorities to establish startup/shutdown procedures in Title V permits, which some permitting authorities had apparently been doing.

16 **WAC 173-400-105(4):** Should part 62 also be referenced. In addition, an “or” appears to be missing just after the revised July 2, 2010 date.

17 **WAC 173-400-105(8):** The revisions to this section address many of our previous concerns with this section. We have the following comments on this new language:

**General:** The proposed regulations do not clearly define what constitutes a valid hour of data other than saying in Section (8)(c) to reduce to hours containing at least 45 minutes of data to one hour averages. Does this mean the other 15 minutes of the hour do not count for availability purposes? We recommend Ecology incorporate the more specific requirements of the NSPS 40 CFR 60.13(e) and (h) for determining whether there is a valid hour of data.

**General:** We recommend including the installation criteria in 40 CFR 60.13 (f) and (g) in this rule.

**General:** Based on the applicability criteria in this rule, it appears that this provision applies to sources that are also subject to part 64 monitoring requirements. If that is not the case, this should be clarified.

**Section (8)(c):** This specifies that data after a failed QA test or audit should not be used, but does not specify when use of such data should resume. Does this mean that once a source fails a QA test or audit, no data is counted until the equipment passes the test again. This is different from Part 60 requirements. See 40 CFR 60.13(h)(2)(iv). Also, should “draft” be “drift?” Finally, unless all of Ecology’s opacity rules have been converted to 6-minute averages, this should require the conversion of opacity monitoring data in a manner consistent with the applicable standard if it is intended to serve as compliance monitoring for Ecology’s opacity rules.

Section (8)(e)(ii) and (iv): The language in these subsections appears to be identical and redundant.

Section (8)(e)(iii): We suggest replacing the term "equipment (required to be monitored)" with "monitored emission unit."

Section (8)(e)(vi): Should the requirement to report the date, time period and cause of each failure to recover valid hourly monitoring data for at least 90% of the hours be 95% to agree with the data recovery requirement in (8)(a)? It is unclear why it would be important to have notice of each day there was less than 90% availability if the monthly total is over 95%. Having different averaging times and data recovery requirements for different provisions may be confusing. If Ecology’s intent is to require reporting only when the total downtime (including malfunction time) is >10%, this requirement should explicitly state that malfunction downtime be included when calculating the 90% data recovery time.

18           **WAC 173-400-107:** EPA appreciates the 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.

The version proposed by Ecology does not have all of the elements that were included in a previous draft provided to EPA and EPA continues to believe that additional revisions are needed for WAC 173-400-107 to meet CAA requirements, as discussed 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. WAC 173-400-108(3)(c): We suggest that this provision more clearly emphasize that the burden is on the source to make the demonstration, by revising the language to provide: “Information and supporting documentation to demonstrate that the excess emissions were unavoidable under the procedures and criteria in WAC 173-400-109(3), (4), or (5).
- 19 2. WAC 173-400-109(2)(b): 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. Washington’s proposed language addresses this to some extent by not allowing the affirmative defense where a source causes a monitored exceedance of the NAAQS. This language should be broadened to make the affirmative defense unavailable where a source causes or contributes to a violation of PSD increments.
- 20 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. It does not appear that the proposed rule revisions fully address all of the criteria in EPA’s Excess Emissions Policy, including the following:
  - 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 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 the amount and duration of emissions were minimized).
- 21 4. WAC 173-400-109(4) provides an affirmative defense for excess emissions due to scheduled maintenance provided certain criteria are met. As EPA has advised Ecology on numerous occasions, 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. EPA’s 1999 Excess Emissions Policy does

not discuss allowing an affirmative defense for excess emissions during maintenance activities, an omission that 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.

As we have previously advised Ecology, 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). Ecology had proposed similar language in a October 22, 2009 draft rule provided to EPA. EPA is disappointed to see that this language is not in the current proposal of Ecology's rule.

- 22 5. WAC 173-400-109(4) provides an affirmative defense to a penalty action for excess emissions due to a malfunction if certain conditions are met. It does not appear that the proposed rule revisions fully address all of the criteria in EPA's Excess Emissions Policy, including the following:
- a. The excess emissions were caused by a sudden, unavoidable breakdown of technology beyond the control of the operator.
  - 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.
- 23 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 173-400-108 and 109 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 confirmation of this from

Ecology and EPA intends to make clear in any SIP approval of such a provision that a State or local's determination on whether the affirmative defense is met is not binding on EPA or citizens.

24 **WAC 173-400-110:** While we understand that the new language in WAC 173-400-035 clarifies that nonroad engines are not subject to NSR, we note that Ecology continues to use the term "source" in its NSR regulations. We understand that the Washington Clean Air Act uses the term "source" in conjunction with the Notice of Construction requirements. However, Congress exercised the Commerce Clause of the U.S. Constitution to preempt States from regulating certain engines, including but not limited to nonroad engines, as stationary sources. So regardless of how Washington State law defines the term "source" it can not include engines that are preempted by the Clean Air Act for purposes of any State regulatory program that would apply to stationary sources. Since this proposed language only ensures that "nonroad engines" would not be subject to NSR, for example, and not all engines at a stationary source, EPA continues to recommend that Ecology either use the term "stationary source" or revise its regulatory definition of "source" to reflect the federal preemption of nonroad and other engines. The definition of "stationary source" in WAC 173-400-030 includes appropriate exclusions.

26 **WAC 173-400-110:** Because EPA approval of Ecology's current NSR program will have the effect of changing the SIP so that Ecology's NSR program will no longer apply where a local air authority has adopted its own NSR provisions, Ecology must submit as part of the SIP revision that contains revisions to WAC 173-400-110 to -113 the NSR regulations of the local air authorities. Under the current SIP, Ecology's NSR rules apply statewide so that approval of this regulation as a SIP revision would leave portions of the State without an NSR program in the SIP if the locals' NSR rules are not also submitted as part of the SIP revision.

Finally, because of the substantial changes to the categories covered by Ecology's NSR program since it was last approved by EPA, this SIP revision must be accompanied by a demonstration that the exemptions from minor NSR are consistent with the requirements of 40 CFR 51.160-161 and that these exemptions do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of Title I of the CAA as provided in CAA Section 110(l) and, as applicable, CAA Section 193.

**WAC 173-400-110(2)(e):** For this exemption from the procedural requirements of minor NSR permitting to be approved into the SIP, Ecology will need to demonstrate as part of its submittal that the emissions from subject sources are sufficiently de minimis that failure to permit this category, along with consideration of other source categories and emission units exempt from Ecology's minor NSR program, would not interfere with attainment or maintenance of the NAAQS or violate applicable portions of the SIP control strategy as provided in 40 FR 51.160. This would likely be difficult to do because of the variability within the source category. Another alternative would be to submit as part of the SIP revision the applicable procedural requirements from the MTCA program that Ecology is relying on to impose the substantive requirements of Washington's minor NSR program and a demonstration that such procedural requirements are consistent with the requirements of 40 CFR 51.160 and 161 and the SIP revision as a whole meets the requirements of Section 110(l) of the CAA, and as applicable, CAA Section 193.

27 **WAC 173-400-110(3)(a):** This provision should be revised to make clear that it applies notwithstanding the exemptions in subparagraphs (4) and (5). This connection is in the current version of the rule and is no longer in these proposed revisions. Also, note that certain changes to

plant-wide caps and unit specific emission limitations could subject the source or unit to PSD or Part D NSR under the relaxation provisions in 52.21(r)(4) and WAC 173-400-830(3).

- 28      **WAC 173-400-110(4):** The proviso has been deleted from this list of exemptions, but not from the emission exemptions in subparagraph (5), and we do not understand the reason for this distinction. Also, the list of exemptions must be revised to specifically state that major stationary sources and major modifications to major stationary sources are not exempt from NSR even if they fall into one of the identified categories.
- 29      **WAC 173-400-110(5):** The reference to the table as in paragraph (d) appears to be in error. Should it not be to the table in 111(5)? How does Ecology consider precursors to the pollutants listed in this definition? Note that for SIP approved programs, Ecology must consider pollutants that have been identified by the Administrator as precursors to NAAQS pollutants in determining whether the construction of new sources and modifications, both major and minor, assure attainment and maintenance of the NAAQS and, as applicable, PSD increments.
- 30      **WAC 173-400-111(1)(b):** 40 CFR 51.160(c) requires that SIPs contain procedures for the submission by the permit applicant of information on the nature and amounts of emissions to be emitted by the facility or emitted by associated mobile sources as well as the location, design, construction and operation of the facility as needed to enable the permitting authority to determine that the construction or modification will not result in a violation of the control strategy or interfere with attainment or maintenance of the NAAQS. This provision does not appear to meet that requirement.
- 31      **WAC 173-400-111(7)(a):** This paragraph should clarify that extensions of these time periods for major sources or major modifications in nonattainment areas must go through notice and public comment. This is required under Ecology's current rules.
- 32      **WAC 173-400-112:** The provisions that were in sections WAC 173-400-112(f)(2)(a) through (c) that applied to minor sources and are not contained in the revised rules. We understand that this omission was unintentional and that these provisions will be added into the final rule. Some of these provisions are needed to meet the requirements of 40 CFR 51.160-161. In addition, if these provisions are not included in the final rule, Ecology will need to demonstrate in its final SIP revision that deletion of these provisions does not interfere with attainment or reasonable further progress or other applicable requirements of the CAA, as provided in CAA Section 112(l) and especially Section 193 which is specific to revising control strategies in nonattainment areas.
- 33      **WAC 173-400-113(3):** The deletion of the last sentence of this paragraph makes it unclear as to whether offsets could be used to mitigate the impact of a new source or modification if it contributed to a new violation in an attainment/unclassifiable area. As we have suggested in our previous comments, Ecology should expand paragraphs (4)(a) and (b) so that offsets can be used to mitigate a source's impacts whenever the permitting analysis would show that it would cause or significantly contribute to any NAAQS violation.
- 34      **WAC 173-400-113:** The recently promulgated significant impact levels for PM<sub>2.5</sub> need to be added to Table 4.a.
- 35      **WAC 173-400-116:** Note that EPA's PSD requirements at 40 CFR 51.166(a)(4) also require the State to periodically review the adequacy of its PSD plan.

- 36 **WAC 173-400-116(3):** If Ecology wishes to obtain full delegation of the PSD program prior to receiving a SIP-approved PSD program, subsection (3) must be revised to provide that the exclusions from increment analysis will take effect with respect to PSD sources as a matter of state law only upon EPA approval of Washington's PSD program as part of the SIP. 40 CFR 52.21, the federal PSD program administered by EPA, does not provide the exemptions from increment consumption set forth in 40 CFR 51.166(f).
- 37 **WAC 173-400-131(3)(a):** Shouldn't the end of the new sentence say "representative of normal operations"?
- 38 **WAC 173-400-131(3)(f):** This new provision should also include reductions used to demonstrate reasonable progress goals in a regional haze SIP as well as reasonable further progress in an attainment SIP.
- 39 **WAC 173-400-131(5)(b):** Should the new requirement that the credit be less than the reduction include some criteria for how much less?
- 40 **WAC 173-400-136(1):** Since this provision already provided for the use of ERC's in the determination of "net emission increase," it's not clear what the purpose is of the new language regarding "creditable emission reduction" under WAC 173-400-720. If this is something different than creditable reductions for netting purposes, please explain. Also, why wouldn't the same be allowed for creditable emission reduction in nonattainment areas?
- 41 **WAC 173-400-136(6):** This provision should also include the ability to discount credits if necessary to meet the reasonable progress goals of the regional haze SIP.
- 42 **WAC 173-400-171(1)(a):** Some words appear to be missing in the last line. Should it be "*Compliance with the public notification requirements of WAC 173-4-740 in such cases is required.*"?
- 43 **WAC 173-400-171(2)(c):** It would be more clear if this provision specified that the "*public may request a public comment period on the proposed action by submitting a request to the permitting authority in writing via letter, fax, or electronic mail within 15 days of the initial posting of the receipt of the application.*"?
- 44 **WAC 173-400-171(2)(e):** Should the reference at the end of that section be to the "*fifteen-day internet posting period*" rather than "*fifteen-day comment period.*"?
- 45 **WAC 173-400-171(3):** This list must include extensions of the deadline to begin actual construction of a major stationary source or major modification in a nonattainment area. Redoing a LAER determination is no less important, and arguably more important, than redoing a BACT determination in an extension, and for which Ecology's rules require public involvement. This provision is currently in Ecology's rules at WAC 173-400-171(2)(a)(xii), but appears to be proposed for deletion. Alternatively, the public involvement provisions could be included in WAC 173-400-111(7) where the new language regarding extensions for nonattainment area major source permits is now housed.
- 46 **WAC 173-400-171(12)(b):** Is the cross-reference to subsection (10) the correct cross-reference?

47 **WAC 173-400-560:** This provision is not currently in the SIP and must be accompanied by a demonstration that issuing permits under this provision will comply with the requirements for SIP-approved minor NSR programs in 40 CFR 51.160-161 and meet the requirements for SIP revisions in Section 110(l) of the CAA, and as applicable, CAA Section 193. It may also possibly require Region 10 to undertake the SIP consistency review involving Headquarters and the other Regions. Note that a provision requiring general permits to contain a provision authorizing the state to deny coverage for cause on a case-by-case basis and to require a source-specific construction permit would facilitate the demonstration of consistency with Clean Air Act requirements.

48 **WAC 173-400-560(1)(f):** We do not understand the cross-reference to 173-400-830 in subsection (1)(f) because the -800 series now appears to apply exclusively to major nonattainment NSR and subsection 4(a)(iii) states that coverage under general permits is not available to major stationary sources or major modifications subject to WAC 173-400-830 or 173-400-720.

49 **WAC 173-400-560(7):** This appears to contain a typo. Should it state “*in violation of WAC 173-400-110 if a decision to grant coverage...*”

49a **WAC 173-400-710:** While we understand that this section is not open for public comment, EPA wishes to go on record that the language of -710(1) is problematic for SIP approval. The language appears to establish a preference for definitions in WAC 173-400-030 over the definitions in the federal PSD rules adopted by reference in WAC 173-720. EPA believes that the language in WAC 173-400-030(1) is sufficient, in and of itself, to establish the relationship between the definitions in -030 and definitions provided elsewhere in the chapter. As such, this definition section should simply state that the definitions in -710 apply for purposes of -700 through -750 (-710 should in turn reference the definitions adopted by reference in -720). In order for EPA to evaluate this provision for purposes of SIP approval, we request that Ecology provide EPA with an explanation of which definitions in -030 it will use in -700 through -750, and specifically, whether definitions in 40 CFR 52.21(b) or in WAC 173-400-030 will be where Ecology has drafted State regulatory provisions in -700 through -750 and is not relying on the substantive provisions of 40 CFR 52.21 (e.g, the “reasonable possibility provisions in WAC 173-400-720(4)(b)(iii).

49b **WAC 173-400-720:** This section needs to incorporate by reference the provisions of 40 CFR 52.21(p)(1) and (4) with respect to adverse impacts on Air Quality Related Values (AQRV’s). Alternatively, Ecology could adopt state provisions sufficient to meet the requirements of 51.166(p) for impacts on AQRV’s. Note that WAC 173-400-117 currently only applies to adverse impacts on visibility in Federal Class I areas which requirement comes from the 40 CFR 51.307 visibility permitting provisions.

**WAC 173-400-720(1):** The replacement of the word “shall” with “can” does not appear to be correct. The prohibition is on the source’s authority to construct and not its ability to construct. Shall should be retained or replaced with “may” or “is authorized to.”

**WAC 173-400-720(3):** The replacement of the word “shall” with “will” is not accurate and is problematic. Although the first subsection (a) is a statement of intent for which “will” is appropriate,” the other two subsections (b) and (c) are required for Washington to have authority to have a delegated or SIP-approved program. Thus, “shall” should be retained or replaced with “must.” Note that there are many references throughout WAC 173-400 where “shall” or “must” are used with respect to the obligations of Ecology or a permitting authority.

54 **WAC 173-400-720(4)(a)(v):** The statement at the end of the list of the sections of 40 CFR 52.21 incorporated by reference is not appropriate for inclusion in the state regulation or in the SIP. EPA will determine, in acting on any delegation request or request for SIP approval whether sections actually adopted by reference or adopted elsewhere in Ecology's rules are sufficient.

55 **WAC 173-400-720(4)(b)(i):** A few additional references need to be added to this section setting forth the provisions in 40 CFR 52.21 for which the term "Administrator" must continue to mean the Administrator of EPA: 40 CFR 52.21(b)(37)(i) and (b)(51).

56 **WAC 173-400-720(4)(b)(iii)(C):** Although we understand that Ecology has intentionally broadened the scope of this requirement, this provision needs to be revised to include revisions made to 40 CFR 52.21(r)(6) in response to the court remand as follows. In addition, as discussed above in connection with the use of "shall" versus "will" in Ecology's revisions, the use of "shall" in (C)(v) must be retained for consistency with the terminology elsewhere in these provisions and in 40 CFR 52.21:

(C) 40 CFR 52.21 (r)(6) "The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from ~~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 of such pollutant 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.

(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. For purposes of this paragraph (r)(6)(iii), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in paragraph 40 CFR 52.21(b)(1)(iii) of this section or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(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, as monitored pursuant to 40 CFR 52.21 (r)(6)(iii), 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))~~ ~~will~~ shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

- 57      **WAC 173-400-730(1)(a):** The use of the term “adequate” here is inconsistent with the language of 40 CFR 52.21(n), incorporated by reference in -720, which uses the term “necessary”. Since Ecology uses the term “necessary” in a similar provision of its minor source rules, the term “adequate” should be changed to “necessary” for consistency and for purposes of SIP approval.
- 58      **WAC 173-400-730(1)(c):** Should the cross reference to WAC 173-400-720(4)(b)(iii) be a more specific cross-reference to WAC 173-400-720(4)(b)(iii)(F)?
- 59      **WAC 173-400-730(5):** These provisions regarding construction time limitations are inconsistent with similar provisions in 40 CFR 52.21(r)(2), which is incorporated by reference.
- 60      **WAC 173-400-750(3)(c) and (d):** As EPA has previously commented, these two provisions are not SIP approvable as currently drafted. While certain revisions to compliance monitoring methods could be done as administrative revisions (see 40 CFR Part 70 for an example), a provision that allows any provision of a PSD permit to be revised administratively based on a determination by an unspecified party using unspecified criteria provides too broad of a director’s discretion to be approved by EPA into a PSD SIP.
- 61      **WAC 173-400-800 to -850 Global comment:** We recommend that Ecology conduct a global search of the WAC-173-400 rule making package to make sure that “reviewing authority” is changed to “permitting authority” as appropriate, and that the term “source” is changed to “stationary source” as appropriate.
- 62      **WAC 173-400-800 and 810:** Although we recognize that Ecology has added definition (28) to section -810, which defines source as stationary source, there continues to be cases where the term “source” is used in the text. As examples, in -800(1), the first paragraph should be changed as follows: “*WAC-173-400-800 through 173-400-860 apply statewide except where a permitting authority has a permitting program for major stationary sources in a nonattainment area incorporated into the Washington state Implementation Plan.....*”, and section -810(1) should be changed as follows: “*The definitions in WAC-173-400-030 are to be used in WAC 173-400-800 through 173-400-860 unless a term is defined differently in this section for use in the major stationary source nonattainment area permitting program...*”  
To avoid possible confusion and misinterpretations, all references to “source” in the -800 series rules should be replaced with “stationary source” unless a specific clarifying statement is added with their use.
- 63      **WAC 173-400-810:** As discussed in the comments above on WAC 173-400-710, the language of this section indicates a preference for the definitions in WAC 173-400-030 over the definitions actually contained in this section or adopted by reference in the PAL provisions (WAC 173-400-850). We suggest that the introductory language of this section be revised as suggested in our comment on 710 above.
- 64      **WAC 173-400-810(24)(b):** We believe the statement that “*Applicability determinations made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of this section*” is too broad and cannot appropriately apply to condensable particulate matter for PM10. 40 CFR 51.165(a)(1)(xxxvii)(D) contains the following caveat: “*unless the applicable implementation plan required condensable particulate matter to be included.*” Our understanding is that the current Washington SIP does require that condensable particulate matter be accounted for in the applicability

determinations for PM10. Therefore we suggest that this last sentence be amended to read “Applicability determinations for PM2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850, and made without accounting for condensable particulate matter shall not be considered in violation of this section.”

65 **WAC-173-400-810(5):** A citation appears to be incomplete in the definition of reasonable possibility. The first sentence should read *“Except as provided in (f)(11), of this subsection,…”*

66 **WAC 173-400-840:** As Ecology knows, 40 CFR 51.165 is not written in the form of an implementable permitting rule, but rather as the minimum requirements for an approvable SIP NSR rule. As such, the requirements with respect to precursors of ozone (VOC and NOx) and precursors of PM2.5 (SO2 and NOx) are scattered throughout the EPA rules. As a result, specific PM2.5 precursor and NOx as an O3 precursor language is not in this emission offset requirements section. However, a complete description of each these precursors can be found in the definition of regulated NSR pollutant (WAC-173-400-810(24) taken directly from 51.165(a)(1)(xxxvii) (regulated NSR pollutants). WAC 173-400-810(24) also includes SO2 as a PM2.5 precursor. A discussion or at least an inference of the use and requirements of NOx as an ozone precursor can also be found in WAC 173-400-830 which states that VOC emissions in this section apply to NOx emissions as well, and in WAC 173-400-810) which implies that VOC requirements also apply to NOx emissions. Also the table in WAC 173-400-810 summarizing significant emission rates includes emission rates for NOx as an ozone precursor and NOx as a PM2.5 precursor. We suggest that the Ecology rules include specific language in this section (and in 173-400-830 as well) that clearly indicates that the requirement for LAER and offsets apply to the precursors of ozone and PM2.5.

67 **WAC-173-400-840(5):** Under this emission offset requirement section, paragraph 5 states: *“The requirements of this section applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area”* We believe this paragraph should be moved into section -840 because it is directly referencing the broader permitting requirements in 40 CFR 51.165(a)(10).

68 **WAC-173-400-840(8)(b)(iii)(II):** There appear to be two typos in paragraph (II). The seventh line apparently should read *“....explicitly includes the pre-shutdown or pre-curtailement emissions.....”*

69 **WAC 173-400-930:** This rule must make clear that emergency engines at major stationary sources or that are part of a major modification to a major stationary source are not eligible for coverage under this section.

In addition, if this section is submitted as part of a SIP revision, Ecology must demonstrate that sources operating under this permit-by-rule meet the requirements for SIP-approved minor NSR programs in 40 CFR 51.160-161 and also that the requirements for SIP revisions in Section 110(l) are met, and as applicable, CAA Section 193. Review of this provision as a SIP revision may require Region 10 to undertake the SIP consistency review involving Headquarters and the other Regions.

We note that this rule does not include many of the safeguards generally included in provisions for general permits or permits-by-rule. Including these provisions would greatly facilitate a demonstration that this provision is consistent with Clean Air Act requirements. Specifically, this rule does not include provisions that:

- require the source to notify the state that it is opting for coverage under the rule a set period of time before bringing the generators on site. This is a requirement of the rule for general permits, WAC 173-400-560.
- require the submission of any information from the source, such as size or operational or emission related parameters specific to the source. This is a requirement of the rule for general permits, WAC 173-400-560.
- require some type of affirmative action by the permitting authority on the notice—even an acknowledgement of receipt and when coverage begins. This is a requirement of the rule for general permits, WAC 173-400-560 under one option. The other option in the general permits rule allows a general permit to allow a source to begin operation 30 days after giving notice unless the state declines coverage.
- authorize the state to deny coverage for cause on a case-by-case basis and to require a source-specific construction permit.
- include any monitoring/testing requirements, recordkeeping, or reporting requirements, such as records on the amount of fuel combusted, hours of maintenance and testing to show the engine is under the 50 hour limit, hours of emergency use and an explanation to demonstrate an emergency existed, documentation that the engine meets the standard for new engines for the year it was put into operation, or notice that emission limits were exceeded. WAC 173-400-560 does require that general permits include appropriate monitoring, testing, recordkeeping and reporting.

Again, thank you for the opportunity to comment. If you have any questions or concerns regarding this letter or would like to discuss these matters further, please contact Scott Hedges at (206)-553-0296.

Sincerely,



Debra Suzuki, Manager  
State and Tribal Air Programs Unit

Enclosures

cc: Scott Hedges, EPA Region 10  
Julie Vergeront, EPA Region 10  
Dave Bray, EPA Region 10

November 12, 2010

Linda Witcher  
Air Quality Program  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Subject: Proposed Chapter 173-400 WAC; General Regulations for Air Pollution Sources



Dear Ms. Witcher:

The Boeing Company is pleased to offer the following comments on proposed amendments to Chapter 173-400 WAC, General Regulations for Air Pollution Sources. We appreciate the Department's efforts to quickly align Washington's rules with revised federal permitting requirements, and offer the following to assist in those efforts.

We note that Washington's Administrative Procedures Act (with limited exceptions not applicable to this rulemaking) specifically requires a cost-benefit analysis for rulemaking that goes beyond "adopting or incorporating by reference without material change federal statutes or regulations," implementing content "specifically and explicitly" dictated by statute, or making administrative corrections or clarifications (RCW 34.05.328). The October 2010 "Preliminary Cost-Benefit and Least Burdensome Alternative Analyses"<sup>1</sup> is limited to non-road engines, relocation of portable sources and emergency engines. The analysis is silent on greenhouse gas (GHG) permitting and Nonattainment New Source Review (NNSR), consistent with the Department's assertion in the CR-102 filing on October 5, 2010<sup>2</sup> that this rulemaking "does not impose additional costs on business."

Our comments below are intended to assist Ecology in quickly amending the rule in accordance with the Administrative Procedures Act, in alignment with federal GHG and NNSR permitting regulations; and without inadvertently imposing additional substantive burdens on Washington citizens. Textual suggestions to better align this rule to the federal program requirements and explanatory comments are embedded in the attached redline markup of the rule, and are fully incorporated herein by reference. We ask that Ecology consider these in total in bringing the rule to final form.

**1. The Washington PSD permitting rule definition of greenhouse gases must be consistent with the federal permitting rule definition.**

The proposed definition of Greenhouse gases (GHGs) in 173-400-30 (42) includes "any other gas designated by the department in chapter 173-411," (Ecology's greenhouse gas reporting rule). Greenhouse gases that are not within the federal definition at 40 CFR 86.1818-12(a) (incorporated by reference in to 40 CFR 51.166, 40 CFR 52.21, 40 CFR Part 70 and 40 CFR Part 71) are not subject to federal

<sup>1</sup> <http://www.ecy.wa.gov/pubs/1002031.pdf>

<sup>2</sup> <http://www.ecy.wa.gov/laws-rules/wac173400/p0901.pdf>



permitting requirements. Therefore, to the extent proposed 173-400-30(42) would apply to Ecology's permitting programs, the inclusion of other gases reportable under Ecology's Reporting Rule would be an inappropriate expansion of greenhouse gas permitting requirements beyond the federal mandatory program. The state GHG reporting rule may have its own specifically applicable definition, but this general definition should not conflict with the EPA definition applicable to permitting programs.

The Boeing Company asks that the definition used for new source permitting be revised to match federal definition as follows:

**"Greenhouse gases (GHGs)" means the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride."**

By maintaining identical definitions in federal and state permitting regulations, we avoid imposing additional, Washington-only requirements on Washington citizens and remain consistent with the stipulated rulemaking intent.

## **2. Align exemptions from permitting with federal rule thresholds while preserving the option for voluntary emission limitations.**

Matching the New Source Review program applicability thresholds for greenhouse gases with the thresholds in the federal PSD GHG Tailoring Rule, 75 Fed. Reg. 31524 (June 3, 2010),<sup>3</sup> is fundamental to aligning Washington's program with federal requirements. It is also required in order to avoid imposing additional burden on Washington sources – a point underlying Ecology's published rulemaking approach. The current proposal at WAC 173-400-110(5)(b) for a 75,000 ton threshold for all sources would impose unique greenhouse gas permitting requirements on certain new sources and modifications where the federal PSD program does not. However, although mandatory greenhouse gas new source review permitting obligations not required by federal law must be avoided, the rule should also make clear that at the request of the owner or operator the permitting authority may restrict greenhouse gas emissions in an order of approval which will accommodate synthetic minor permitting strategies.

To achieve the stipulated goal of this rulemaking while providing flexibility for voluntary GHG limitations, we suggest tying the exemption thresholds directly to the PSD program language with a direct citation to the PSD rules at WAC 173-400-720 and expressly providing for voluntary limits. The following is our suggested adjustment to WAC 173-400-110 (5)(b):

**"(b) (d)) Greenhouse gas emissions are exempt from new source review requirements except *to the extent required under WAC 173-400-720 (Prevention of significant deterioration (PSD))*, provided, however, that the permitting authority, upon the request the owner or operator of a source or emission unit, may impose emission limits and/or physical or operation limitations for greenhouse gas in any new source review order of approval."**

<sup>3</sup> <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=0aCXC2/0/2/0&WAISaction=retrieve>



### 3. Remove redundant reporting requirement for operating permit sources.

Proposed WAC173-400-108 (excess emissions reporting) should only apply to sources not subject to WAC 173-401. Operating permit sources are already subject to the deviation reporting requirements under WAC 173-401-615(3)(b) which are essentially the same as the requirements of proposed WAC 173-400-108.<sup>4</sup> In order to avoid a confusing potential overlap of requirements, the rule should be clear that *none* of the provisions proposed WAC 173-400-108 should apply to operating permit sources.

We suggest inserting a new second sentence in Section 173-400-108's introductory language, to read as follows:

**“This section only applies to sources that are not subject to WAC 173-401. Source subject to WAC 173-401 shall report as provided in WAC 173-401-615(3)(b).”;**

This general exclusion would allow the elimination of language specifically excluding WAC 173-401 sources from subsection (1) and (2) of proposed WAC 173-400-108 by:

- Deleting the last clause of proposed Section 173-400-108(1) which reads: “or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615”; and
- Deleting the first clause of proposed Section 173-400-108(1) which reads: “For those sources not required to report under WAC 173-401-615”

### 4. Voluntary limits on emissions should recognize *emission unit* limits as well as *source emission limits*.

Consistent with other language in this rule, and in order to accommodate the use of synthetic minor limits for modifications to existing sources, the text at WAC 173-400-091 should acknowledge that voluntary limits on potential emissions may be applied to individual emission units as well as to entire sources. We suggest adding this term as follows:

“Upon request by the owner or operator of a new or existing source **or emission unit**, ~~((ecology or))~~ the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the source’s **or emission unit’s** potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and ~~((ecology or))~~ the permitting authority with jurisdiction over the source **or emission unit**.”

<sup>4</sup> WAC 173-401(3)(b) requires “[p]rompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define “prompt” in each individual permit in relation to the degree and type of deviation likely to occur and the applicable requirement. For deviations which represent a potential threat to human health or safety, ‘prompt’ means as soon as possible, but in no case later than twelve hours after the deviation is discovered. The source shall maintain a contemporaneous record of all deviations. Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered.”



5. **WAC 173-400-113(3)'s requirements should be limited to proposed new major sources and major modifications.**

Proposed WAC 173-400-113(3) regulates proposed new sources and modifications to be located in attainment areas but impacting nonattainment areas. If a proposed new source or modification will "cause or contribute" to a violation of an ambient air quality standard in a nonattainment area, the construction of the new source or modification will be banned. Because of the harsh economic consequences of such a construction ban (and because of the costly nature of making the ambient air quality impact demonstration) federal law does not require this burdensome ambient air quality standard test for minor sources or modifications. See 40 CFR 51.165(b). In order to maintain parity with the federal requirements and avoid unduly burdening economic development in Washington, proposed WAC 173-400-113(3) should be amended by inserting the following introductory clause:

***"If the new source is a major stationary source or the change is a major modification of an existing major stationary source (as those terms are defined in WAC 173-400-810)"***

6. **Language at WAC 173-400-113 should make clear that emission impacts below the specified threshold values are not considered to cause or contribute to nonattainment of air quality standards.**

The proposed modification of the provisions of WAC 173-400-113 (3) by separating the threshold table into a new (4) and removing the words: "*This requirement will be considered to be met if the projected impact of*" could impose a significant and unwarranted obstacle to new / modified source construction in attainment areas. Currently, WAC 173-400-113 provides a bright line rule for determining whether the emissions increase from a proposed new source or modification in an attainment area will be considered to "cause or contribute" to a violation of an ambient air quality standard in a nonattainment area. That is, in the current WAC 173-400-113 (3) impacts below the table's threshold values conclusively demonstrate the source does not cause or contribute to an ambient air quality standard violation. The proposed rule now appears to impose two separate tests (i.e., that the emissions increase from proposed new source or modification will not "cause or contribute" to such a violation *and* that the emissions will not impact the nonattainment area beyond the table's threshold values), both of which would need to be met before Ecology would grant permission to construct. Under the proposal, a source's impact might be below the table values in (4), but the rule as proposed provides no way to demonstrate that these lower emissions do not "cause or contribute" to nonattainment of standards in another area under (3).

We ask that Ecology restore the explicit linkage between the "cause or contribute" test and the threshold value table either by maintaining the current structure of WAC 173-400-113(3) (and the existing phrase "*This requirement will be considered to be met if the projected impact of*"), or by revising proposed WAC 173-400-113(3) & (4) as set out in the attached redline.



**7. Emission reduction credit calculation in WAC 173-400-131(3)(a) should allow for consistency with annual reporting timeframes in determining baseline emissions.**

In order to calculate emission reduction credits, baseline emissions must first be determined. Normal annual reporting of emissions occurs some months following the end of a year meaning that emissions totals are normally available for the preceding calendar years, and rarely for the last 24 months. We suggest that the time window for documenting credits in WAC 173-400-131(3)(a) allow for consistency with existing reporting periods. That is, the rule should allow for baseline emissions to be determined based on the last two reported years rather than previous 24 months, by inserting the following sentence into proposed WAC 173-400-131(a)(3) as indicated in the attached redline document:

**“A source subject to WAC 173-400-105(1) or an authority’s equivalent annual emission inventory reporting requirement may use the average emissions rate occurring during the two most recent annual reporting periods.”**

**8. Emission reduction credits should be granted for the full amount of a creditable emission reduction**

The proposed rule language at WAC 173-400-131(5)(b) states that an emission credit must be granted at an amount “less than the amount of emission reduction achieved by the source.” Discounting emission reduction credits has the effect of discouraging the creation of enforceable emission reductions, and thereby slowing progress on improving air quality. The lack of available ERCs will also hamper economic development. Because the permitting programs in which the ERCs will be used already provide for discounting where appropriate (for example through offset ratios greater than 1:1), Ecology’s ERC rules should not additionally provide for an unbounded discount upon the creation of the ERC. Therefore we suggest changing the language in the last sentence of proposed WAC 173-400-131(5)(b) as follows:

“The emission reduction credit listed in the certificate shall be **no more** less than the amount of emission reduction achieved by the source.”

**9. “Federally enforceable” should be changed to “legally enforceable” throughout the new source review regulations**

Starting with the definition at WAC 173-400-030(36) and throughout the proposed rules we are suggesting that Ecology change the term “federally enforceable” to “legally enforceable” consistent with the D.C. Circuit ruling September 15, 1995 in *Chemical Manufacturers Assn v. EPA*, No. 89-1514. That ruling vacated the federal enforceability requirement of the PTE definitions in EPA’s PSD and nonattainment NSR regulations; and the use of the phrase “legally enforceable” in the nonattainment NSR provisions proposed herein. Although the federal PSD rules as published still contain the term “federally enforceable,” the effect of the Court’s ruling is as if the federal enforceability requirements never existed in the regulations. Perpetuating the vacated federal requirement in the proposed state



rule does not enhance alignment or enforceability, and should not be continued.<sup>5</sup>

We have proposed a revision in the definition section to replace the definition of “federally enforceable” with the following definition of “legally enforceable”:

***“legally enforceable”*** means all limitations and conditions which are enforceable as a practical matter by the department of ecology, an authority or by EPA.”

**10. Adjustments to incorporating the federal PSD rules by reference should be made to provide for survival of the tailoring rule thresholds in the event of the promulgation of an NSPS standard covering GHGs.**

Under the complex method used by EPA in “tailoring” major source rule applicability for greenhouse gases, a future New Source Performance Standards addressing greenhouse gases will undo the tailored applicability thresholds for PSD and operating permit sources. The Tailoring Rule adjusts the meaning of the “subject to regulation” prong of the definition of “regulated NSR pollutant” in 40 CFR 52.21(b)(50)(iv), but if GHGs are regulated under an NSPS they will become a regulated NSR pollutant under 40 CFR 52.21(b)(50)(ii) at the statutory (un-tailored) major source/major modification levels. EPA has been made aware of this problem and will be addressing it in future. To avoid the same unintended result in the Washington rule, the following provision should be added to WAC 173-400-720(4)(b)(iii)’s list of language adopted in place of existing federal language:

**“(C) 40 CFR 52.21 (b)(50)(ii) ‘Any pollutant other than GHG that is subject to any standard under section 111 of the Act.’”**

**11. General orders of approval should be broadly available for sources, especially sources and modifications that might be newly subject to permitting based on greenhouse gas emissions.**

Ecology proposes in WAC 173-400-560(4)(a)(ii) that 173-400-830 (NNSR) sources be excluded from general permitting, making the proposed requirement in WAC 173-400-560(1)(f) that general orders of mandate compliance with WAC 173-400-830 inapt. However, we believe that appropriate general permitting should be available, even though a proposed new source or modification to be covered by a general permit would be subject to WAC 173-400-830 (NNSR), WAC 173-400-720 (PSD), or WAC 173-400-113 (NSR for sources in clean areas impacting nonattainment areas). General permitting for PSD could be especially valuable for sources or modifications that would be subject to this program solely because of their greenhouse gas emissions. Thus, this provision should require compliance with all of these programs, as applicable, and 173-400-560(4)(a)(iii) which excludes sources and modification subject to PSD or NNSR from general orders of approval, should be deleted.

Further, in WAC 400-560(4)(a)(iv) Ecology proposes to prohibit access to general orders of approval for sources subject to the air operating permit program in WAC

<sup>5</sup> See, e.g., 57 Fed. Reg. 14352 (March 25, 2010) (Direct final rule approving a revision to the Michigan SIP) (“On September 11, 2008, MDEQ adopted the revised rule, at the State level, to include in the definition of “potential to emit” the condition that a limitation must be “enforceable as a practical matter by the State, local air pollution control agency, or United States environmental protection agency.” The revised definition is consistent with the definition in 40 CFR 51.166(b)(4) and with the Interim Policy dated January 22, 1996.”)



173-401. This would have the effect of increasing source and agency permitting burdens without any corresponding environmental benefit. We see no reason why the need to obtain or modify an operating permit should preclude streamlined construction permitting. The probation in WAC 173-400-560(4)(a)(iv) should be deleted.

**12. Ecology should align the proposed increment protection requirements with federal PSD.**

In WAC 173-400-116 Ecology proposes to include the increment protection requirements of the federal PSD program. To fully implement this objective, per 40 CFR 51.166(f)(1)(i) and (ii) we ask that the following also be included in WAC 173-400-116(3):

**“(a) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;**

**(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.”**

In addition, in order to provide a clear standard for the “cause or contribute” test in proposed WAC 173-400-116 (c)(iii)(B) we recommend amending that provision as follows:

**(B) Cause or contribute to the violation of a national ambient air quality standard. If the projected impact of the temporary increase in emissions contemplated in the SIP revision does not exceed the levels in WAC 173-400-113, Table 4a, for the pollutant(s) which would exceed the national ambient air quality standard(s), then the temporary increase in emissions contemplated by the SIP revisions will not be considered to cause or contribute to a violation of an ambient air quality standard.**

**13. The date of incorporation of the federal PSD rules appears to be erroneous.**

Proposed WAC 173-400-116(2) refers to PSD increments “given in 40 CFR 52.21(c) as published in the Federal Register as final rule on October 6, 2010.” We are unable to find an October 6, 2010 Federal Register Final Rule addressing PSD increments. If this date was intended to reflect EPA’s October 20, 2010 PM 2.5 increment final rule (57 Fed. Reg. 64864 (October 20, 2010)), then the date in proposed WAC 173-400-720(4)(a)(vi) should be changed to October 20, 2010.



The Boeing Company supports implementation of the GHG Tailoring Rule and alignment of Washington's new source review regulations with applicable federal requirements in order to promote consistent and predictable air quality requirements across all jurisdictions. Ecology, having committed to further that objective, must be careful to avoid imposing additional burdens without meaningful stakeholder involvement. By having PSD and Nonattainment NSR requirements consistent with the federal program we can minimize confusion, misdirection and unwarranted burden on the permitting and permitted communities. We also stand in a better position to expedite future revisions as the federal requirements continue to evolve.

Very Truly Yours

A handwritten signature in black ink, appearing to read "David Moore", with a long horizontal line extending to the right.

David Moore  
Boeing Environment, Health and Safety

cc: Stuart Clark  
Andrew Green

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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 ~~legally~~ federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(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

2 (c) The emissions rate specified as a **legally**~~federally~~ enforceable approval condition, including those with a future compliance date. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(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~~) that 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) "Brake horsepower (BHP)" means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(15) "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))~~ (16) "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))~~ (17) "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)) (18) "**Combustion and incineration units**" means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

((+18)) (19) (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)) 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.

(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))~~ (20) "**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))~~ (21) "**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<sub>3</sub>) sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

~~((21))~~ (22) "**Director**" means director of the Washington state department of ecology or duly authorized representative.

~~((22))~~ (23) "**Dispersion technique**" means a method ~~((which))~~ that 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))~~ (24) "**Ecology**" means the Washington state department of ecology.

~~((24))~~ (25) "**Emission**" means a release of air contaminants into the ambient air.

~~((25))~~ (26) "**Emission reduction credit (ERC)**" means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

~~((26))~~ (27) "**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))~~ (28) "**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<br><del>((tpy))</del>                                                                                                                                       |
| Nitrogen oxides:                                          | 40 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                    |
| Sulfur dioxide:                                           | 40 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                    |
| Particulate matter (PM):                                  | 25 <del>((tpy))</del> <u>tons per year</u><br>of PM emissions<br>15 <del>((tpy))</del> <u>tons per year</u><br>of PM-10 emissions <u>10</u><br><u>tons per year of PM-2.5</u> |
| Volatile organic compounds:                               | 40 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                    |
| Fluorides:                                                | 3 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                     |
| Lead:                                                     | 0.6 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                   |
| Sulfuric acid mist:                                       | 7 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                     |
| Hydrogen sulfide (H <sub>2</sub> S):                      | 10 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                    |
| Total reduced sulfur<br>(including H <sub>2</sub> S):     | 10 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                    |
| Reduced sulfur compounds<br>(including H <sub>2</sub> S): | 10 <del>((tpy))</del> <u>tons per year</u>                                                                                                                                    |

~~((28))~~ (29) "**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))~~ (30) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard.

~~((30))~~ (31) "**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))~~ (32) "**Existing stationary facility (Facility)**" is

defined in WAC 173-400-151.

~~((32))~~ (33) "**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))~~ (34) "**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))~~ (35) "**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.

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~~((35))~~ (36) "**legally enforceable**" means all limitations and conditions which are enforceable as a practical matter by the department of ecology, an authority or by EPA. [TBC

comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein. See, also e.g., 57 Fed. Reg. 14352 (March 25, 2010) (Direct final rule approving a revision to the Michigan SIP) ("On September 11, 2008, MDEQ adopted the revised rule, at the State level, to include in the definition of "potential to emit" the condition that a limitation must be "enforceable as a practical matter by the State, local air pollution control agency, or United States environmental protection agency." The revised definition is consistent with the definition in 40 CFR 51.166(b)(4) and with the Interim Policy dated January 22, 1996.")]

~~((36))~~ (37) "**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))~~ (38) "**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))~~ (39) "**Fugitive emissions**" means emissions ~~((which))~~ that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~((39))~~ (40) "**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))~~ (41) "**Good engineering practice (GEP)**" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2) (a) (ii).

~~((41))~~ (42) "**Greenhouse gases (GHGs)**" means the air pollutant defined in 40 CFR 86.1818-12(a) as aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. ~~includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the department in chapter 173-441 WAC.~~ [TBC comment: This definition should be identical to the EPA definition used in the LDV and Tailoring Rules to avoid confusing inconsistency between the WAC regulations and EPA's regulations. The state GHG reporting rule may have its own specifically applicable definition, but this general definition should not conflict with the EPA definition.]

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

~~((42))~~ (44) "**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))~~ (45) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

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

~~((46))~~ (48) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

~~((47))~~ (49) **"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))~~ (50) **"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<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

~~((49))~~ (51) **"National Emission Standards for Hazardous Air Pollutants (NESHAPS)"** means the federal rules in 40 CFR Part 61.

~~((50))~~ (52) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 CFR Part 63.

~~((51))~~ (53) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((52))~~ (54) **"New source"** means:

(a) The construction, installation, establishment, 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))~~ (55) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 CFR Part 60.

~~((54))~~ (56) **"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~~)) (57) "**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+)) (58) "**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+)) (59) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

((+58+)) (60) "**Outdoor 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 or silo burners is not considered outdoor burning.

((+59+)) (61) "**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))~~ (62) "**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))~~ (63) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((62))~~ (64) "**Particulate matter**" or "**particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((63))~~ (65) "**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))~~ (66) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

~~((65))~~ (67) "**Permitting authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

~~((66))~~ (68) "**Person**" means an individual, firm, public or

private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((67))~~ (69) "**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))~~ (70) "**PM-10 emissions**" means finely divided solid or liquid material, including ~~((condensable))~~ condensable 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))~~ (71) "**PM-2.5**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(72) "**PM-2.5 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 53 or by a test method

specified in the SIP.

(73) "Portable source" means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(74) "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 **legally** enforceable. Secondary emissions do not count in determining the potential to emit of a source. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

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~~((70))~~ (75) "Prevention of significant deterioration (PSD)" means the program in WAC 173-400-700 to 173-400-750.

~~((71))~~ (76) "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+)) (77) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

((+73+)) (78) **"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+)) (79) **"Regulatory order"** means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapters 70.94, 80.70 and 80.80 RCW or rules adopted to implement those laws; or

(b) Local air authority regulations adopted by the local

air authority with jurisdiction over the sources to whom the order is issued.

(c) A voluntary limit on a source's or emission unit's potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and the permitting authority with jurisdiction over the source or emission unit, including an order issued under WAC 173-400-091. [TBC comment: We need to make clear here that regulatory orders may be used to create synthetic minor status]

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(80) "**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 offsite 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. [TBC comment: This does not match 40 CFR 52.21(b)(18) (<http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=do41gd/2/2/0&WAISaction=retrieve>) which excludes motor vehicle emissions:

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(viii) *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. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

What is this definition used for in light of the fact that the PSD regulations in WAC 173-400-720 have their own definition of "secondary emissions"? (See WAC 173-400-720(4)(a)(vi))]

~~((76))~~ (81) "**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))~~ (82) "**Source category**" means all sources of the same type or classification.

~~((78))~~ (83) "**Stack**" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((79))~~ (84) "**Stack height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.

~~((80))~~ (85) "**Standard conditions**" means a temperature of

20°C (~~(68°F)~~) (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

~~((81))~~ (86) "**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))~~ (87) "**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))~~ (88) "**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))~~ (89) "**Synthetic minor**" means any source whose potential to emit has been limited below applicable thresholds by means of a legally~~federally~~ enforceable order, rule, or approval condition. [TBC comment: See *Chemical Manufacturers*

*Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

~~((85))~~ **"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 ~~(76)~~ and ~~(82)~~ of this section, respectively.

~~(86))~~ (90) **"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 EPA approved equivalent method and expressed as hydrogen sulfide.

~~((87))~~ (91) **"Total suspended particulate"** means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

~~((88))~~ (92) **"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.

~~((89))~~ (93) **"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.

~~((90))~~ (94) "**United States Environmental Protection Agency (USEPA)**" shall be referred to as EPA.

~~((91))~~ (95) "**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.

~~((92))~~ (96) "**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); 1,1,1,3,3,3-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<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub> or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500) 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; tertiary-butyl 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 saturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and

(iv) Sulfur containing perfluorocarbons with no saturations 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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-030, filed 5/8/07, effective 6/8/07.

Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-030, filed 1/10/05, effective 2/10/05. Statutory

Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-

06), § 173-400-030, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.152. 98-01-183 (Order 96-01), § 173-400-

030, filed 12/23/97, effective 1/23/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-030, filed 9/13/96, effective 10/14/96; 95-07-126 (Order 93-40), § 173-400-030, filed 3/22/95, effective 4/22/95; 93-18-007 (Order 93-03), § 173-400-030, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-030, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-030, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-030, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-030, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-030, filed 5/8/79; Order DE 76-38, § 173-400-030, filed 12/21/76. Formerly WAC 18-04-030.]

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07,  
effective 10/7/07)

**WAC 173-400-035 (~~(Portable and temporary sources.)~~)**

**Nonroad engines.** (~~(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.~~

~~(3) Fees relating to this section can be found in chapter 173-455 WAC.))~~ (1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

(a) Any nonroad engine that is:

(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; or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

(b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.

(c) Nonroad engines used to propel a motor vehicle or a vehicle used solely for competition, or subject to standards promulgated under section 202 of the Federal Clean Air Act.

(d) Engines regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act.

(e) Engines that remain 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 **positionsite** 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.

**(2) Nonroad engines are not subject to:**

(a) New source review.

(b) Control technology determinations.

(c) Emission limits set by the state implementation plan, SIP.

**(3) > 500 and ~~&~~ 2000 BHP.** This section applies to the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

(a) Notification of intent to operate is required before operations begin.

The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:

(i) Name and address of owner or operator;

(ii) Site address or location;

(iii) Date of equipment arrival at the site;

(iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. At each site, the owner or operator must record the following information for each nonroad engine:

(i) Site address or location;

(ii) Date of equipment arrival at the site;

(iii) Date of equipment departure from the site;

(iv) Engine function or purpose;

(v) Identification of each component as follows:

(A) Equipment manufacturer, model number and its unique serial number;

(B) Engine model year;

(vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep on-site the records of the current engine and equipment activity. The owner or operator may keep all other records at the main office. Records must be kept for at least five years and be readily available to the permitting authority on request.

(d) Fuel standards. All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).

(4) > 2000 BHP. This section applies to the installation and operation of any nonroad engine with a cumulative maximum rated brake horsepower greater than 2000 BHP.

(a) Notification of intent to operate. Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4).

(b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

(c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (3)(b) and (c) of this section.

(d) Integrated review. Applicants seeking approval to construct or modify a source that requires review under WAC 173-400-110 or 173-400-560 that includes the review of nonroad engines may elect to integrate the reviews. A nonroad engine notification designated for integrated review must be processed in accordance with the ambient air quality and public involvement procedures in WAC 173-400-111.

(e) Fuel standards. All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).

(f) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

(g) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final

decision to the applicant.

(h) Conditions to assure compliance with NAAQS. The permitting authority may set specific conditions for operation as necessary to ensure compliance with National Ambient Air Quality Standards as regulated by WAC 173-400-113 (3) and (4).

(i) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

(j) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. 07-19-005 (Order 07-10), § 173-400-035, filed 9/6/07, effective 10/7/07.  
Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-035, filed 8/15/01, effective 9/15/01.]

NEW SECTION

**WAC 173-400-036 Relocation of portable sources. (1)**

**Applicability.**

(a) Portable sources that meet the requirements of this section may without obtaining a site-specific or permitting authority-specific order of approval relocate and operate in any jurisdiction in which the permitting authority has adopted these rules. The owner or operator of a portable source may file a new notice of construction application in compliance with WAC 173-400-110 each time the portable source relocates in lieu of participating in the inter-jurisdictional provisions in this section.

(b) Permitting authority participation in the inter-jurisdictional provisions of this section is optional. This section applies only in those jurisdictions where the permitting authority has adopted it. Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here except that subsection (2) of this section applies statewide.

(c) This section applies to sources that move from the jurisdiction of one permitting authority to the jurisdiction of

another permitting authority, inter-jurisdictional relocation. This section does not apply to intra-jurisdictional relocation.

(2) **Portable sources in nonattainment areas.** If a portable source is locating in a nonattainment area and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, then the source must acquire a site-specific order of approval. The order of approval must be issued by the permitting authority with jurisdiction over the nonattainment area in which the portable source wishes to locate.

(3) **Relocation requirements.** Portable sources are allowed to operate at a new location without obtaining an order of approval from the permitting authority with jurisdiction over the new location provided that:

(a) A permitting authority in Washington state issued a notice of construction order of approval for the portable source after July 1, 2010, identifying the emission units as a "portable source";

(b) The owner/operator of the portable source submits a relocation notice and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location;

(c) The owner/operator submits the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the

preceding year. The data must be sufficient in detail to enable each permitting authority to calculate the emissions within its jurisdiction and the yearly aggregate.

(4) **Enforcement of the order of approval.** The permitting authority with jurisdiction over the location where a portable source is operating has authority to enforce the conditions of the order of approval that authorizes the portable source operation, regardless of which permitting authority issued the order of approval. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

(5) **Change of conditions to orders of approval.** To change the conditions in an order of approval, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

(6) **Portable source modification.** Prior to commencing construction or installation of a modification of a portable source, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

[]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**WAC 173-400-040 General standards for maximum emissions.**

(1) 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))~~ takes 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 permitting authority shall, as provided in RCW ~~((70.194.154 [RCW 70.94.154]))~~ 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of

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RACT.

~~((1))~~ (2) **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 permitting authority must 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 permitting 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) Military training exercises. Visible emissions resulting from military obscurant training exercises (~~((15))~~) are 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) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter 173-425 WAC.

~~((2))~~ (3) **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))~~ (4) **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))~~ (5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity 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))~~ (6) **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))~~ (7) **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 permitting 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 permitting 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 permitting authority.

~~((7))~~ (8) **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))~~ (9) **Fugitive dust.**

(a) The owner or operator of a source ~~((of))~~ or activity that generates fugitive dust ~~((shall))~~ must take reasonable

precautions to prevent that fugitive dust from becoming airborne and (~~shall~~) must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source (~~of~~) or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area (~~shall be~~) is 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).

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-040, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-040, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-040, filed 11/22/00, effective 12/23/00. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-040, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-040, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-040, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-040, filed 5/8/79; Order DE 76-38, § 173-400-040, filed 12/21/76. Formerly WAC 18-04-040.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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~~) 2010) or approved procedures contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of (~~July 12, 1990~~) September 20, 2004, 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~~) September 20, 2004, 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)~~) September 20, 2004, 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 permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(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~~) July 1, 2010) 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))~~ 2010); 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))~~) in effect on July 1, 2010); 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))~~ 2010), Eb (in effect on July 1, ~~((2000))~~ 2010), and AAAA (~~((adopted on December 6, 2000 and in effect on June 1, 2001))~~) in effect on July 1, 2010), 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~~) 2010);

(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))~~ 2010).

(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))~~ July 1, 2010).

(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~~) July 1, 2010).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on (~~January 30, 2001~~) July 1, 2010).

(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~~) 2010).

(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~~) 2010).

(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~~) July 1, 2010).

(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~~) July 1, 2010) 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~~) July 1, 2010, 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 legally~~federally~~ enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day. [TBC comment: See Chemical Manufacturers Assn v.

EPA, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(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 ~~legally~~<sup>federally</sup> enforceable order or order of approval to the permitting authority. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(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:

11 (A) The unit has a ~~legally~~~~federally~~ enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

12 (C) The owner or operator submits a copy of the ~~legally~~~~federally~~ enforceable order or order of approval to the permitting authority. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(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))~~ July 1, 2010).

(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))~~ July 1, 2010) 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))~~ July 1, 2010).

(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))~~ July 1, 2010).

(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))~~ July 1, 2010), 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))~~ July 1, 2010).

(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))~~ July 1, 2010) 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~~) July 1, 2010) 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~~) July 1, 2010).

(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~~) July 1, 2010) 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~~) July 1, 2010) 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~~) July 1, 2010), 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)), achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.~~

| ((Table 1 Compliance Schedules and Increments of Progress |                                            |                                  |                                             |                                                |                                   |
|-----------------------------------------------------------|--------------------------------------------|----------------------------------|---------------------------------------------|------------------------------------------------|-----------------------------------|
| Affected units                                            | Increment 1<br>(Submit final control plan) | Increment 2<br>(Award contracts) | Increment 3<br>(Begin on site construction) | Increment 4<br>(Complete on site construction) | Increment 5<br>(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))~~ July 1, 2010).

(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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-050, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-050, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 and silo burners.**

(a) All wigwam and silo burners (~~(shall)~~) designed to dispose of wood waste must 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 and silo burners (~~(shall)~~) must 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~~) The permit authority may establish additional requirements for wigwam (~~burners located in sensitive areas as defined by chapter 173-440 WAC~~) and silo burners. 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 and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(~~(1)~~) (2), visible emissions. 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 WAC 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~~) 2010, 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 Resource 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).

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-070, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-070, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-070, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-

070, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-070, filed 9/13/96, effective 10/14/96; 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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 ~~((October 1, 2006, is))~~ July 1, 2010, are 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))~~ EPA can delegate its authority to a permitting authority to receive reports for one or all of these federal rules. Do not send a duplicate report to EPA if EPA delegated authority to your permitting authority for the rule you are reporting under, unless EPA or your permitting authority tells you to do so.

(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

~~((a))~~ Adopt by reference.

(a) 40 CFR Part 63 and Appendices in effect on ((October 1, 2006, is)) July 1, 2010, as they apply to major stationary sources of hazardous air pollutants are 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, LLLL, and OOOO.~~

~~(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.)~~ The term "administrator" in 40 CFR Part 63 includes the permitting authority.

(b) 40 CFR Part 63 and Appendices in effect on July 1, 2010, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:

(i) Subpart EEEEE, Primary Copper Smelting;

(ii) Subpart FFFFFFF, Secondary Copper Smelting;

(iii) Subpart GGGGG, Primary Nonferrous Metal;

(iv) Subpart SSSSS, Pressed and Blown Glass Manufacturing;

(v) Subpart YYYYY, Stainless and Nonstainless Steel

Manufacturing (electric arc furnace);

(vi) Subpart EEE, Hazardous Waste Incineration;

(vii) Subpart IIIII, Mercury Cell Chlor-Alkali Plants;

(viii) Subpart LLL, Portland Cement; and

(ix) Subpart X, Secondary Lead Smelting.

(7) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** 40 CFR Part 65, in effect on ~~((October 1, 2006))~~ July 1, 2010, is adopted by reference.

(8) **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 ~~((4-))~~ (8)(a) 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: |
|------------------------------------------------------|----------------------------------------|--------------------------------------|-----------------------------------|
| <del>((4))</del> Only Dry-to-Dry Machines            | 140 gallons PCE/yr                     | 140-2,100 gallons PCE/yr             | 2,100 gallons PCE/yr              |
| <del>((2))</del> Only Transfer Machines              | 200 gallons PCE/yr                     | 200-1,800 gallons PCE/yr             | 1,800 gallons PCE/yr              |
| <del>(3)</del> 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))~~ 2010).

~~((b))~~ (iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to ~~install~~ ~~locate~~ a dry cleaning machine using perchloroethylene in a residential building on or after December 21, 2005.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system, or the residents, by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry

door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) 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.

~~((e))~~ (d) **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                                                                                       | Dry cleaner located in a building where people live                                           |
|-----------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 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. | Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure. |

((+d)) (e) **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     | Dry cleaner located in a building where people live |
|---------------------|-------------------|------------------|-----------------------------------------------------|
| Once every 2 weeks. | Once every week.  | Once every week. | Once every week.                                    |

TABLE 4. Minimum Inspection Frequency Using Portable Leak Detector

| Small area source | Large area source | Major source      | Dry cleaner located in a building where people may live |
|-------------------|-------------------|-------------------|---------------------------------------------------------|
| Once every month. | Once every month. | Once every month. | Once every week.                                        |

(ii) (~~(An inspection must include an examination of)~~) You must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of percholoroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine 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))~~ (iv) The dry cleaning system must be inspected while it is operating.

~~((iv))~~ (v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

~~((+))~~ (f) **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.

~~((+))~~ (g) **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))~~ (h) **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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039

(Order 06-03), § 173-400-075, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-075, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 70.94.331. 02-15-068 (Order 02-09), § 173-400-075, filed 7/11/02, effective 8/11/02. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-075, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-075, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-075, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-075, filed 9/13/96, effective 10/14/96; 93-05-044 (Order 92-34), § 173-400-075, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-075, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-075, filed 3/6/85. Statutory Authority: Chapter 70.94 RCW. 84-10-019 (Order DE 84-8), § 173-400-075, filed 4/26/84. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-075, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-075, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-075, filed 5/8/79; Order DE 76-38, § 173-400-075, filed 12/21/76. Formerly WAC 18-04-075.]

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-081 Startup and shutdown.** In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) (~~ecology and~~) as part of new source review the permitting authorities (~~shall~~) will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

Where (~~ecology or~~) the permitting authority, during a control technology determination, determines that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, (~~ecology or~~) the permitting authority (~~shall~~) must include in the standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions.

In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, (~~ecology and~~) the permitting authorities shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under

this rule.

Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in an approved state implementation plan shall not take effect until approved by EPA as a SIP amendment.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-081, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-091 Voluntary limits on emissions.** (1) Upon request by the owner or operator of a new or existing source or emission unit, (~~ecology or~~) the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the source's or emission unit's potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and (~~ecology or~~) the permitting authority with jurisdiction over the source or emission unit.

(2) A condition contained in an order issued under this section shall be less than the source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70.94 RCW and the FCAA, including any standard or other requirement provided for in the

Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or emission unit complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

(4) Any order issued under this section (~~shall be subject to the notice and comment procedures under~~) must comply with WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section shall be legally federally enforceable, upon approval of this section as an element of the Washington state implementation plan. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order. [TBC comment: See *Chemical*

*Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-091, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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)~~) (18), 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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-099, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-099, filed 3/22/95, effective 4/22/95.]

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

**WAC 173-400-101 Registration issuance.** (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required shall register the source emission unit with ecology or the authority. The owner or operator shall make reports containing information as may be required by ecology or the authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration form. Registration information shall be provided on forms supplied by ecology or the authority and shall be completed and returned within the time specified on the form. Emission units within the facility shall be listed separately unless ecology or the authority determines that certain emission units may be combined into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative shall sign the registration form for each source. The owner or operator of the source shall be responsible for notifying ecology or the

authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction shall maintain an operation and maintenance plan for process and control equipment. The plan shall reflect good industrial practice and shall include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan shall be reviewed and updated by the source owner or operator at least annually. A copy of the plan shall be made available to ecology upon request.

(5) Report of closure. A report of closure shall be filed with ecology or the authority within ninety days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator shall report to ecology or the authority within ninety days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW 70.94.030(~~((+17))~~)(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

[Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-

40), § 173-400-101, filed 3/22/95, effective 4/22/95; 94-10-042 (Order 93-39), § 173-400-101, filed 4/29/94, effective 5/30/94.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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))~~ More than de minimis 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))~~ is 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))~~ more than de minimis 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                                |
| <del>((Nitrogen oxides))</del> <u>Lead</u>                                 | <del>((2.0))</del><br><u>0.005</u> |
| <del>((Sulfur dioxide))</del> <u>Nitrogen oxides</u>                       | 2.0                                |
| <del>((Particulate Matter (PM)))</del> <b><u>PM-10</u></b>                 | <del>((1.25))</del><br><u>0.75</u> |
| <b><u>PM-2.5</u></b>                                                       | <u>0.5</u>                         |
| <del>((Fine Particulate (PM10)))</del> <u>Total suspended particulates</u> | <del>((0.75))</del><br><u>1.25</u> |
| <del>((Volatile organic compounds (VOC)))</del> <u>Sulfur dioxide</u>      | 2.0                                |
| <del>((Lead))</del> <u>Volatile organic compounds</u>                      | <del>((0.005))</del><br><u>2.0</u> |
| <u>(VOC)</u>                                                               | <u>2.0</u>                         |

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-102, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-102, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-102, filed 3/22/95, effective 4/22/95.]

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

**WAC 173-400-104 Registration fees.** (~~Fees can be found in chapter 173-455 WAC.~~) See chapter 173-455 WAC for ecology's registration fee schedule.

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. 07-19-005 (Order 07-10), § 173-400-104, filed 9/6/07, effective 10/7/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-104, filed 1/10/05, effective 2/10/05. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-104, filed 11/22/00, effective 12/23/00. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-104, filed 3/22/95, effective 4/22/95.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a

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source category, or other information available to the owner(s) or operator(s), whichever 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 (~~October 1, 2006~~) July 1, 2010) procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of (~~July 12, 1990~~) September 20, 2004, 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~~) 2010).

(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))~~ emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement ((under)) contained in 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

~~((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) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required under an order, PSD permit, operating permit, or regulation issued by a permitting authority and not required by 40 CFR Parts 60, 61, 62, 63, or 75, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the

time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect on July 1, 2010, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute averages. All monitoring data will be included in these averages except for data collected during calibration draft tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit.

(d) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(e) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. This report shall include:

(i) The date, time period, magnitude (in the units of the standard) and cause of each emission that exceeded an applicable

emission standard;

(ii) The date and time for all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;

(iii) The number of hours that the equipment (required to be monitored) operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(iv) The date and time of all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;

(v) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(vi) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(vii) The results of all cylinder gas audits conducted during the month; and

(viii) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(9) 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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-105, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-105, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-105, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-105, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-105, filed 9/13/96, effective 10/14/96; 93-18-007 (Order 93-03), § 173-400-105, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-105, filed 2/19/91, effective 3/22/91; 87-20-019 (Order 87-12), § 173-400-105, filed 9/30/87.]

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-107 Excess emissions.** This section is in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section. This section is not effective starting on that date.

(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.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-107, filed 8/20/93, effective 9/20/93.]

NEW SECTION

**WAC 173-400-108 Excess emissions reporting.** This section is not in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107. This section only applies to sources that are not subject to WAC 173-401. Source subject to WAC 173-401 shall report as provided in WAC 173-401-615(3)(b). [TBC comment. AOP sources are already subject to the deviation reporting requirements under WAC 173-401-615(3)(b) which are essentially the same as the requirements below. In order to avoid confusing overlap of requirements, none of the provisions below should apply to AOP sources.]

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(1) 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, per the criteria under WAC 173-400-109, must be reported to the permitting authority as soon as possible, but in no case later than twelve hours after the excess emissions were discovered. Other excess emissions must be reported to the permitting authority within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports ~~or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615.~~

(2) ~~For those sources not required to report under WAC 173-401-615,~~ The report must contain at least the following information:

- (a) Date, time, duration of the episode;
- (b) Known causes;
- (c) For exceedances of nonopacity emission limitations, an estimate of the quantity of excess emissions;
- (d) The corrective actions taken; and
- (e) The preventive measures taken or planned to minimize the chance of recurrence.

(3) For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must include the following information in addition to that required in subsection (2) of this section:

(a) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage;

(c) Any additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

[]

NEW SECTION

**WAC 173-400-109 Unavoidable excess emissions.** This section is not in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, regulation, permit, or regulatory order. Unavoidable excess emissions are subject to injunctive relief but not penalty.

(2)(a) The owner or operator of a source shall have the burden of proving to the permitting 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 (3), (4) and (5) of this section.

(b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.

(c) This section does not apply to exceedances of emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal

standards.

(d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.

(3) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:

(a) Excess emissions could not have been prevented through careful planning and design;

(b) Startup or shutdown was done as expeditiously as practicable;

(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;

(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and

(f) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under subsection (5) of this section.

(4) Maintenance. Excess emissions during scheduled maintenance will be considered unavoidable if the source reports as required by WAC 173-400-108 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.

(5) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 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;

(c) The operator took immediate and appropriate corrective action in a manner consistent with safety and 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; and

(d) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage.

[]

AMENDATORY SECTION (Amending Order 05-19, filed 5/20/09, effective 6/20/09)

**WAC 173-400-110 New source review (NSR) for sources and portable sources.** (~~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~~) 173-400-111 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

(b) This section applies to sources and stationary sources as defined in RCW 70.94.030 (~~((22)~~, but does not include nonroad engines. ~~Nonroad 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 beginning actual construction 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.) and WAC 173-400-030.~~

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;

(ii) "New source" includes ((any)):

(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030((, and any new or modified toxic air pollutant source, as defined in WAC 173-460-020.

~~(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 beginning actual construction 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 subpart AAA, Wood stoves and except subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines) and subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) as they apply to emergency stationary internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(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) except subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) as it applies to emergency or limited use stationary reciprocating internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(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.) ) :~~

(B) A portable source as defined under WAC 173-400-030; and

(C) A new or modified toxic air pollutant source, as

defined under WAC 173-460-020.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications and orders of approval for sources that are not major sources shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9) or during a department-conducted remedial action, through the procedures outlined in WAC 173-340-710(9).

(2) Requirements for new sources, modifications to existing sources, new major stationary sources and major modifications to sources.

(a) A nonattainment new source review approval issued per the requirements of WAC 173-400-830 is required for any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment

area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards, as provided in WAC 173-400-800 through 860. [TBC comment: See proposed 173-400-800. We need to avoid inconsistencies in applicability language.] ~~those pollutants to be emitted by the proposed new source or stationary source for which the area is classified as nonattainment if:~~

~~(i) The proposed new source is a major stationary source per the criteria in WAC 173-400-810 and 173-400-820; or~~

~~(ii) The proposed modification to a stationary source is a major modification to a major source per the criteria in WAC 173-800-810 and 173-400-820.~~

(b) A PSD permit issued per the requirements of WAC 173-400-730 is required for proposed new major stationary sources and major modifications to major stationary sources located in attainment or unclassified areas in Washington, as provided in WAC 173-400-700 through 750. [TBC comment: See proposed 173-

400-720. We need to avoid inconsistencies in applicability language.] ~~those pollutants to be emitted by the proposed new source or stationary source for which the area is classified as attainment or unclassified if:~~

~~(i) The new source is a major stationary source per the criteria in WAC 173-400-710 and 173-400-720; or~~

~~(ii) The proposal is a major modification per the criteria of WAC 173-400-710 and 173-400-720.~~

(Note: The owner or operator of a proposed new stationary source or modification might be required to obtain both a nonattainment new source review approval and a PSD permit for the project, depending on the types and amounts of pollutants proposed to be emitted from a proposed new source or proposed to be emitted in increase amounts from a proposed modification)

(c) A notice of construction order of approval must be issued by the permitting authority prior to the establishment of any new source or modification except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section or as otherwise expressly exempted under the regulations of the permitting authority.

(Note: The owner or operator of a proposed new stationary source or modification might be required to obtain a notice of construction order of approval in addition to a nonattainment new source review approval and/or a PSD permit for the project, depending on the types and amounts of pollutants proposed to be emitted from a proposed new source or proposed to be emitted in increased amounts from a proposed modification)

(3) **Modifications and change of conditions.**

(a) ~~New source review ((of a modification is 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))~~ is required for any modification to a stationary source that requires an

increase in a plant-wide cap or ~~requires~~causes an increase in a ~~emission~~ unit ~~or activity~~ specific emission limit.

(b) All sources regulated by ecology must submit a notice of construction application when requesting a change of conditions.

**(4) Emission unit and activity exemptions.**

~~((Except as provided in subsection (2) of this section,))~~  
The construction or modification of emission units ~~or activities~~ in one of the categories listed below is exempt from new source review, provided that the modified unit ~~or activity~~ continues to fall within one of the listed categories. The construction or modification of an emission 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)~~). Except that asphalt plants are not exempt ~~under this subsection~~~~from this section~~;

(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 and maintenance;

(viii) Insulation application and maintenance (~~(, excluding products for resale)~~);

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that are not related to new or modified stationary sources or portable stationary sources. [TBC comment: This provision needs to be clarified, perhaps by giving a few examples, because virtually all construction activity can be considered to be "related" in some way to a stationary source]

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(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)~~). Except that wholesale distributors of lubricating oils are not exempt from this section;

(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 (~~eft~~) cubic feet);

(vi) Operation, loading and unloading of storage tanks, ~~and~~ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as ~~(defined)~~ listed in chapter 173-460 WAC, max. VP 550 mm (~~Hg~~ ~~g~~) mercury at 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~~) New or modified emission units with combined aggregate heat inputs of combustion units (excluding emergency engines exempted by subsection (4) (~~(h)~~) (g) (xxxix) of this section), (~~and~~) less than or equal to all of the following as applicable:

(i) ~~and~~ 500,000 Btu/hr using coal with ~~and~~ 0.5% sulfur or other fuels with ~~and~~ 0.5% sulfur;

(ii) ~~and~~ 500,000 Btu/hr using used oil, per the requirements of RCW 70.94.610;

(iii) ~~and~~ 400,000 Btu/hr using wood waste or paper;

(iv) ~~and~~ 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with ~~and~~ 0.05% sulfur;

(v) ~~and~~ 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~~ ~~e~~) mercury at 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~~) using only gases that are not toxic air pollutants listed in 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 research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

(v) 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) (~~Non~~toxic 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 @) mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;

(xxxiv) Surface coating, aqueous solution or suspension containing ~~&~~ 1% (by weight) VOCs, (~~and/~~) or & 1% (by weight) toxic air pollutants as (~~defined~~) listed in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ~~±~~ 1% VOCs (by weight) (~~(+)~~) or ~~±~~ 1% (by weight) toxic air pollutants. Acid solutions used on metallic substances (~~(, acid solutions)~~) are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) (~~(and/)~~) or ~~±~~ 1% (by weight) toxic air pollutants as (~~(defined)~~) listed in chapter 173-460 WAC.

(xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency (~~(generators powered by)~~) internal combustion engines with (~~(a maximum power of)~~) an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities (~~(GDFs) regulated by chapter 173-491 WAC)~~) with annual gasoline throughputs less than those specified in WAC 173-491-040 (4)(a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) **Exemptions based on emissions.**

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in the ~~Table 110(5) 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)))~~ Table 110(5) Exemption levels 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 must 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 minimis 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 or modified emission 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)) Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 (Prevention of significant deterioration (PSD)), provided, however, that the permitting authority, upon the request the owner or operator of a source or emission unit, may impose emission limits and/or physical or operation limitations for greenhouse gas in any new source review order of approval. when the emission increase from the new or modified source is equal to or greater than 75,000 tons per year, CO<sub>2</sub>e.~~

Table 110(5) Exemption levels ~~((table))~~:

| POLLUTANT                                                                                   | LEVEL (TONS PER YEAR) |
|---------------------------------------------------------------------------------------------|-----------------------|
| <del>((a) Total Suspended Particulates</del>                                                | <del>1.25</del>       |
| <del>(b) PM 10</del>                                                                        | <del>0.75</del>       |
| <del>(c) PM 2.5</del>                                                                       | <del>0.5</del>        |
| <del>(d) Sulfur Oxides</del>                                                                | <del>2.0</del>        |
| <del>(e) Nitrogen Oxides</del>                                                              | <del>2.0</del>        |
| <del>(f) Volatile Organic Compounds, total</del>                                            | <del>2.0</del>        |
| <del>(g) Carbon Monoxide</del>                                                              | <del>5.0</del>        |
| <del>(h) Lead</del>                                                                         | <del>0.005))</del>    |
| <u>Carbon monoxide</u>                                                                      | <u>5.0</u>            |
| <u>Lead</u>                                                                                 | <u>0.005</u>          |
| <u>Nitrogen oxides</u>                                                                      | <u>2.0</u>            |
| <u>PM-10</u>                                                                                | <u>0.75</u>           |
| <u>PM-2.5</u>                                                                               | <u>0.5</u>            |
| <u>Total suspended particulates</u>                                                         | <u>1.25</u>           |
| <u>Sulfur dioxide</u>                                                                       | <u>2.0</u>            |
| <u>Volatile Organic Compounds, total</u>                                                    | <u>2.0</u>            |
| <del>((i)) Ozone Depleting Substances</del>                                                 | <del>1.0</del>        |
| <del>(in effect on July 1, 2000), total Greenhouse gases expressed as CO<sub>2</sub>e</del> | <del>75.000</del>     |

~~((j))~~ Toxic Air Pollutants

The de minimis  
emission rate  
specified for each  
TAP in WAC 173-  
460-150.

~~(6) (**Application processing – completeness determination.**~~

~~(a) Within thirty days after receiving a notice of construction application, the permitting authority must 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 must 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 must 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 must 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 must:~~

~~(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 must 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 construction is~~

~~not commenced 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, 173-400-720 and 173-460-040(3), as applicable.~~

~~(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.~~

~~(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 173-455-120 applies to requests filed with ecology 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.)) Portable source with notice of approval. A portable source is allowed to operate without obtaining a site-specific or a permitting authority specific approval order if the portable source complies with the provisions of WAC 173-400-036.~~

[Statutory Authority: Washington Clean Air Act, RCW 70.94.152.09-11-131 (Order 05-19), § 173-400-110, filed 5/20/09, effective 6/20/09. Statutory Authority: RCW 70.94.395 and 70.94.331.07-11-039 (Order 06-03), § 173-400-110, filed 5/8/07, effective

6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-110, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-110, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-110, filed 7/21/98, effective 8/21/98. Statutory Authority: RCW 70.94.152. 98-01-183 (Order 96-01), § 173-400-110, filed 12/23/97, effective 1/23/98. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-110, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-110, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-110, filed 4/15/83. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. 81-03-002 (Order DE 80-53), § 173-400-110, filed 1/8/81. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-110, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-110, filed 5/8/79; Order DE 76-38, § 173-400-110, filed 12/21/76. Formerly WAC 18-04-110.]

NEW SECTION

**WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources.** (1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must 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) A complete application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under 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). The applicant must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the

completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. 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 must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be approved unless the following criteria are met:

- (a) The requirements of WAC 173-400-113;
- (b) The requirements of WAC 173-400-200;
- (c) The requirements of WAC 173-400-800 through 173-400-860, as applicable; and
- (d) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - time frame and signature

authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must 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.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide 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.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval for to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) 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 under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced 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 by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source in a nonattainment area or a major modification of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) 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.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a

change in the 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 the permitting 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 173-400-111, 173-400-113, 173-400-720, 173-400-830, and 173-460-040 as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) All sources regulated by ecology must file a notice of construction application when requesting a change of conditions or revisions to an order of approval.

(9) Chapter 173-455 WAC lists the fees payable to ecology for processing notice of construction applications, construction time extensions and change of conditions.

(10) Enforcement. All persons who receive an order of

approval must comply with all approval conditions contained in the order of approval.

[]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**WAC 173-400-112** (~~(Requirements for new sources in nonattainment areas.)~~) **Reserved.** (~~(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 NO<sub>x</sub> 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

~~(c) "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 for 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.)~~

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-112, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-112, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-112, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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) If the new source is a major stationary source or the change is a major modification of an existing major stationary source (as those terms are defined in WAC 173-400-810) [TBC

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comment: federal law does not require this burdensome NAAQS test for minor sources or modifications. See 40 CFR 51.165(b). As written this section could be read to require modeling for all projects - whether minor or major] Allowable emissions from the proposed new source or modification will not ~~delay the attainment date for an area not in attainment ((nor)), or~~ [TBC

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comment what is the authority for this "delay the attainment" language? Federal law does not appear to require this test for minor or major NSR (as compared to transportation conformity), and the RCW also does not appear to authorize this requirement (See RCW 70.94.152(4)) cause or contribute to a violation of any

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ambient air quality standard, as determined under subsection(4), below. [TBC comment: Separating this language from the SILs below, raises the possibility that even if the SILs are met, the new source or modification could still be considered to cause or

contribute to a NAAQS exceedance, making the WA law more stringent than it currently is more stringent than federal law] (~~This requirement will be considered to be met if the projected impact of~~)

(4) (a) ~~If the~~ projected impact of the allowable emissions from the proposed new major source or the projected impact of the increase in allowable emissions from the proposed major modification of an existing major stationary source at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment, then the proposed new source or modification will not be considered to cause or contribute to a violation of an ambient air quality standard:

Table 4a: Cause or Contribute Threshold Values for Nonattainment Area Impacts

| Pollutant        | Annual Average        | 24-Hour Average     | 8-Hour Average        | 3-Hour Average       | 1-Hour Average       |
|------------------|-----------------------|---------------------|-----------------------|----------------------|----------------------|
| CO               | -                     | -                   | 0.5 mg/m <sup>3</sup> | -                    | 2 mg/m <sup>3</sup>  |
| SO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup> | -                     | 25 µg/m <sup>3</sup> | 30 µg/m <sup>3</sup> |
| PM <sub>10</sub> | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup> | -                     | -                    | -                    |
| NO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | -                   | -                     | -                    | -                    |

~~((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))~~ (b) A project that results in a projected impact

inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction adequate to reduce the projected impacts to the above values or less. If the proposed project is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new source or modification.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, then the source must meet((s)) 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.))~~

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-113, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-113, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-113, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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 (~~October 1, 2006, is~~) July 1, 2010, are 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, GGGG, JJJJ, 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

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State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, HHHH (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).

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-115, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-115, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-115, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-115, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.785. 98-22-019 (Order 98-02), § 173-400-115, filed 10/23/98, effective 2/18/11 10:33 AM [ 158 ] OTS-3427.3

11/23/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-115, filed 9/13/96, effective 10/14/96; 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-115, filed 4/15/83; 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

**WAC 173-400-116** (~~(New source review fees.)~~) **Increment protection.** ((Fees can be found in chapter 173-455 WAC.)) (1) Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are given in 40 CFR 52.21(c) as published in the Federal Register as final rule on October 6, 2010. [TBC comment: We can not find an October 6, 2010 Federal Register Final Rule addressing PSD increments. Was this date intended to reflect EPA's October 20, 2010 PM 2.5 increment final rule? See 57 Fed. Reg. 64864 (October 20, 2010). If so, and if this date changed, the date in proposed WAC 173-400-720(4) (a) (vi) should also be changed to the same date]

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

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(a) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order; [TBC comment: See 40 CFR 51.166(f)(1)(i). This language would preserve alignment with the federal regulations.]

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(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan. [TBC comment: See 40 CFR 51.166(f)(1)(ii). This language would preserve alignment with the federal regulations.]

(ca) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(cb) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(ee) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by the administrator of the environmental protection agency. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the administrator.

(ii) Specify that the time period for excluding certain contributions in accordance with (ee) (i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard. If the projected impact of the temporary increase in emissions contemplated in the SIP revision does not exceed the levels in WAC 173-400-113, Table 4a, for the pollutant(s) which would exceed the national ambient air quality standard(s), then the temporary increase in emissions contemplated by the SIP revisions will not be considered to cause or contribute to a violation of an ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (ee) (i) of this

subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. 07-19-005 (Order 07-10), § 173-400-116, filed 9/6/07, effective 10/7/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-116, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-116, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-116, filed 9/13/96, effective 10/14/96. Statutory Authority: RCW 70.94.153 and 70.94.154. 94-17-070, § 173-400-116, filed 8/15/94, effective 9/15/94.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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. [TBC comment: This timing limitation should be substantially relaxed from the 180 days, so as to encourage sources to create and sustain these reductions. As long as the credit is applied for and the emission reduction is properly verified before the credit is to be used or transferred, there is no justification for an application deadline. C.f. OH Admin. Code 3745-111-03]

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(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. The old actual emissions rate is the average emissions rate occurring during the most recent twenty-four-month period preceding the request for an ERC. A source subject to WAC 173-400-105(1) or an authority's equivalent annual emission inventory reporting requirement may use the average emissions rate occurring during the two most recent annual reporting periods. An alternative twenty-four-month period from within the previous five years may be accepted by the permitting authority if the owner or operator of the source demonstrates to the satisfaction of the permitting authority that the alternative period is more representative of actual operations of the unit or source.

(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 reduction must be: Greater than otherwise required by an applicable emission standard, ~~or~~ order of approval, or regulatory order, and be permanent, quantifiable, and legally federally enforceable. [TBC comment: See *Chemical*

*Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of

the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(d) The ERC reduction must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved. No reductions will be rejected based on this criteria if the amount, rate and characteristics of the emission credit can be estimated through a reliable, reproducible method approved by the permitting authority. [TBC comment: This test should not be more stringent than the generally accepted requirement that the reduction be "quantifiable." C.f., OH Admin Code 3745-111-01 (E) [<http://codes.ohio.gov/oac/3745-111>] ("Quantifiable" means that the amount, rate and characteristics of emissions and emission reductions can be determined or measured through a reliable and replicable method established by an applicable law or approved by the director."); and North Carolina ERC guidance at <http://daq.state.nc.us/permits/erc/ercinfo.shtml> ("Emission reductions are considered quantifiable if the amount, rate and characteristics of the emission credit can be estimated through a reliable, reproducible method approved by the Division")]

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~~((d))~~ (e) No part of the emission reductions claimed for credit shall have been used to avoid PSD (WAC 173-400-700 through 750) or nonattainment area major modification review (WAC 173-400-800 through 860) as part of a demonstration that a project's ~~determination of~~ net emission increase is below an applicable significance level. [TBC comment: We believe that this provision is intended to apply only when the project nets

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out of PSD or NNSR, not when the project actually goes through PSD permitting. See, e.g., the North Carolina ERC guidance at <http://daq.state.nc.us/permits/erc/ercinfo.shtml> ("The following are not considered surplus ... 1. Emission reductions which have previously been used to avoid 15A NCAC 2D .0530 or .0531 (new source review) through a netting demonstration") (emphasis added).], nor as part of an offsetting transaction under WAC ((~~173-400-112~~ (2)(d))) 173-400-113(4) or 173-400-830, nor as part of a bubble transaction under WAC 173-400-120, ~~nor to satisfy NSPS, NESHAPS(, for Source Categories), BACT, or LAER.~~ [TBC comment: This last clause is already covered by (3)(c), above]

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((~~e~~)) (f) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress in an amendment to the state implementation plan.

(g) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a ~~legally~~federally enforceable 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.

[TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

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~~((f))~~ (h) 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. [TBC comment: Logically, if the original application contained "all supporting data and documentation," no further information would be required]

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(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))~~ (h) 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))~~ (h) 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. The emission reduction credit listed in the certificate shall be **no more than less than** the amount of emission reduction achieved by the source. [Authorizing the unlimited confiscation of emission reductions upon their creation will discourage the creation of ERCs]

(c) The certificate of emission reduction credit shall include **anythe** expiration date of the credit. [TBC comment: Limiting the effective life of ERCs will discourage emission reductions. ERCs should not expire except in connection with the termination of the underlying emission reductions. See North Carolina ERC Guidance at <http://daq.state.nc.us/permits/erc/ercuse.shtml> ("Certified ERCs are permanent until withdrawn by the owner or until withdrawn by the Director of the DAQ.").]

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-131, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-131, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-131, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-131, filed 2/19/91, effective 3/22/91.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 "emissions increase" or "net emissions increase;" under WAC 173-400-720 or WAC 173-400-820\*\*\* or as an offsetting reduction to satisfy the requirements for new source review in WAC ((~~173-400-112~~) 173-400-830(1) (e) or 173-400-113(~~(+3)~~)) (4) ~~or to demonstrate a creditable emission reduction for permitting under WAC 173-400-720.~~ [TBC comment: How is this "creditable emission reduction" any different than using the ERC in the determination of "net emissions increase"?]

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(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 reasonable, scientifically justified 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 to the extent that the ERC is being used to satisfy a requirement that is temporal and/or spatial in nature. [TBC comment: NNSR offsets need only be in the required ratio and from the same non-attainment area as the proposed project; the offsets need not fully counter the impact of the project's emissions at all receptors at all times.]

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(4) **Sale of an ERC.** An ERC may be sold or otherwise transferred by its owner to any person. ~~to a person other than the person to whom it was originally issued.~~ Within thirty days ~~after the transfer of ownership, and before any use or subsequent transfer,~~ the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner. [TBC comment: Why is there a 30 day time limit? This should be allowed at any time before the new owner want to use the ERC.]

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~~(5) **Redemption period.** An unused ERC expires ((ten)) five years after date of original issue.~~ [TBC comment: Limiting the effective life of ERCs with a static expiration period unrelated to a termination of the underlying emission reductions will discourage emission reductions. If there is any expiration period, it should not be less than 10 years. Other states like North Carolina and Ohio do not impose a static expiration period. See North Carolina ERC Guidance at <http://daq.state.nc.us/permits/erc/ercuse.shtml> ("Certified ERCs are permanent until withdrawn by the owner or until withdrawn by

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the Director of the DAQ."); and Ohio ERC Banking Program Guidance at [http://www.epa.state.oh.us/dapc/ERC/general\\_info.aspx](http://www.epa.state.oh.us/dapc/ERC/general_info.aspx) ("ERCs that enter the ERC banking system are not subject to a static expiration period.")]

(56) **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)~~, issued ERCs may be discounted as necessary to reach attainment.

(a) Issued ERCs may be discounted **only** if:

(i) Reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard;

(ii) The ambient standard cannot be met through controls on operating sources; and

(iii) The **SIP**plan must be revised.

(b) The discount shall not exceed the percentage of additional emission reduction needed to reach attainment. [TBC

comment: The risk of discounting will discourage the creation of ERCs and the underlying emissions reductions. As this section is worded, persistent nonattainment would justify the discounting of 100% of all ERCs rendering them worthless. In this situation, no new ERCs will be created and offsets for new

projects will be very difficult to find, stifling economic development. Depending on whether ERCs will expire and, if so, what their life span will be, there should be a maximum discount. For example, if the life span is limited to five years as proposed, there should no discounting allowed. If the life span is 10 years, the maximum discount should be 10%, etc.]

(c) ERCs may be discounted by the permitting authority only after notice to the public according to WAC 173-400-171 and the owners of affected ERCs.

(d) No discount under this section shall be effective until approval of the corresponding SIP revision by EPA.

(e) Just compensation shall be paid by the permitting authority imposing the discount to the owner of the ERC at the time the discount is effective.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-136, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-136, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-136, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-136, filed 2/19/91, effective 3/22/91.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**WAC 173-400-171 Public ~~((involvement))~~ notice.** The purpose of this section is to specify the requirements for notifying the public about air quality permit actions and to provide opportunities for the public to participate in those permit actions.

(1) **Prevention of significant deterioration, and relocation of portable sources.**

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-720. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet ~~((notification))~~ notice of ~~((receipt of an))~~ application.**

(a) For those applications and actions not subject to a mandatory public ~~((notice and))~~ comment period per subsection ~~((2)(a))~~ (3) of this section, the permitting authority ~~((will either:~~

~~((i) Post on the permitting authority's internet web site))~~ must post 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)) on the permitting authority's internet web site.~~

(b) (~~For~~) The internet (~~(notification, notice shall))~~ posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting (~~(shall))~~ must include a 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.

~~((e))~~ (d) Requests for a public comment period (~~(shall))~~ must be submitted to the permitting authority in writing via letter, fax, or electronic mail (~~(within fifteen days of its))~~ during the fifteen-day internet posting period.

(e) A public (~~(notice and))~~ comment period (~~(shall))~~ must be provided (~~(pursuant to subsections (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 fifteen-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 web site.~~

~~(2) Actions))~~ (3) Actions subject to a mandatory public  
((notice and)) comment period.

~~((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))~~ A public comment period is mandatory for the following applications, orders, and actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for ((any)) a new or modified source, including the initial application for operation of a portable source, if there is 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 emissions of a toxic air pollutant regulated under chapter 173-460 WAC above the applicable small quantity emission rate in WAC 173-460-150, and which would have an impact on ambient concentrations above the acceptable source impact levels in WAC 173-460-150. ~~as regulated under chapter 173-460 WAC~~ [TBC comment: A source should not have to perform an AISL demonstration to avoid triggering public comment if its TAP emissions are below the applicable small quantity emissions rates.] ~~((which will increase above the small quantity emission rate listed in WAC 173-460-080 (2)(e) would result))~~; or

~~((ii))~~ (c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40

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CFR Part 51 (in effect on (~~October 1, 2006~~) July 1, 2010) as part of review under WAC 173-400-110, (~~(173-400-112,)~~) 173-400-113, 173-400-117(~~(, or 173-400-720)~~); or

~~((iii))~~ (d) Any order to determine reasonably available control technology, RACT; or

~~((iv))~~ (e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

~~((v))~~ (f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, 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))~~ (g) An order to authorize a bubble; or

~~((vii))~~ (h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136~~(6)~~; or

~~((viii))~~ (i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

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

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

~~((xi))~~ (l) The original issuance and the issuance of all

revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

~~((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, 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.**)~~ (m) Any application or other action for which the permitting authority determines that there is substantial public interest.

(4) **Advertising the mandatory public comment period.**  
Public notice of all applications, orders, or actions listed in subsection (3) of this section must be published in a newspaper of general circulation in the area where the source or sources are or will be located. This public notice ((shall)) can be ((made)) published only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made. The notice must be published before any of the applications or other actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice.  
~~((Public notice shall include:~~

~~(a) Availability for public inspection.))~~

(5) Information available for public review. 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:))~~

(6) Published notice components.

(a) The notice must include:

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

(ii) A brief description of the proposal, and the type of facility, including a description of the facility's processes subject to the permit;

(iii) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(iv) The location ((of the)) where those documents made available for public inspection may be reviewed;

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

~~((v))~~ (vi) A statement that a public hearing ((may)) will be held if the permitting authority determines ((within a thirty-day period)) that there is significant public interest ((exists or));

(vii) The time, date and location of the public hearing for those ecology only 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)) WAC 173-400-171(12);

~~((vii))~~ (viii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements

for federal Class I areas (~~(in WAC 173-400-117 (5)(e))~~), public notice (~~(shall either explain)~~) must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval; and

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

~~((e) 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))~~ **(7) Length of the public comment period.**

(a) The public comment period must be at least (~~(the thirty day period for written comment specified in the public notice)~~) thirty days long.

(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)~~) cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

~~((5))~~ **Public hearings.**

~~(a))~~ **(8) Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, fax, or electronic mail. A request must indicate the interest of the entity filing it and why a hearing is warranted.

**(9) Setting the hearing date and providing hearing notice.**

If the permitting authority (~~may hold a public hearing if it~~) determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

~~((b))~~ **(10) Notice of public hearing.**

(a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:

(i) Publish the notice of public hearing in a newspaper of general circulation in the area where the source or sources are or will be located; and

(ii) Mail the notice of public hearing to the applicant and to any person who submitted written comments on the application or requested a public hearing.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) The applicant must pay all publishing costs associated

with meeting the requirements of this subsection.

(11) **Notifying the EPA.** The permitting authority must send a copy of the notice for all actions subject to ~~at~~ the mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) Ecology must ~~((hold a hearing))~~ comply with the requirements of 40 CFR 51.102, in effect on July 1, 2010, 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 including plans for attainment, maintenance, and visibility protection;

(ii) A Washington state recommendation to EPA for designation, redesignation, or a change of boundaries of an attainment area, or nonattainment area, or an unclassifiable 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))~~ Class I, II, or III areas 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))~~ (b) The notice must comply with subsection (10) of

this section.

(13) **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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-171, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-171, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-171, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-171, filed 3/22/95, effective 4/22/95; 93-18-007 (Order 93-03), § 173-400-171, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-171, filed 2/19/91, effective 3/22/91.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 nonroad 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)(e))) **173-400-830** or 173-400-113(3) as applicable; [TBC

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*comment: Section 173-400-830 sources are excluded from general permitting below in 173-400-560(4)(a)(iii), making this requirement to comply with -830 inapt. However, we believe that appropriate general permitting should be available even though a proposed new source or modification to be covered by a general permit would be subject to -830 (NNSR) - 720 (PSD) or -113 (NSR for sources in attainment areas impacting nonattainment areas). General permitting for PSD could be especially valuable for sources or modifications that would be subject to this program solely because of their greenhouse gas emissions. Thus, this provision should require compliance with all of these programs, as applicable, and 173-400-560(4)(a)(iii), below should be deleted.]*

(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)~~) Compliance with WAC 173-400-171 is required for 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; and

(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)) 173-400-830 or 173-400-720; and~~ [TBC comment: PSD and NNSR sources/modifications should not be excluded from general permitting. We need general permits to deal with greenhouse gases as a regulated pollutant under PSD (and perhaps, in the future, under NNSR)].

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~~(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.~~ [TBC comment: There is no reason why the need to obtain or modify an operating permit should preclude streamlined construction permitting. This provision would exclude all existing operating permit major sources from general permitting even for insignificant changes, since the conditions of the general order of approval would need to eventually be incorporated into the operating permit!]

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(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 subsection (5) of this section.

(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 (a) or (b) of this subsection 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 thirty-one days after an application for coverage is received by the permitting authority, 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 a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07),  
§ 173-400-560, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05,  
effective 2/10/05)

**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 actual 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 programs in WAC 173-400-110 and 173-400-800 through 173-400-860.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-700, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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~~) can 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~~) will:

(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 <sup>3</sup> | -                    | 2 mg/m <sup>3</sup>  |
| SO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup> | -                     | 25 µg/m <sup>3</sup> | 30 µg/m <sup>3</sup> |
| PM <sub>10</sub> | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup> | -                     | -                    | -                    |
| NO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | -                   | -                     | -                    | -                    |

~~An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.))~~ WAC 173-400-113 (1), (3), and (4).

(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;

(v) WAC 173-400-116 - Increment protection; and

~~((v))~~ (vi) The following subparts of 40 CFR 52.21, in effect on October ~~((1, 2006))~~ 6, 2010, which are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

| <u>Section</u>                  | <u>Title</u>                                                                                      |
|---------------------------------|---------------------------------------------------------------------------------------------------|
| 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.                                                                                |
| <del>((40 CFR 52.21 (x))</del>  | <del>Vacated by federal Court Decision.</del>                                                     |
| <del>40 CFR 52.21 (y)</del>     | <del>Vacated by federal Court Decision.</del>                                                     |
| <del>40 CFR 52.21 (z)</del>     | <del>Vacated by federal Court Decision.))</del>                                                   |
| 40 CFR 52.21 (aa)               | Actuals Plantwide Applicability Limitation.                                                       |
| <del>((40 CFR 52.21 (bb))</del> | <del>Severability clause.</del>                                                                   |
| <del>40 CFR 52.21 (cc)</del>    | <del>Vacated by federal Court Decision.))</del>                                                   |

(Note: Sections not listed above might be adopted

elsewhere in this rule, reserved, stayed, ~~not part of the 40 CFR 51.166 requirements,~~ or are not delegable.)

(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.~~ [TBC comment: This is deleted because the "legally enforceable" test should be used instead. We have suggested a new WAC 173-400-720(4)(b)(iii)(K), below to universally replace "federally enforceable" with "legally enforceable." See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations)]

(AB) In 40 CFR 52.21 (1) (2), air quality models, "administrator" means the EPA administrator.

(BE) In 40 CFR 52.21 (b) (43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(CE) In 40 CFR 52.21 (b) (48) (ii) (c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(EF) 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, 173-400-720, and 173-400-730."

(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 (b) (50) (ii) "Any pollutant other than GHG that is subject to any standard under section 111 of the Act." [TBC comment: This is needed to prevent a situation where the first NSPS to regulate GHGs undoes the Tailoring Rule. The Tailoring Rule tweaks the meaning of the "subject to regulation" prong of the definition of "regulated NSR pollutant" in 40 CFR 52.21(b) (50) (iv), but if GHGs are regulated under an NSPS they will become a regulated NSR pollutant under 40 CFR 52.21(b) (50) (ii) at the statutory (un-tailored) major source/major modification levels. We have notified EPA of this time bomb threatening the Tailoring Rule.]

(DE) 40 CFR 52.21 (r) (6) "The provisions of this paragraph (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~~) will 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 (r) (6) (iii) of this section; 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)."

(E) 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).

(F) 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.

(G) 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.

(HG) 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.

(IH) 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).

(JF) 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).

(K) Every instance where the term "federally enforceable" is used it is replaced with the term "legally enforceable" which is defined as follows: all limitations and conditions which are enforceable as a practical matter by the department of ecology, an authority or by EPA. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE

definitions in EPA's PSD and NNSR regulations)]

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-720, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-720, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-730, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 chapter 173-455 WAC (~~(173-400-116 shall)~~) also (~~apply~~) applies.

(3) 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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-750, filed 1/10/05, effective 2/10/05.]

NEW SECTION

**WAC 173-400-800 Major stationary source and major modification in a nonattainment area.** WAC 173-400-800 through 173-400-860 apply statewide except where a permitting authority has a permitting program for major sources in a nonattainment area incorporated into the Washington state implementation plan as replacement for these sections.

These requirements apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

[]

NEW SECTION

**WAC 173-400-810 Major stationary source and major modification definitions.** The definitions in WAC 173-400-030 are to be used in WAC 173-400-800 through 173-400-860 unless a term is defined differently in this section for use in the major source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860 or a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in WAC 173-400-850.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions

increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, for those purposes ~~of a PAL~~, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting 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 unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant

during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year,

and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by the administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit

shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) 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) except the activities of any vessel. ~~located at the new or modified stationary source unless performing stationary source functions.~~ [TBC comment: The idea that vessel emissions might be considered to be a "building, structure facility or installation" might be better

addressed through guidance rather than this departure from the language in the federal regulations. If this limitation on the exclusion of vessel emissions remains, then the PSD and minor NSR definitions should also be revised, and clarifications for nonroad engines (See Virginia Regulations 9 VAC 5-80-1110) motor vehicles and other mobile sources should also be included.]

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*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to

a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary

activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this

section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by

themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(8)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14) (a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185Bb, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty 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 (as determined under rules issued by the administrator);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185Bb of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any

extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes ~~in~~ of WAC 173-400-810(14) ~~(e) of this subsection~~ whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;

- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the act.

(15) (a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

- (i) A significant emissions increase of a regulated NSR

pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 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;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any legally~~federally~~ enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, Subpart I

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or section 51.166; or [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any ~~legally~~ ~~federally~~ enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51, Subpart I or 40 CFR 51.166; [TBC comment: See *Chemical Manufacturers Assn v.*

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*EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR part 51, Appendix S adopted by reference in WAC 173-400-850 shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185Bb, part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185Bb, part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection

(14) (e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those ~~permits or orders of approval required under~~ federal air quality control laws and regulations ~~and those or under~~ air quality control laws and regulations which are part of the applicable state implementation plan. [TBC comment: Although the proposed language is taken verbatim from 40 CFR 51.165, it does not make sense without some clarifying tweaks. See WAC 173-400-030 (19) (b).]

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(17) (a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that ~~subsection~~ WAC 173-400-810 (2) (a) (iii) and (b) (iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs ~~between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs~~~~before the date that the increase from the particular change occurs~~; [TBC comment: While the proposed language is taken verbatim out of 40 CFR 51.165's definition of net emission increase, it does not seem to make sense. In 40 CFR Part 51 Appendix S's definition of net emission increase, the contemporaneous period runs from 5 years before the commencement of construction of the project at issue and until the date that the increase from that project occurs.]

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(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than ~~one year~~~~five years~~ 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; and [TBC comment: This one year limitation is unreasonably short. In 40 CFR Part 51 Appendix S's definition of net emission increase, the contemporaneous period runs from 5 years before the commencement of construction of the project at issue and until the date that the increase from that project occurs.]

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(ii) For an emissions increase, the permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165~~this section~~, which permit is in effect when the increase in actual emissions from the particular change occurs, and for an emissions decrease, the reduction has not been relied on as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs;

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[TBC comment: We believe the intent of this provision is that this exclusion only applies to decreases in circumstances where credit for the reduction has been taken in a offset transaction and not when the reduction is used to net out of new source review. See, e.g., December 29, 1889 EPA Memo from John Calcagni Re: Use of Netting Credits [http://www.epa.gov/region7/air/nsr/nsrmemos/netting.pdf] ("There are situations, such as when a source nets out of review, when the permitting authority does not rely on creditable emissions increases or decreases" )] and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or

decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 in issuing any permit under regulations approved pursuant to 40 CFR part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

[TBC comment: I believe the intent is that this exclusion only applies to decreases when credit for the reduction has been taken in a offset transaction and not when the reduction is used to net out of new source review. See, e.g., December 29, 1889 EPA Memo from John Calcagni Re: Use of Netting Credits

[http://www.epa.gov/region7/air/nsr/nsrmemos/netting.pdf]

("There are situations, such as when a source nets out of review, when the permitting authority does not rely on creditable emissions increases or decreases")]

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

~~(v)~~ (f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

~~(f)~~ Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days. [TBC comment: See 40 CFR 51.165's definition of net emission increase]

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(g) WAC 173-400-810 Subsection (1) (b) ~~of this section~~, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165, or a program that implements part 51, Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit. [TBC comment: See 40 CFR 51.165(a)(i)(xxx). Appendix S itself is not implemented through a SIP.]

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(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23) (a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit

resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing

unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b) (i) through (iii) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24) (a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subparagraph (a) (iii) subsection as a constituent or precursor of a general pollutant listed in (a) (i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5

nonattainment areas.

(C) Nitrogen oxides are presumed to be a precursors to PM-2.5 in all PM-2.5 nonattainment areas, unless the State demonstrates to the EPA's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM-2.5 concentrations. [TBC comment: See 40 CFR 51.165 (a) (1) (xxxvii)]

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(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming EPA rulemaking codifying emission test methods for condensable particulate matter), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 and PM-10 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 and PM-10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of WAC 173-400-800 through 173-400-850 ~~this section~~.

(25) (a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the

meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not

appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

| Pollutant       | Emission Rate                                                                             |
|-----------------|-------------------------------------------------------------------------------------------|
| Carbon monoxide | 100 tons per year (tpy)                                                                   |
| Nitrogen oxides | 40 tons per year                                                                          |
| Sulfur dioxide  | 40 tons per year                                                                          |
| Ozone           | 40 tons per year of volatile organic compounds or nitrogen oxides                         |
| Lead            | 0.6 tons per year                                                                         |
| PM-10           | 15 tons per year                                                                          |
| PM-2.5          | 10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions |

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185~~Bb~~, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in

an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a)(i), (ii), and (v) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a)(i) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a)(i) and (ii) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185Bb of the Federal Clean Air Act shall be considered a significant net emissions increase.

(27) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in WAC 173-400-810(26)) for that pollutant.

(28) Source means "stationary source" as defined in WAC

173-400-030.

(29) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

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NEW SECTION

**WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements.** (1) Any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Federal Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment area shall use the following procedures to determine if the new stationary source or modification is subject to the permitting requirements of WAC 173-400-830 through 173-400-850.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major

modification in WAC 173-400-810(15), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in WAC 173-400-810(27)), and a significant net emissions increase (as defined in WAC 173-400-810(17)&(26)).

The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant net

emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in WAC 173-400-810(1)) and the baseline actual emissions (as defined in WAC 173-400-810(2)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in WAC 173-400-810(26)).

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in WAC 173-400-030 (75)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in WAC 173-400-810(2)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in WAC 173-400-810(26)).

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the

emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in WAC 173-400-810(26)).

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in WAC 173-400-850.

(5) **Reasonable possibility:** Except as provided in (f) of this subsection, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of (f) of this subsection, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) 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 the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction. [TBC comment: The EPA regulations only require that this information be submitted to the permitting authority for EUSGUs]

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(c) 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 units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations

after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection (c), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) The owner or operator shall submit a report to the permitting authority within sixty days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

[TBC comment: The EPA regulations only require that this information be submitted to the permitting authority for EUSGUs]

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(e) The owner or operator shall submit a report to the permitting authority if for a year during which records must be generated under (c) of this subsection the annual emissions, in tons per year, from the project identified in (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in WAC 173-400-810(26) ~~the definition of significant~~) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this

subsection. Such report shall be submitted to the permitting authority within sixty days after the end of such year, and may be combined with any report required under subsection (d) of this section. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) 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).

(f) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23) (b) (iii) sums to at least fifty percent of the amount that is a "significant emissions increase," (as defined in WAC 173-400-810 (27)) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility

occurs only within the meaning of (f)(ii) of this subsection, and not also within the meaning of (f)(i) of this subsection, then (c) through (f) of this subsection does not apply to the project.

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application or pursuant to the conditions of an order of approval issued for the project, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in chapter 173-401 WAC. [TBC comment: In light of the fact that the reporting requirements, as proposed, go beyond the federal requirements by applying to non-EUSGUs, what projects would this section apply to?]

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NEW SECTION

**WAC 173-400-830 Permitting requirements.** (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, may be permitted to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary 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) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The proposed new major stationary source or a major modification of an existing major stationary source and 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.

(c) The proposed new major stationary source or a major

modification of an existing major stationary source 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, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants, except that it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source or major modification to an existing major stationary source is major.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840. [TBC comment: The introductory language in this section indicates that the entire section is limited to new major stationary sources and major modifications of existing major stationary sources]

(f) ~~If the proposed new source is a major stationary source or the proposed modification is a major modification,~~ The owner or operator of the proposed new major stationary source or major modification of an existing major stationary source 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. [TBC comment: The introductory language in this

section indicates that the entire section is limited to new major stationary sources and major modifications of existing major stationary sources]

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is also 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 t~~The proposed new ~~source is a~~ major stationary source ~~within the meaning of WAC 173-400-810~~, or the proposed ~~modification is a~~ major modification ~~within the meaning of WAC 173-400-810~~, ~~the project~~ meets the special protection requirements for federal Class I areas in WAC 173-400-117. [TBC

comment: The introductory language in this section indicates that the entire section is limited to new major stationary sources and major modifications of existing major stationary sources]

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major

stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where the administrator of the environmental protection agency has granted a NO<sub>x</sub> waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 CFR 51.165~~this section~~ shall apply to the source or modification as though construction had not yet commenced on the source or modification.

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NEW SECTION

**WAC 173-400-840 Emission offset requirements.** (1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section. [TBC comment: See 40 CFR 51.165(a)(9)(i)]

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(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows: [TBC comment: See 40 CFR 51.165(a)(9)(ii)]

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- (a) In any marginal nonattainment area for ozone - 1.1:1;
- (b) In any moderate nonattainment area for ozone - 1.15:1;
- (c) In any serious nonattainment area for ozone - 1.2:1;
- (d) In any severe nonattainment area for ozone - 1.3:1; and
- (e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and

extreme ozone nonattainment areas that are subject to sections 181-185~~Bb~~ of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185~~Bb~~ of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1. [TBC comment: See 40 CFR 51.165(a)(9)(iv)]

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(5) The requirements of this section applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(6) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant. [TBC comment: Why are there no provisions for interprecursor trading as contemplated in 40 CFR 51.165(a)(ii)?]

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(7) If the offsets are provided by another source, the reductions in emissions from that source must be ~~legally~~<sup>federally</sup> 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

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subsection. [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(8) Emission offsets not included in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is filed ~~determined to be complete~~ [TBC comment: See 40 CFR 51.165(a)(3)(i). The use of the completeness date is also inconsistent with other provisions in these offset regulations that use the filing date]], except that

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the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential

to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is ~~filed~~determined

~~to be complete.~~ [TBC comment: See 40 CFR 51.165(a)(3)(ii)(B). The use of the completeness date is also inconsistent with other provisions in these offset regulations that use the filing date].

If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and ~~legally~~federally enforceable; and [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995)]

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(vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or curtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (8)(b)(iii)(A)(I) of this subsection.

(iv) All emission reductions claimed as offset credit shall

be ~~legally~~ federally enforceable; [TBC comment: See *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (DC Cir. Sept. 15, 1995) (vacating federal enforceability requirement of the PTE definitions in EPA's PSD and NNSR regulations); and the use of the phrase "legally enforceable" in the NNSR provisions proposed herein.]

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area, ~~except~~ except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status ~~than the nonattainment area where the source proposing to use the reduction is located~~; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on ~~as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830~~ in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress. [TBC comment: I believe the intent is that this exclusion only applies to decreases when credit for the reduction has been taken in a offset]

(vii) The total tonnage of increased emissions, in tons per

year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

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NEW SECTION

**WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL).** The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of July 1, 2010, is adopted by reference with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL ~~or~~ those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 CFR 70.6(a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

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NEW SECTION

**WAC 173-400-860 Public involvement procedures.** The public involvement procedures in WAC 173-400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued under **this section** must comply with WAC 173-400-171. [TBC comment: What section?]

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NEW SECTION

**WAC 173-400-930 Emergency engines. (1) Applicability.**

(a) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(b) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(c) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

(d) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(2) **Operating requirements for emergency engines.**

Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines, contained in 40 CFR Parts 89 and 1039, as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance, ~~and~~ testing, and other non-emergency uses, combined.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical

work during an emergency use, except as provided in WAC 173-400-930(2)(c).

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) To Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) To Train personnel on emergency activities; or

(iii) To Provide electric power for the facility when the electric utility provider takes its power distribution equipment offline to service that equipment for any reason that does not qualify as an emergency use; or

(iv) To Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(v) As part of a preventative maintenance program if such operation is recommended by the engine manufacturer.

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Ms. Linda Whitcher  
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Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Re: WAC ch. 173-400 amendments

Dear Ms. Whitcher:

I am writing on behalf of Alcoa, Inc., Nucor Steel Seattle, Inc. and the Western States Petroleum Association (collectively, "the Coalition") to comment on the public comment draft of the proposed amendments to WAC ch. 173-400 published at WSR 10-20-151. The Coalition strongly supports Ecology's efforts to secure SIP approval of Washington's major new source review permitting programs. We also support and appreciate many of the policy calls reflected in these amendments, including the form of the amendments proposed to address EPA concerns with Washington's increment protection rules and the unavoidable excess emissions rule.

The Coalition's comments aim mainly at eliminating inconsistencies between Ecology and EPA rules, and addressing overlap between the coverage of Ecology's air rules and the air rules established by local air authorities. The Coalition proposes several edits to ensure that sources regulated by local air authorities need comply with only one set of rules addressing a specific topic, e.g. public notice requirements for permits (WAC 173-400-171) or performance specifications for continuous emission monitoring systems (WAC 173-400-105).

The concerns addressed in the attached redline are in many cases the precise issues that the Governor highlighted in issuing Executive Order 10-06. In general the Coalition is not asking Ecology to reduce the stringency of its air rules. Instead, we ask Ecology to calibrate its rules to minimize pointless delays in permit processing. For instance, the proposed amendments to WAC 173-400-171 would require Ecology to publish notice, not only of its proposed decision on an application, but of its receipt of an application. We assume that it was not Ecology's intent in proposing these amendments to further lengthen the permit review process, and we are asking Ecology to adjust the final rules to eliminate new hurdles in the permitting process.

With this letter we enclose a redline of the proposed ch. 173-400 amendments. It includes suggested edits and footnotes that explain the need for each edit. Please call if I

Ms. Linda Whitcher  
November 19, 2009  
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can provide any additional information in support of the changes proposed in the attached redline.

Finally, I want to express my appreciation for Ecology's decision to grant me a one week extension of the deadline to file comments on the proposed rules. I am grateful that Ecology was able to accommodate my request, and hope that the attached comments will contribute to the quality of the final rules.

Very truly yours,

Matthew Cohen

Cc: Stu Clark  
Andrew Green  
Alan Newman  
Coalition members

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AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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~~) that 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) "Brake horsepower (BHP)" means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(15) "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))~~ (16) "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))~~ (17) "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))~~ (18) "Combustion and incineration units" means units using combustion for waste disposal, steam production,

chemical recovery or other process requirements; but excludes outdoor burning.

((+18+)) (19) (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)) 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.

(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+)) (20) "**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+)) (21) "**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<sub>3</sub>) sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

~~((21))~~ (22) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

~~((22))~~ (23) **"Dispersion technique"** means a method ~~((which))~~ that 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))~~ (24) **"Ecology"** means the Washington state department of ecology.

~~((24))~~ (25) **"Emission"** means a release of air contaminants into the ambient air.

~~((25))~~ (26) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

~~((26))~~ (27) **"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))~~ (28) **"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<br><del>((tpy))</del>                       |
| Nitrogen oxides:         | 40 <del>((tpy))</del> <u>tons per year</u>                    |
| Sulfur dioxide:          | 40 <del>((tpy))</del> <u>tons per year</u>                    |
| Particulate matter (PM): | 25 <del>((tpy))</del> <u>tons per year</u><br>of PM emissions |

|                                                           |                                                                                                              |
|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
|                                                           | 15 <del>((tpy))</del> <u>tons per year</u><br>of PM-10 emissions <u>10</u><br><u>tons per year of PM-2.5</u> |
| Volatile organic compounds:                               | 40 <del>((tpy))</del> <u>tons per year</u>                                                                   |
| Fluorides:                                                | 3 <del>((tpy))</del> <u>tons per year</u>                                                                    |
| Lead:                                                     | 0.6 <del>((tpy))</del> <u>tons per year</u>                                                                  |
| Sulfuric acid mist:                                       | 7 <del>((tpy))</del> <u>tons per year</u>                                                                    |
| Hydrogen sulfide (H <sub>2</sub> S):                      | 10 <del>((tpy))</del> <u>tons per year</u>                                                                   |
| Total reduced sulfur<br>(including H <sub>2</sub> S):     | 10 <del>((tpy))</del> <u>tons per year</u>                                                                   |
| Reduced sulfur compounds<br>(including H <sub>2</sub> S): | 10 <del>((tpy))</del> <u>tons per year</u>                                                                   |

~~((28))~~ (29) "**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))~~ (30) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard.

~~((30))~~ (31) "**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))~~ (32) "**Existing stationary facility (Facility)**" is defined in WAC 173-400-151.

~~((32))~~ (33) "**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))~~ (34) "**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+)) (35) "**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.~~<sup>1</sup>

((+35+)) (36) "**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+)) (37) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil

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<sup>1</sup> This definition should track the definition of "Federal Land Manager" found in EPA's major NSR rules, 40 CFR 51.165(a)(1)(xlili) and 51.166(b)(24). The additional text in Ecology's definition modifies or editorializes on the delegation schemes of various federal agencies, and conflicts with WAC 173-400-730(1), which directs PSD permit applicants to send copies of their application to the only two FLMs that EPA cares about: The Forest Service and the National Park Service.

fuel for the primary purpose of producing steam by heat transfer.

((37)) (38) "**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)) (39) "**Fugitive emissions**" means emissions ((which)) that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

((39)) (40) "**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)) (41) "**Good engineering practice (GEP)**" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2) (a) (ii).

((41)) (42) "**Greenhouse gases (GHGs)**" means the aggregate group of six greenhouse gases: includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the department in chapter 173-441 WAC.<sup>2</sup>

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

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<sup>2</sup> The Coalition shares the concerns of Boeing and Weyerhaeuser that this definition needs to precisely track the definition that EPA applies in major NSR permitting, to avoid inadvertent coverage gaps between the universe of pollutants subject to NSR in Washington and in the EPA major NSR system. Ecology should follow EPA's lead on this definition even if Ecology defines GHGs differently for other purposes, e.g. for the reporting rule.

~~((42))~~ (44) "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))~~ (45) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means

the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

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

~~((46))~~ (48) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

~~((47))~~ (49) **"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+)) (50) "**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<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

((+49+)) (51) "**National Emission Standards for Hazardous Air Pollutants (NESHAPS)**" means the federal rules in 40 CFR Part 61.

((+50+)) (52) "**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

((+51+)) (53) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

((+52+)) (54) "**New source**" means:

(a) The construction, ~~installation, establishment,~~<sup>3</sup> 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

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<sup>3</sup> The legislature defined "new source" in RCW 70.94.030(17). Ecology has no authority to add to, revise or improve a definition enacted by the legislature in RCW ch. 70.94. The definition of "new source" in WAC 173-400-030(54) tracks the statutory definition, but the proposed additional text does not.

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

~~((53))~~ (55) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 CFR Part 60.

~~((54))~~ (56) **"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))~~ (57) **"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))~~ (58) **"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))~~ (59) **"Opacity"** means the degree to which an object

seen through a plume is obscured, stated as a percentage.

~~((58))~~ (60) "**Outdoor 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 or silo burners is not considered outdoor burning.

~~((59))~~ (61) "**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))~~ (62) "**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))~~ (63) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((62))~~ (64) "**Particulate matter**" or "**particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((63))~~ (65) "**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))~~ (66) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

~~((65))~~ (67) "**Permitting authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

~~((66))~~ (68) "**Person**" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((67))~~ (69) "**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))~~ (70) "**PM-10 emissions**" means finely divided solid or liquid material, including ~~((condensable))~~ condensable 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))~~ (71) "**PM-2.5**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR

Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(72) "PM-2.5 emissions" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 53 or by a test method specified in the SIP.

(73) "Portable source" means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(74) "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))~~ (75) "Prevention of significant deterioration (PSD)" means the program in WAC 173-400-700 to 173-400-750.

((+71+)) (76) "**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+)) (77) "**Reasonably attributable**" means attributable by visual observation or any other technique the state deems appropriate.

((+73+)) (78) "**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+)) (79) "**Regulatory order**" means an order issued by a

permitting authority that requires compliance with:

(a) Any applicable provision of chapters 70.94, ~~80.70 and 80.80 RCW~~ or rules adopted ~~thereunder to implement those laws;~~ or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.<sup>4</sup>

(80) "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 offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major~~

<sup>4</sup> RCW chapters 80.70 and 80.80 address GHG emissions from fossil fuel power plants. The programs established by those chapters are not part of ch. 70.94, and the legislature established in those chapters the administrative vehicles for Ecology and EFSEC to accomplish the objectives of those chapters. The implementation vehicles for CO2 mitigation under RCW ch. 80.70 include a new source review approval order issued under RCW 70.94.152, but not a regulatory order. See RCW 80.70.040(2). Ecology's rules to enforce the baseload electric generation performance standard in RCW 80.80 include a complex implementation scheme that does not rely on regulatory orders. See WAC 173-407-100 through 240. If Ecology ever needs authority to issue regulatory orders under those chapters, the proper course would be to amend the rules governing those chapters, rather than to claim authority in ch. 70.94 to issue orders to implement a different regulatory program.

stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source such as the tailpipe of a motor vehicle, from a train or from a vessel.<sup>5</sup>

((+76+)) (81) **"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+)) (82) **"Source category"** means all sources of the same type or classification.

((+78+)) (83) **"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

((+79+)) (84) **"Stack height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

((+80+)) (85) **"Standard conditions"** means a temperature of 20°C ((+68°F)) (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

((+81+)) (86) **"State implementation plan (SIP)"** or

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<sup>5</sup> It's time for Ecology to conform its definition of the technical term "secondary emissions" to the form used by EPA in both its nonattainment NSR rules, 40 CFR 51.165(a)(1)(viii) and its PSD rules, 40 CFR 51.166(b)(18). We recognize that a 1984 court decision qualified the exemption for vessels in this definition, but EPA has not yet seen fit to amend its definition, and Ecology should track EPA's definition until EPA gets around to updating its own rules. The definition in WAC 173-400-030 should be amended, because it defines "secondary emissions" more broadly than EPA would, even after revision to account for the holding in *NRDC v. EPA*, 725 F.2d. 761 (D.C.Cir. 1984).

**"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))~~ (87) **"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))~~ (88) **"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))~~ (89) **"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))~~ ~~**"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 (76) and (82) of this section, respectively.~~

~~((86))~~ (90) **"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 EPA approved equivalent method and expressed as hydrogen sulfide.

~~((87))~~ (91) **"Total suspended particulate"** means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

~~((88))~~ (92) **"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.

~~((89))~~ (93) **"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.

~~((90))~~ (94) **"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

~~((91))~~ (95) **"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.

~~((92))~~ (96) **"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 ( $(CF_3)_2CFCH_2OCH_3$ ); 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 ( $(CF_3)_2CFCH_2OC_2H_5$ ); methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n-C_3F_7OCH_3$  or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500) 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ( $HCOOCH_3$ ); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; tertiary-butyl 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 saturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and

(iv) Sulfur containing perfluorocarbons with no saturations 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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-030, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-030, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-030, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.152. 98-01-183 (Order 96-01), § 173-400-030, filed 12/23/97, effective 1/23/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-030, filed 9/13/96, effective 10/14/96; 95-07-126 (Order 93-40), § 173-400-030, filed 3/22/95, effective 4/22/95; 93-18-007 (Order 93-03), § 173-400-030, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-030, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and

70.94.510. 85-06-046 (Order 84-48), § 173-400-030, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-030, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-030, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-030, filed 5/8/79; Order DE 76-38, § 173-400-030, filed 12/21/76. Formerly WAC 18-04-030.]

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07,  
effective 10/7/07)

**WAC 173-400-035 ((Portable and temporary sources.))**

**Nonroad engines.** ((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.

~~(3) Fees relating to this section can be found in chapter 173-455 WAC.)~~ (1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

(a) Any nonroad engine that is:

(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; or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

(b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.

(c) Nonroad engines used to propel a motor vehicle or a vehicle used solely for competition, or subject to standards promulgated under section 202 of the Federal Clean Air Act.

(d) Engines regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act.

~~(e) <sup>6</sup>Engines that remain 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~~

<sup>6</sup> This paragraph describes operating conditions that disqualify an engine from being a nonroad engine, per the definition in WAC 173-400-030(57). The definition states (subsection (b)) that an internal combustion engine is not a nonroad engine if it remains at a location for more than 12 months, etc. There is no need in WAC 173-400-035(1)(a) to say that a nonroad engine which does not meet the definition of a nonroad engine is exempt from the coverage of the section.

~~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.~~

(2) Nonroad engines are not subject to:

(a) New source review.

(b) Control technology determinations.

(c) Emission limits set by the state implementation plan,

SIP.

(3) Fuel standards.<sup>7</sup> All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).

~~(3)~~ **> 500 and ~~&~~ 2000 BHP.** This section applies to the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

(a) Notification of intent to operate is required before operations begin.

The owner or operator must notify the permitting authority

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<sup>7</sup> This section contains text moved up from (3)(d) and (4)(d). Those subsections deals with engines of particular capacities, but we understand that Ecology intends to apply the ULSD fuel requirement to all nonroad engines. If so, it is better to state the requirement only once, in a subsection that applies to all nonroad engines.

of their intent to operate prior to beginning operation. The notice must contain the following information:

- (i) Name and address of owner or operator;
- (ii) Site address or location;
- (iii) Date of equipment arrival at the site;
- (iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. At each site, the owner or operator must record the following information for each nonroad engine:

- (i) Site address or location;
- (ii) Date of equipment arrival at the site;
- (iii) Date of equipment departure from the site;
- (iv) Engine function or purpose;
- (v) Identification of each component as follows:

(A) Equipment manufacturer, model number and its unique serial number;

(B) Engine model year;

(vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep on-site the records of the current engine and equipment activity. The owner or operator may keep all other records at the main office. Records must be kept for at least five years and be readily available to the permitting authority on request.

~~(d) Fuel standards. All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline,~~

~~natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).~~

(45) > 2000 BHP. This section applies to the installation and operation of any nonroad engine with a cumulative maximum rated brake horsepower greater than 2000 BHP.

(a) Notification of intent to operate. Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4).

(b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

(c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (3)(b) and (c) of this section.

(d) Integrated review.<sup>8</sup> Applicants seeking approval to construct or modify a stationary<sup>9</sup> source that requires review under WAC 173-400-110 or 173-400-560 and to operate one or more nonroad engines in conjunction with the new or modified stationary source~~that includes the review of nonroad engines~~ may elect to integrate the reviews. A nonroad engine notification designated for integrated review must be processed in accordance

<sup>8</sup> Nonroad engines are not stationary sources, which is why Congress exempted them from stationary source emission limits. Most of the edits to this subsection are intended to recognize that Ecology's regulatory authority to conduct new source review of nonroad engines has a different source than Ecology's authority to conduct NSR on stationary sources.

<sup>9</sup> See our comment on WAC 173-400-110(2).

with the new source review~~ambient air quality~~ and public involvement procedures in WAC 173-400-111 and WAC 173-400-171.

~~(e) Fuel standards. All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).~~

(f) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

(g) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final decision to the applicant.

(h) Conditions to assure compliance with NAAQS. Subject to the limitations of subsection (2),<sup>10</sup> the permitting authority may set specific conditions for operation as necessary to ensure that the nonroad engine(s) do not cause or contribute to a violation of ~~compliance with~~ National Ambient Air Quality Standards ~~as regulated by WAC 173-400-113 (3) and (4).~~

(i) Appeals. Final decisions and orders of ~~ecology or a~~

<sup>10</sup> Subsection (2) lists certain types of limits that states cannot apply to nonroad engines. It leaves the permitting authority free to impose what EPA calls “in use” restrictions – fuel specifications, hours of operation limits, etc. – to protect the NAAQS.

permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

(j) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. 07-19-005 (Order 07-10), § 173-400-035, filed 9/6/07, effective 10/7/07.  
Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-035, filed 8/15/01, effective 9/15/01.]

NEW SECTION

**WAC 173-400-036 Relocation of portable sources. (1)**  
**Applicability.**

(a) Portable sources that meet the requirements of this section may without obtaining a site-specific or permitting authority-specific order of approval relocate and operate in any jurisdiction in which the permitting authority has adopted these rules. The owner or operator of a portable source may file a

new notice of construction application in compliance with WAC 173-400-110 each time the portable source relocates in lieu of participating in the inter-jurisdictional provisions in this section.

(b) Permitting authority participation in the inter-jurisdictional provisions of this section is optional. This section applies only in those jurisdictions where the permitting authority has adopted it. Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here except that subsection (2) of this section applies statewide.

(c) This section applies to sources that move from the jurisdiction of one permitting authority to the jurisdiction of another permitting authority, inter-jurisdictional relocation. This section does not apply to intra-jurisdictional relocation.

(2) **Portable sources in nonattainment areas.** If a portable source is locating in a nonattainment area and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, then the source must acquire a site-specific order of approval. The order of approval must be issued by the permitting authority with jurisdiction over the nonattainment area in which the owner or operator proposes to locate the portable source ~~wishes to locate~~, or by Ecology if the proposed location is on or adjacent to a stationary source

for which Ecology is the permitting authority.<sup>11</sup>

(3) **Relocation requirements.** Portable sources are allowed to operate at a new location without obtaining an order of approval from the permitting authority with jurisdiction over the new location provided that:

(a) A permitting authority in Washington state issued a notice of construction order of approval for the portable source after July 1, 2010, identifying the emission units as a "portable source";

(b) The owner/operator of the portable source submits a relocation notice and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location;

(c) The owner/operator submits the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the preceding year. The data must be sufficient in detail to enable each permitting authority to calculate the emissions within its jurisdiction and the yearly aggregate.

(4) **Enforcement of the order of approval.** The permitting authority with jurisdiction over the location where a portable source is operating has authority to enforce the conditions of the order of approval that authorizes the portable source operation, regardless of which permitting authority issued the

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<sup>11</sup> Think of pulp mills or aluminum smelters.

order of approval. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

(5) **Change of conditions to orders of approval.** To change the conditions in an order of approval, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

(6) **Portable source modification.** Prior to commencing construction on a ~~or installation of a~~ modification of a portable source,<sup>12</sup> the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

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<sup>12</sup> A portable source is a type of stationary source, per WAC 173-400-030(73). Ecology has authority under RCW 70.94.152 to review the “establishment of a new source.” A new source is defined by RCW 70.94.030 as “the construction or modification of a stationary source . . .” The Coalition questions whether the term “installation” would add any content to the scope of Ecology’s jurisdiction, but that jurisdiction was defined by the legislature, and Ecology may not add to it.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**WAC 173-400-040 General standards for maximum emissions.**

(1) 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))~~ takes precedence~~t~~ 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))~~ determined for some sources or source categories to be<sup>13</sup> 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 permitting authority

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<sup>13</sup> The language that Ecology proposes to delete is helpful because it acknowledges that a process exists for determining when a RACT review is warranted and for establishing RACT.

shall, as provided in RCW (~~(70.194.154)~~ [~~RCW 70.94.154~~]) 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

~~((1))~~ (2) **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 permitting authority must 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 permitting 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) Military training exercises. Visible emissions resulting from military obscurant training exercises (~~(is)~~) are 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) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of

chapter 173-425 WAC.

~~((2))~~ (3) **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))~~ (4) **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))~~ (5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity 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))~~ (6) **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+)) (7) 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 permitting 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 permitting 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 permitting authority.

((+7+)) (8) 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))~~ (9) **Fugitive dust.**

(a) The owner or operator of a source ~~((ef))~~ or activity that generates fugitive dust ~~((shall))~~ must take reasonable precautions to prevent that fugitive dust from becoming airborne and ~~((shall))~~ must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source ~~((ef))~~ or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area ~~((shall-be))~~ is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113 (3) ~~-(2)(e)~~.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-040, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-040, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-040, filed 11/22/00, effective 12/23/00. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-040, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-040, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-040, filed 8/20/80. Statutory Authority:

RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-040, filed 5/8/79; Order DE 76-38, § 173-400-040, filed 12/21/76. Formerly WAC 18-04-040.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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~~) 2010) or approved procedures contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of (~~July 12, 1990~~) September 20, 2004, 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~~)

September 20, 2004, 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)~~) September 20, 2004, 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 permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(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~~) July 1, 2010) 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))~~ 2010); 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))~~ in effect on July 1, 2010); 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))~~ 2010), Eb (in effect on July 1, ~~((2000))~~ 2010), and AAAA (~~((adopted on December 6, 2000 and in effect on June 1, 2001))~~ in effect on July 1, 2010), 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~~) 2010);

(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))~~ 2010).

(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))~~ July 1, 2010).

(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~~) July 1, 2010).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on (~~January 30, 2001~~) July 1, 2010).

(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~~) 2010).

(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~~) 2010).

(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~~)) July 1, 2010).

(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~~)) July 1, 2010) 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~~)) July 1, 2010, 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~~) July 1, 2010).

(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))~~ July 1, 2010) 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))~~ July 1, 2010).

(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))~~ July 1, 2010).

(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))~~ July 1, 2010), 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))~~ July 1, 2010).

(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~~) July 1, 2010) 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~~) July 1, 2010) 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~~) July 1, 2010).

(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~~) July 1, 2010) 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~~) July 1, 2010) 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~~) July 1, 2010), 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)), achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.~~

|                                                           |
|-----------------------------------------------------------|
| ((Table 1 Compliance Schedules and Increments of Progress |
|-----------------------------------------------------------|

| Affected units     | Increment 1<br>(Submit final control plan) | Increment 2<br>(Award contracts) | Increment 3<br>(Begin on-site construction) | Increment 4<br>(Complete on-site construction) | Increment 5<br>(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)~~ July 1, 2010).

(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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-050, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152,

[70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-050, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 and silo burners.**

(a) All wigwam and silo burners (~~(shall)~~) designed to

dispose of wood waste must 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 and silo burners (~~((shall))~~) must 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)~~) The permit authority may establish additional requirements for wigwam (~~((burners located in sensitive areas as defined by chapter 173-440 WAC))~~) and silo burners. 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 and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(~~((1))~~) (2), visible emissions. 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 WAC 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~~) 2010, 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 Resource 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).

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-070, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-070, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-070, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-070, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-070, filed 9/13/96, effective 10/14/96; 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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 ~~((October 1, 2006, is))~~ July 1, 2010, are 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. 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)) EPA can delegate its authority to a permitting authority to receive reports for one or all of these federal rules. Do not send a duplicate report to EPA if EPA delegated authority to your permitting authority for the rule you are reporting under, unless EPA or your permitting authority tells you to do so.<sup>14</sup>~~

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(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

~~((a))~~ Adopt by reference.

(a) 40 CFR Part 63 and Appendices in effect on ~~((October 1, 2006, is))~~ July 1, 2010, as they apply to major stationary

<sup>14</sup> The Coalition asks Ecology to retain the current version of Subsection (5). The new version of this paragraph reads like a guidance letter to the owner of an affected facility. It starts out with a statement about EPA's power to delegate, and goes on to provide instructions to owner/operators about where "you" should send reports. Air rules should be written for a broader constituency than just the regulated facility, and the more formal statement of the requirement in the current subsection (5) is more appropriate for inclusion in a regulation.

sources of hazardous air pollutants are 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, LLLL, and OOOO.~~

~~(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.)~~ The term "administrator" in 40 CFR Part 63 includes the permitting authority.

(b) 40 CFR Part 63 and Appendices in effect on July 1, 2010, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:

(i) Subpart EEEEE, Primary Copper Smelting;

(ii) Subpart FFFFFFF, Secondary Copper Smelting;

(iii) Subpart GGGGG, Primary Nonferrous Metal;

(iv) Subpart SSSSS, Pressed and Blown Glass Manufacturing;

(v) Subpart YYYYY, Stainless and Nonstainless Steel Manufacturing (electric arc furnace);

(vi) Subpart EEE, Hazardous Waste Incineration;

(vii) Subpart IIIII, Mercury Cell Chlor-Alkali Plants;

(viii) Subpart LLL, Portland Cement; and

(ix) Subpart X, Secondary Lead Smelting.

(7) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** 40 CFR Part 65, in effect on ~~((October 1, 2006))~~ July 1, 2010, is adopted by reference.

(8) **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 ~~((+))~~ (8)(a) 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: |
|------------------------------------------------------|----------------------------------------|--------------------------------------|-----------------------------------|
| <del>((1))</del> Only Dry-to-Dry Machines            | 140 gallons PCE/yr                     | 140-2,100 gallons PCE/yr             | 2,100 gallons PCE/yr              |
| <del>((2))</del> Only Transfer Machines              | <del>200 gallons PCE/yr</del>          | <del>200-1,800 gallons PCE/yr</del>  | <del>1,800 gallons PCE/yr</del>   |
| <del>(3)</del> Both Dry-to-Dry and Transfer Machines | 140 gallons PCE/yr                     | 140-1,800 gallons PCE/yr             | <del>1,800 gallons PCE/yr))</del> |

(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))~~ 2010).

~~((b))~~ (iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from

one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) 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.

~~((e))~~ (d) **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                                                                                       | <u>Dry cleaner located in a building where people live</u>                                           |
|-----------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| 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. | <u>Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.</u> |

~~((d))~~ (e) **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     | <u>Dry cleaner located in a building where people live</u> |
|---------------------|-------------------|------------------|------------------------------------------------------------|
| Once every 2 weeks. | Once every week.  | Once every week. | <u>Once every week.</u>                                    |

TABLE 4. Minimum Inspection Frequency Using Portable Leak Detector

| <u>Small area source</u> | <u>Large area source</u> | <u>Major source</u>      | <u>Dry cleaner located in a building where people may live</u> |
|--------------------------|--------------------------|--------------------------|----------------------------------------------------------------|
| <u>Once every month.</u> | <u>Once every month.</u> | <u>Once every month.</u> | <u>Once every week.</u>                                        |

(ii) ~~((An inspection must include an examination of))~~ You

must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of percholoroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine 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))~~ (iv) The dry cleaning system must be inspected while it is operating.

~~((iv))~~ (v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

~~((e))~~ (f) **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))~~ (g) **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))~~ (h) **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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-075, filed 5/8/07, effective 6/8/07.

Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-075, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 70.94.331. 02-15-068 (Order 02-09), § 173-400-075, filed 7/11/02, effective 8/11/02. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-075, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-075, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-075, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-075, filed 9/13/96, effective 10/14/96; 93-05-044 (Order 92-34), § 173-400-075, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-075, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-075, filed 3/6/85. Statutory Authority: Chapter 70.94 RCW. 84-10-019 (Order DE 84-8), § 173-400-075, filed 4/26/84. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-075, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-075, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-075, filed 5/8/79; Order DE 76-38, § 173-400-075, filed 12/21/76. Formerly WAC 18-04-075.]

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-081 Startup and shutdown.** In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) 15 ~~((ecology and))~~ as part of new source review<sup>15</sup> the permitting authorities ~~((shall))~~ will<sup>16</sup> consider any physical 16 constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

Where ~~((ecology or))~~ the permitting authority, during a control technology determination, determines that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, ~~((ecology or))~~ the permitting authority ~~((shall))~~ must include in the standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions.

In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air

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<sup>15</sup> Ecology may draft startup or shutdown limits as part of control technology determinations that have nothing to do with new source review. E.g., RACT and BART determinations.

<sup>16</sup> This sentence contains a directive to permitting authorities. If Ecology does not like “shall,” the appropriate substitute is “must.” Ecology followed this nomenclature in paragraph 2 of this section.

quality standards, ~~((ecology and))~~ the permitting authorities shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule.

Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in the Washington an approved state implementation plan shall not take effect until approved by EPA as a SIP amendment.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-081, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-091 Voluntary limits on emissions.** (1) Upon request by the owner or operator of a new or existing source or emission unit,<sup>17</sup> ~~((ecology or))~~ the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the source's or emission unit's potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and ~~((ecology or))~~ the permitting authority ~~with jurisdiction over the source~~.

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<sup>17</sup> The Coalition, like Boeing, believes that permitting authorities should have the flexibility to

(2) A condition contained in an order issued under this section shall be less than the source's or emission unit's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70.94 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or emission unit complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

18 (4)<sup>18</sup> Any order issued under this section (~~shall be subject to the notice and comment procedures under~~) is subject to notice and opportunity for comment as provided in ~~must comply with~~ WAC 173-400-171.

19 (5) The terms and conditions of a regulatory order issued under this section are~~shall be~~ federally enforceable, ~~upon approval of this section as an element of the Washington state implementation plan.~~<sup>19</sup> Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

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write synthetic minor limits for emission units as well as sources.

<sup>18</sup> It is not technically accurate to state that an order "must comply with" a rule.

<sup>19</sup> The edits to this section reflect the fact that WAC 173-400-091 is SIP approved.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-091, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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))~~) (18), 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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-099, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-099, filed 3/22/95, effective 4/22/95.]

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

**WAC 173-400-101 Registration issuance.** (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required shall register the source ~~emission unit~~ with ~~ecology or~~ the permitting authority. The owner or operator shall make reports containing information as may be required by ~~ecology or~~ the permitting authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration form. Registration information shall be provided on forms supplied by ~~ecology or~~ the permitting authority and shall be completed and returned within the time specified on the form. Emission units within the facility shall be listed separately unless ecology or the authority determines that certain emission units may be combined into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative shall sign the registration form for each source. The owner or operator of the source shall be responsible for notifying the permitting ~~ecology~~

~~or the~~ authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction shall maintain an operation and maintenance plan for process and control equipment. The plan shall reflect good industrial practice and shall include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan shall be reviewed and updated by the source owner or operator at least annually. A copy of the plan shall be made available to ecology upon request.

(5) Report of closure. A report of closure shall be filed with ~~ecology or the~~ permitting authority within ninety days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator shall report to ~~ecology or the~~ permitting authority within ninety days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW 70.94.030(~~(+17+)~~)(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

[Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-

40), § 173-400-101, filed 3/22/95, effective 4/22/95; 94-10-042 (Order 93-39), § 173-400-101, filed 4/29/94, effective 5/30/94.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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))~~ More than de minimis 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))~~ is 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)) more than de minimis 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)) <u>Lead</u>                                 | ((2.0))<br><u>0.005</u> |
| ((Sulfur dioxide)) <u>Nitrogen oxides</u>                       | 2.0                     |
| ((Particulate Matter (PM))) <u>PM-10</u>                        | ((1.25))<br><u>0.75</u> |
| <u>PM-2.5</u>                                                   | <u>0.5</u>              |
| ((Fine Particulate (PM10))) <u>Total suspended particulates</u> | ((0.75))<br><u>1.25</u> |
| ((Volatile organic compounds (VOC))) <u>Sulfur dioxide</u>      | 2.0                     |
| ((Lead)) <u>Volatile organic compounds (VOC)</u>                | ((0.005))<br><u>2.0</u> |

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-102, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-102, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-102, filed 3/22/95, effective 4/22/95.]

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07,  
effective 10/7/07)

**WAC 173-400-104 Registration fees.** (~~Fees can be found in  
chapter 173-455 WAC.~~) See chapter 173-455 WAC for ecology's  
registration fee schedule.

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331,  
[70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. 07-19-005  
(Order 07-10), § 173-400-104, filed 9/6/07, effective 10/7/07.  
Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), §  
173-400-104, filed 1/10/05, effective 2/10/05. Statutory  
Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.]  
00-23-130 (Order 98-27), § 173-400-104, filed 11/22/00,  
effective 12/23/00. Statutory Authority: Chapter 70.94 RCW.  
95-07-126 (Order 93-40), § 173-400-104, filed 3/22/95, effective  
4/22/95.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07,  
effective 6/8/07)

**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. Emission 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), whichever 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 (~~October 1, 2006~~) July 1, 2010)<sup>20</sup> or<sup>20</sup> procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of (~~July 12, 1990~~) September 20, 2004, 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

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<sup>20</sup> The word "or" plays an important function here.

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~~) 2010).

(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))~~ emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement ((under)) contained in 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards. ~~Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.~~<sup>21</sup>

(ii) Not subject to an applicable emission standard.

~~((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

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<sup>21</sup> Subsection (5) lists source categories that require CEMs. New Subsection (8) sets data recovery requirements for CEMS. This sentence fits better in new subsection 8 than in subsection (5).

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)<sup>22</sup> Continuous emission monitoring system operating requirements. Continuous emission monitoring systems (CEMS) required by a standard or requirement in 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of those federal standards must meet the CEMS performance specifications and data recovery requirements imposed by those standards. All continuous emission monitoring systems (CEMS) required under an order, PSD permit, operating permit, or regulation issued by a permitting authority and not ~~required~~ subject to CEMS performance specifications and data recovery

<sup>22</sup> The Coalition edits to this subsection would ensure that some set of performance specs and data recovery requirements applies to every CEMS. If the CEMS is regulated by an EPA performance standard, then you follow the performance specs and data recovery requirements of that standard. If the CEMS is not subject to EPA performance standards but it is subject to data recovery requirements imposed by a local air authority regulation, follow those rules. If neither EPA nor the local air authority has imposed data recovery requirements and performance specs for the CEMS, then follow the rules in this subsection. It is valuable to the regulated community not only to have a set of performance specs and data recovery rules for every CEMS, but to have only **one** set of those requirements for each monitor.

requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75 or the regulations of the permitting authority<sup>7</sup> must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect on July 1, 2010, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block<sup>23</sup> averages. All monitoring

<sup>23</sup> Method 9, Section 2.5 (Data Reduction), states that opacity shall be determined as an average of 24 consecutive observations recorded at 15 second intervals, that a set consists of 24 consecutive observations, and that "in no case shall two sets overlap." The same conventions should apply for COMS data reduction, to ensure that Method 9 results are comparable to those

data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit.

(d) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(e) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. The report required by this section may be combined with any excess emission report required by WAC 173-400-108. This report shall include:

(i) The date, time period, magnitude (in the units of the standard) and cause of each emission that exceeded an applicable emission standard;

(ii) The date and time for all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;

(iii) The number of hours that the equipment (required to be monitored) operated each month and the number of valid hours of monitoring data that the monitoring system recovered each

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from a COMS.

month;

~~(iv) The date and time of all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;~~<sup>24</sup>

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(v) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(vi) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 9095 percent of the hours that the equipment (required to be monitored) was operated each monthday;<sup>25</sup>

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(vii) The results of all cylinder gas audits conducted during the month; and

(viii) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(9) 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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-105, filed 5/8/07, effective 6/8/07.

Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), §

<sup>24</sup> Paragraphs (ii) and (iv) are identical.

<sup>25</sup> The edits to this section align the reporting requirement with the data recovery requirement in (8)(a).

173-400-105, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-105, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-105, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-105, filed 9/13/96, effective 10/14/96; 93-18-007 (Order 93-03), § 173-400-105, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-105, filed 2/19/91, effective 3/22/91; 87-20-019 (Order 87-12), § 173-400-105, filed 9/30/87.]

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-107 Excess emissions.** This section is in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section. This section is ~~not effective~~ starting on that date.

(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.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-107, filed 8/20/93, effective 9/20/93.]

NEW SECTION

**WAC 173-400-108 Excess emissions reporting.** This section ~~is not in~~takes effect ~~on~~until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.

(1) 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, per the criteria under WAC 173-400-109,~~<sup>26</sup> must be reported to the permitting authority as soon as possible, but in no case later than twelve hours after the excess emissions were discovered. Other excess emissions must be reported to the permitting authority within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615.

(2) For those sources not required to report under WAC 173-401-615, the report must contain at least the following information:

- (a) Date, time, duration of the episode;
- (b) Known causes;

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<sup>26</sup> The Coalition agrees with Weyerhaeuser that there is no need to require immediate reporting of every unavoidable excess emission event.

(c) For exceedances of nonopacity emission limitations, an estimate of the quantity of excess emissions;

(d) The corrective actions taken; and

(e) The preventive measures taken or planned to minimize the chance of recurrence.

(3) For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must include the following information in addition to that required in subsection (2) of this section:

(a) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage;

(c) Any additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

[]

NEW SECTION

**WAC 173-400-109 Unavoidable excess emissions.** This section ~~takes is not in~~ effect ~~until~~on the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, regulation, permit, or regulatory order. Unavoidable excess emissions are subject to injunctive relief but not penalty.

(2) (a) The owner or operator of a source shall have the burden of proving to the permitting 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 (3), (4) and (5) of this section.

(b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.

(c) This section does not apply to exceedances of emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal

standards.

(d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.

(3) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:

(a) Excess emissions could not have been prevented through careful planning and design;

(b) Startup or shutdown was done as expeditiously as practicable;

(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;

(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and

(f) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under subsection (5) of this section.

(4) Maintenance. Excess emissions during scheduled maintenance will be considered unavoidable if the source reports as required by WAC 173-400-108 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.

(5) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 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;

(c) The operator took immediate and appropriate corrective action in a manner consistent with safety and 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; and

(d) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage.

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AMENDATORY SECTION (Amending Order 05-19, filed 5/20/09,  
effective 6/20/09)

27

**WAC 173-400-110 New source review (NSR) ~~for sources and portable sources.~~**<sup>27</sup> ((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)) 173-400-111 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

(b) This section applies to the establishment of any new source, as the term new source is defined in WAC 173-400-030.<sup>28</sup> ~~sources and stationary sources as defined in RCW 70.94.030~~ ((-22)), but does not include nonroad engines. Nonroad engines are regulated under WAC 173-400-035.

28

<sup>27</sup> The state and federal air acts both limit NSR to new and modified stationary sources. The term “source” is used in multiple ways in both the state and federal statutes, but not in the NSR program. RCW 70.94.152 authorizes Ecology to “require notice of the establishment of any proposed new sources . . .” RCW 70.94.030 defines a “new source” as the construction or modification of a stationary source. A “source” is a more ambiguous term than “stationary source.” For instance, mobile sources are sources but not stationary sources. The Coalition requests that Ecology limit the scope of NSR to the construction or modification of a stationary source, as authorized by the legislature.

<sup>28</sup> RCW 70.94.030(17).

~~(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 beginning actual construction 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.) ) and WAC-173-400-030.~~

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;

(ii) "New source" includes ((any)):

(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030 ((, and any new or modified toxic air pollutant source, as defined in WAC 173-460-020.

~~(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 beginning actual construction 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 subpart AAA, Wood stoves and except subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines) and subpart JJJJ~~

~~(Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) as they apply to emergency stationary internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(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) except subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) as it applies to emergency or limited use stationary reciprocating internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(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.) ) :~~

(B) The construction, modification or relocation of aA portable source as defined under in WAC 173-400-030, except where exempted under WAC 173-400-036;<sup>29</sup> and

(C) The establishment of Aa new or modified toxic air pollutant source, as defined under WAC 173-460-020.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications ~~and orders of approval for sources that are not major sources~~ shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW, unless the project requires a PSD permit or constitutes a new major

<sup>29</sup> This sentence is important, because WAC 173-400-036 describes circumstances in which relocation of a portable source does not trigger NSR, but the rules need to state that NSR applies to portable sources except where exempted under 036.

stationary source or major modification in a non-attainment area. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9) or during a department-conducted remedial action, through the procedures outlined in WAC 173-340-710(9).

NOTE: The following subsection attempts to summarize the substantive requirements for approval of every possible type of new or modified source. The requirements in question are spread out through WAC 173-400-113, 720, 820 and maybe other sections. Because the applicability rules are complex, they are difficult to summarize, and this section contains several errors. For instance, subsection (2)(a) does not limit its applicability to projects located in the nonattainment area, nor does it require that the project be major for the pollutant for which the area is nonattainment. Another example: proposed (2)(b) states that a PSD permit is required for a project located in an attainment area if the new source is a major stationary source or major mod under the PSD rules. But a project could be major for a pollutant for which the area is a nonattainment area. The PSD definitions of major stationary source and major modification do not require that the project be in an attainment area. If the project was major for a pollutant for which the area is nonattainment, it would not require a PSD permit, and (2)(b) would be wrong.

Rather than trying to summarize all the major NSR applicability rules in one subsection, the Coalition recommends that Ecology follow the approach here that it follows in WAC 173-400-113(5): “If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, then the source must meet all applicable requirements of that program.” Our suggested edits to subsection (2) follow the template that Ecology uses in 113(5):

30

(2) Approval requirements.<sup>30</sup> ~~Requirements for new sources, modifications to existing sources, new major stationary sources and major modifications to sources.~~

31

(a)<sup>31</sup> A notice of construction application must be filed and an order of approval must be issued by the permitting authority prior to the establishment of any new source except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.

(b) If the proposed project is a new major stationary source or a major modification, located in a designated nonattainment area, and the project meets the applicability criteria in WAC 173-400-820, the project is subject to the permitting requirements of WAC 173-400-830 through 850.

~~A nonattainment new source review approval issued per the requirements of WAC 173-400-830 is required for those pollutants to be emitted by the proposed new source or stationary source for which the area is classified as nonattainment if:~~

~~—— (i) The proposed new source is a major stationary source per the criteria in WAC 173-400-810 and 173-400-820; or~~

~~—— (ii) The proposed modification to a stationary source is a major modification to a major source per the criteria in WAC-~~

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<sup>30</sup> This subsection outlines the criteria that govern the review of an NOC application. The basic criteria in 173-400-113 apply to every application. Other criteria, e.g. PSD, apply to some applications but not others. The Coalition recommends two basic changes to this subsection. First, Ecology should lead with the WAC 173-400-113 criteria that apply to every application. Second, Ecology should not try to summarize in this subsection the specific rules governing the scope of major NSR review under PSD or Subpart D. It is better in this introductory section to point the reader to the specific sections that lay out in detail the applicability criteria of those programs.

<sup>31</sup> Ecology should lead with this paragraph, which states the basic NSR requirement for all projects.

~~173-800-810 and 173-400-820.~~

(b) If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, the project is subject to the PSD permitting requirements of WAC 173-400-700 through 750.

~~A PSD permit issued per the requirements of WAC 173-400-730 is required for those pollutants to be emitted by the proposed new source or stationary source for which the area is classified as attainment or unclassified if:~~

~~— (i) The new source is a major stationary source per the criteria in WAC 173-400-710 and 173-400-720; or~~

~~— (ii) The proposal is a major modification per the criteria of WAC 173-400-710 and 173-400-720.~~

(d) If the proposed project will increase emissions of toxic air pollutants regulated under chapter 173-460 WAC, the project must meet all applicable requirements of that program.

~~(c) A notice of construction order of approval must be issued by the permitting authority prior to the establishment of any new source except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.~~

(3)<sup>32</sup> **Modifications that require changes in an approval order and change of conditions.**

<sup>32</sup> Subsection (3) addresses two requirements. Subsection (a), which addresses modifications that require an increase in a limit contained in an approval order, works fine. Subsection (b), which addresses generic changes to the conditions of an approval order, conflicts with Section 111(8). It is also legally incorrect, in that changes to an approval order do not require an NOC application unless those changes result from a modification. The Coalition proposes to retain subsection (a) and strike subsection (b).

~~(a) New source review ((of a modification is 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))~~ is required for any modification to a stationary source that requires an increase in a plant-wide cap or causes an increase in a unit specific emission limit.

~~(b)<sup>33</sup> All sources regulated by ecology must submit a notice of construction application when requesting a change of conditions.~~

**(4) Emission unit and activity exemptions.**

~~((Except as provided in subsection (2) of this section,))~~  
The construction or modification of emission units in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission 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))~~. Except that asphalt plants are not exempt

<sup>33</sup> This sentence conflicts with 111(8) and exceeds Ecology's authority under RCW 70.94.152, for the reasons set forth in the preceding note.

from this section;

(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 and maintenance;

(viii) Insulation application and maintenance (~~(, excluding products for resale)~~);

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that are not related to new or modified stationary sources or portable stationary sources.

(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)~~). Except that wholesale distributors of lubricating oils are not exempt from this section;

(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 ~~((eff))~~) cubic feet);

(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))~~) listed in chapter 173-460 WAC, max. VP 550 mm ~~((Hg-g))~~) mercury at 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))~~) New or modified emission units with combined aggregate heat inputs of combustion units (excluding emergency engines exempted by subsection (4) ~~((h))~~) (g) ~~((xxxix))~~) of this section), ~~((&))~~) less than or equal to 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 using used oil, per the requirements of RCW 70.94.610;

(iii) ~~&~~ 400,000 Btu/hr using wood waste or paper;

(iv) ~~&~~ 1,000,000 Btu/hr using gasoline, 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~~  
) mercury at 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)~~) using only gases that are not toxic air pollutants listed in 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 research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

(v) 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;

(xxxii) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxiii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiiii) (~~Non~~~~toxic~~ ~~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 @) mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;

(xxxiv) Surface coating, aqueous solution or suspension

containing ~~1~~ 1% (by weight) VOCs, (~~and/~~) or 1% (by weight) toxic air pollutants as (~~defined~~) listed in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ~~1~~ 1% VOCs (by weight) (~~+~~) or 1% (by weight) toxic air pollutants. Acid solutions used on metallic substances (~~(, acid solutions)~~) are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) (~~and/~~) or 1% (by weight) toxic air pollutants as (~~defined~~) listed in chapter 173-460 WAC.

(xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency (~~(generators powered by)~~) internal combustion engines with (~~(a maximum power of)~~) an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities (~~(GDFs) regulated by chapter 173-491 WAC~~) with annual gasoline throughputs less than those specified in WAC 173-491-040 (4) (a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) **Exemptions based on emissions.**

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) Construction of 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)~~) Table 110(5) Exemption levels 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 must 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 minimis 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 or modified emission 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)) Greenhouse gas emissions are exempt from new source review requirements except that a new major stationary source that is major for GHGs, or a major modification that is major for GHGs, as those terms are defined in 40 CFR 52.21(b), requires a PSD permit as provided in WAC 173-400-720. A permitting authority may, upon request of the owner or operator, include in a notice of construction approval order conditions that limit the increase in emissions of GHGs from a new source or modification to avoid PSD permitting requirements.<sup>34</sup>~~when the emission increase from the new or modified source is equal to or greater than 75,000 tons per year, CO<sub>2</sub>e.~~

34

Table 110(5) Exemption levels ((table)):

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<sup>34</sup> The Coalition appreciates Ecology's decision to exempt GHG emission increases from minor new source review. In choosing language to achieve that result, the Coalition urges Ecology to expressly exempt those projects that do not require a PSD permit. This approach will ensure no gap in coverage between the scope of the PSD program and the scope of Ecology's de minimus exemption. The version in the proposed rule would require Washington permitting authorities to do NSR on projects that are exempt from PSD review. E.g., a new major stationary source with a GHG PTE of 80,000 tpy CO<sub>2</sub>e that does not require a PSD permit for any other pollutant.

The Coalition also supports Boeing's recommendation to include in the exemption language express authority for Ecology to include synthetic minor GHG emission limits in an approval order.

| POLLUTANT                                                                             | LEVEL (TONS PER YEAR)                                                   |
|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <del>((a) Total Suspended Particulates</del>                                          | <del>1.25</del>                                                         |
| <del>(b) PM-10</del>                                                                  | <del>0.75</del>                                                         |
| <del>(c) PM 2.5</del>                                                                 | <del>0.5</del>                                                          |
| <del>(d) Sulfur Oxides</del>                                                          | <del>2.0</del>                                                          |
| <del>(e) Nitrogen Oxides</del>                                                        | <del>2.0</del>                                                          |
| <del>(f) Volatile Organic Compounds, total</del>                                      | <del>2.0</del>                                                          |
| <del>(g) Carbon Monoxide</del>                                                        | <del>5.0</del>                                                          |
| <del>(h) Lead</del>                                                                   | <del>0.005))</del>                                                      |
| <u>Carbon monoxide</u>                                                                | <u>5.0</u>                                                              |
| <u>Lead</u>                                                                           | <u>0.005</u>                                                            |
| <u>Nitrogen oxides</u>                                                                | <u>2.0</u>                                                              |
| <u>PM-10</u>                                                                          | <u>0.75</u>                                                             |
| <u>PM-2.5</u>                                                                         | <u>0.5</u>                                                              |
| <u>Total suspended particulates</u>                                                   | <u>1.25</u>                                                             |
| <u>Sulfur dioxide</u>                                                                 | <u>2.0</u>                                                              |
| <u>Volatile Organic Compounds, total</u>                                              | <u>2.0</u>                                                              |
| <del>((i)) Ozone Depleting Substances <u>(in effect on July 1, 2000, total)</u></del> | <del>1.0</del>                                                          |
| <del><u>(in effect on July 1, 2000), total</u></del>                                  | <del><u>75.000</u></del>                                                |
| <del><u>Greenhouse gases expressed as CO<sub>2</sub>e</u><sup>35</sup></del>          |                                                                         |
| <del>((j)) Toxic Air Pollutants</del>                                                 | The de minimis emission rate specified for each TAP in WAC 173-460-150. |

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(6) (~~Application processing - completeness determination.~~

~~(a) Within thirty days after receiving a notice of construction application, the permitting authority must 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.~~

<sup>35</sup> The exemption paragraph inserted as 110(5)(b) makes it unnecessary to include GHGs in Table 110(5).

~~(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 must 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 must 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 must 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 must:~~

~~(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 must 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 construction is not commenced 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, 173-400-720 and 173-460-040(3), as applicable.~~

~~(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.~~

~~(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 173-455-120 applies to requests filed with ecology 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.)~~ Portable source with notice of approval. A portable source is allowed to operate without obtaining a site-specific or a permitting authority specific approval order if the portable source complies with the provisions of WAC 173-400-036.<sup>36</sup>

36

[Statutory Authority: Washington Clean Air Act, RCW 70.94.152. 09-11-131 (Order 05-19), § 173-400-110, filed 5/20/09, effective 6/20/09. Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-110, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-110, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-110, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. 98-15-129 (Order 98-04), § 173-400-110, filed 7/21/98, effective 8/21/98. Statutory Authority: RCW 70.94.152. 98-01-183 (Order

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<sup>36</sup> The exemption stated in Ecology's version of this paragraph is broader than the exemption granted by 173-400-036. If Ecology accepts the Coalition's proposed edits to subsection (2), this subsection becomes unnecessary.

96-01), § 173-400-110, filed 12/23/97, effective 1/23/98.  
Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-110, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-110, filed 2/19/91, effective 3/22/91.  
Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-110, filed 4/15/83. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. 81-03-002 (Order DE 80-53), § 173-400-110, filed 1/8/81. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-110, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-110, filed 5/8/79; Order DE 76-38, § 173-400-110, filed 12/21/76. Formerly WAC 18-04-110.]

NEW SECTION

**WAC 173-400-111 Processing notice of construction applications ~~for sources, stationary sources and portable sources~~.**<sup>37</sup> (1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must 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.

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<sup>37</sup> See note 27 above

(b) A complete application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under 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). The applicant must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. 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 must be processed

in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

38

(3)<sup>38</sup> Procedural requirements ~~Criteria~~ for approval of a notice of construction application. An order of approval cannot be issued until the public notice requirements of WAC 173-400-171 have been satisfied and ~~approved unless the following criteria are met:~~

39

~~(a) The requirements of WAC 173-400-113;~~

~~(b) The requirements of WAC 173-400-200;~~<sup>39</sup>

~~(c) The requirements of WAC 173-400-800 through 173-400-860, as applicable; and~~

~~(d) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.~~

(4) Final determination - time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final

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<sup>38</sup> In WAC 173-400-110(2) Ecology plans to point applicants to various NSR approval criteria that an application might trigger. In WAC 173-400-113 Ecology plans to list substantive criteria that an NOC application must satisfy. Ecology now plans to resurrect WAC 173-400-112 and to include in it additional substantive approval criteria. It is confusing and frustrating to applicants to sprinkle approval criteria throughout the chapter. For that reason, the Coalition recommends that Ecology cover only procedural requirements in Section 111, and move all substantive criteria (like the stack height limits in 173-400-200) to WAC 173-400-113.

<sup>39</sup> The Coalition proposes to move this reference to WAC 173-400-113.

decision.

(b) Every final determination on a notice of construction application must 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.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide 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.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval ~~for~~ to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) 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 under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced 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 by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source in a nonattainment area or a major modification of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) 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.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the 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 the permitting 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,~~<sup>40</sup> 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 173-400-111, 173-400-113, 173-400-720, 173-400-830, and 173-460-040 as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

~~(c) All sources regulated by ecology must file a notice of construction application when requesting a change of conditions or revisions to an order of approval.~~<sup>41</sup>

(9) New source review fees.<sup>42</sup> Chapter 173-455 WAC lists the fees payable to ecology for processing notice of construction applications, construction time extensions and requests to change ~~the~~of conditions in an approval order.

<sup>40</sup> Most requests to change approval order conditions are intended to adjust unachievable BACT limits.

<sup>41</sup> NOC applications are limited by statute to construction of a new source or modification of an existing one. Changing the conditions in an approval order is neither of those actions. Current WAC 173-400-110(10) states that "This rule does not prescribe the exact form that such requests must take." Ecology should retain that language here. WAC 173-455-120(3)(b) already authorizes recovery of costs for modifying an approval order, and it does not assume that the request will take the form of an NOC application.

<sup>42</sup> A heading would be helpful here.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

[]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**WAC 173-400-112** (~~(Requirements for new sources in nonattainment areas.)~~) **Reserved.** (~~(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 NO<sub>x</sub> 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                  |

|                                        |         |
|----------------------------------------|---------|
| <del>Volatile organic compounds:</del> | 40 tpy  |
| <del>Lead:</del>                       | 0.6 tpy |
| <del>PM 10:</del>                      | 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.)~~

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-112, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-112, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-112, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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.

43 (3) If the proposed new source is a major stationary source or the modification is a major modification of an existing major stationary source (as those terms are defined in WAC 173-410-810),<sup>43</sup> allowable emissions from the proposed new source or  
44 modification will not ~~delay the attainment date for an area not in attainment ((nor)), or~~<sup>44</sup> 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))

45 (4) (a)<sup>45</sup> A proposed major stationary source or major modification will be considered not to cause or contribute to a violation of a national ambient air quality standard if ~~the~~  
allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the

<sup>43</sup> The Coalition follows Boeing in recommending that this requirement be limited to major projects, as specified in 40 CFR 51.165(b)(1).

<sup>44</sup> We cannot find any EPA source for this language. It is problematic because it restates the “cause or contribute” formulation in the next sentence, without providing any objective test of when a project “delays the attainment date” for a nonattainment area.

<sup>45</sup> The edits to this paragraph come almost verbatim from 40 CFR 51.165(b)(2). They are important to the Coalition, because they provide an objective test for when the ambient impact of a project causes an unacceptable impact in a nonattainment area.

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:

Table 4a: Cause or Contribute Threshold Values for Nonattainment Area Impacts<sup>46</sup>

| Pollutant        | Annual Average        | 24-Hour Average     | 8-Hour Average        | 3-Hour Average       | 1-Hour Average       |
|------------------|-----------------------|---------------------|-----------------------|----------------------|----------------------|
| CO-              | -                     | -                   | 0.5 mg/m <sup>3</sup> | -                    | 2 mg/m <sup>3</sup>  |
| SO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup> | -                     | 25 µg/m <sup>3</sup> | 30 µg/m <sup>3</sup> |
| PM <sub>10</sub> | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup> | -                     | -                    | -                    |
| NO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | -                   | -                     | -                    | -                    |

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~~((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)) (b) A project that results in a projected impact inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction adequate to reduce the projected impacts to the above values or less. If the proposed project is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new source or modification.~~

<sup>46</sup> This table should be updated to include all of the current EPA SILs, and to delete the one hour SIL for SO<sub>2</sub> which has no EPA counterpart. The latest version of this table appears in the October 20, 2010 Federal Register notice that adopted PM 2.5 increments and SILs. See 75 Fed.Reg. at 64902.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, then the source must meet(~~s~~) all applicable requirements of that program.

(6) The project must not violate the stack height and dispersion limitations<sup>47</sup> in WAC 173-400-200.

~~((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.))~~

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-113, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-113, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-113, filed 8/20/93, effective 9/20/93.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**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.

<sup>47</sup> Moved from WAC 173-400-111.

(1) **Adoption by reference.**

(a) 40 CFR Part 60 and Appendices in effect on (~~October 1, 2006, is~~) July 1, 2010, are 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, GGGG, JJJJ, 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, DDDD, FFFF, HHHH (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).

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-115, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-115, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-115, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] 00-23-130 (Order 98-27), § 173-400-115, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.785. 98-22-019 (Order 98-02), § 173-400-115, filed 10/23/98, effective 11/23/98. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-115, filed 9/13/96, effective 10/14/96; 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-115, filed

4/15/83; 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

**WAC 173-400-116 ((New source review fees.)) Increment protection.** ((Fees can be found in chapter 173-455 WAC.)) (1) Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published~~given~~ in 40 CFR 52.21(c) as ~~published in the Federal Register as final rule on October 6, 2010~~ amended through October 20, 2010.<sup>48</sup>

(3) Exclusions from increment consumption. The following

<sup>48</sup> It is important to pick up the new PM2.5 increments and SILs.

concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by the administrator of the environmental protection agency. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the administrator.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national

ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. 07-19-005 (Order 07-10), § 173-400-116, filed 9/6/07, effective 10/7/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-116, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-116, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 96-19-054 (Order 94-35), § 173-400-116, filed 9/13/96, effective 10/14/96. Statutory Authority: RCW 70.94.153 and 70.94.154. 94-17-070, § 173-400-116, filed 8/15/94, effective 9/15/94.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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. The old actual emissions rate is the average emissions rate occurring during the most recent twenty-four-month period preceding the request for an ERC. An alternative twenty-four-month period from within the previous five years may be accepted by the permitting authority if the owner or operator

of the source demonstrates to the satisfaction of the permitting authority that the alternative period is more representative of actual operations of the unit or source.

(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 reduction must be: Greater than otherwise required by an applicable emission standard or order of approval, permanent, quantifiable, and federally enforceable.

(d) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

~~((d))~~ (e) 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)))~~ 173-400-113(4) or 173-400-830, nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, NESHAPS(~~(, for Source Categories)~~), BACT, or LAER.

~~((e))~~ (f) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress in an amendment to the state implementation plan.

(g) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a federally

enforceable 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))~~ (h) 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))~~ (h) 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))~~ (h) 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. The emission reduction credit listed in the certificate shall be less than the amount of emission reduction achieved by the source.

(c) The certificate of emission reduction credit shall include the expiration date of the credit.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-131, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-131, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-131, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-131, filed 2/19/91, effective 3/22/91.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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)~~) 173-400-830 or 173-400-113(~~(-3)~~) (4) or to demonstrate a creditable emission reduction for permitting under WAC 173-400-720.

(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~~) five 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)~~), issued ERCs may be discounted as necessary to reach attainment.

(a) Issued ERCs may be discounted if:

(i) Reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard;

(ii) The ambient standard cannot be met through controls on operating sources; and

(iii) The plan must be revised.

(b) The discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

(c) ERCs may be discounted by the permitting authority only after notice to the public according to WAC 173-400-171 and the owners of affected ERCs.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-136, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-136, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-136, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-136, filed 2/19/91, effective 3/22/91.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

**WAC 173-400-171 Public ((~~involvement~~) notice.** The purpose of this section is to specify the requirements for notifying the public about air quality permit actions and to provide opportunities for the public to participate in those permit actions. This section applies statewide except that a local air authority may apply its own public notice requirements in lieu of those set forth in this section for an action to be taken by the authority.<sup>49</sup>

(1) **Prevention of significant deterioration, and relocation of portable sources.**

<sup>49</sup> This change is important. Local air authorities apply their own public notice requirements, and many of those rules are SIP approved. See, e.g. Southwest Clean Air Agency Section 400-171, Northwest Clean Air Agency Section 301 and PSCAA Regulation I, Section 6.06. Neither permit applicants nor local air authorities with their own public notice rules should be required to follow two different sets of public notice requirements, and an action taken by an authority should not be subject to challenge for failure to follow WAC 173-400-171.

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-720. Compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) Internet ((notification)) notice of ((receipt of an)) application.

(a) For those applications and actions not subject to a mandatory public ((notice and)) comment period per subsection ((2)(a)) (3) of this section, the permitting authority ((will either:

~~(i) Post on the permitting authority's internet web site)~~ must post 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)~~ on the permitting authority's internet web site.

(b) ((For)) The internet ((notification, notice shall)) posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting ((shall)) must include a 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.

((e)) (d) Requests for a public comment period ((shall))

must be submitted to the permitting authority in writing via letter, fax, or electronic mail ~~((within fifteen days of its))~~ during the fifteen-day internet posting period.

(e) A public ~~((notice and))~~ comment period ~~((shall))~~ must be provided ~~((pursuant to subsections (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 fifteen-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 web site.~~

~~(2) Actions))~~ (3) Actions subject to a mandatory public ((notice and)) comment period.

~~((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: 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)) A public comment period is mandatory for the following applications, orders, and actions:~~<sup>50</sup>

<sup>50</sup> The Coalition urges Ecology to retain the current version of this paragraph. The difference between the current version and the proposed replacement is that the current version requires public notice prior to Ecology's approval of various listed applications, whereas the proposed version would require public notice of the filing of the application itself. The comment

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for ((any)) a new or modified source, including the initial application for operation of a portable source, if there is 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 emissions of a toxic air pollutant above the applicable small quantity emission rate in WAC 173-460-150, and which would cause an exceedance of one or more acceptable source impact levels ~~as~~ 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))~~ (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 ((October 1, 2006)) July 1, 2010) as part of review under WAC 173-400-110, ((173-400-112,)) 173-400-113, 173-400-117((, or 173-400-720)); or

~~((iii))~~ (d) Any order to determine reasonably available control technology, RACT; or

~~((iv))~~ (e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

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opportunity should be provided for Ecology's proposed action, and the current version ensures that.

~~((v))~~ (f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, 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))~~ (g) An order to authorize a bubble; or

~~((vii))~~ (h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136(6); or

~~((viii))~~ (i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

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

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

~~((xi))~~ (l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

~~((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, 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.**)~~ (m) Any application or other action for which the permitting authority determines that there is substantial public interest.

(4) **Advertising the mandatory public comment period.**

Public notice of all ~~applications, orders, or proposed~~ actions<sup>51</sup> listed in subsection (3) of this section must be published in a newspaper of general circulation in the area where the source or sources are or will be located. This public notice ~~((shall))~~ can be ~~((made))~~ published only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made. The notice must be published before any of the ~~applications or other~~ actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice. ~~((Public notice shall include:~~

~~(a) Availability for public inspection.))~~

(5) **Information available for public review.** 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

<sup>51</sup> This is important. Ecology should not be required to publish notice of the receipt of an application. The notice should be provided for Ecology's proposed decision on the application.

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:)) (6)~~

**Published notice components.**

(a) The notice must include:

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

(ii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(iii) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(iv) A brief description of the order or other action proposed by the permitting authority;

(v) The location (of the) where those documents made available for public inspection may be reviewed;

~~((iv))~~ (vi) A thirty-day period for submitting written

comment to the permitting authority;

~~((v))~~ (vii) A statement that a public hearing ~~((may))~~ will be held if the permitting authority determines ~~((within a thirty-day period))~~ that there is significant public interest ~~((exists or))~~;

(vii) The time, date and location of the public hearing for those ecology only 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)~~ WAC 173-400-171(12);

~~((vii))~~ (viii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas ~~((in WAC 173-400-117 (5) (e))~~), public notice ~~((shall either explain))~~ must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval; and

~~((viii))~~ (c) For a redesignation of an area under WAC

173-400-118, (~~public~~) the notice (~~shall~~) must 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))~~ **(7) Length of the public comment period.**

(a) The public comment period must be at least (~~the thirty-day period for written comment specified in the public notice~~) thirty days long.

(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~~) cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

~~((5) Public hearings.~~

~~(a))~~ **(8) Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, fax, or electronic

mail. A request must indicate the interest of the entity filing it and why a hearing is warranted.

**(9) Setting the hearing date and providing hearing notice.**

If the permitting authority ((may hold a public hearing if it)) determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

~~((b))~~ **(10) Notice of public hearing.**

(a) At least ~~thirty~~<sup>52</sup> ~~fifteen~~ days prior to the hearing the permitting authority will provide notice of the hearing as follows:

(i) Publish the notice of public hearing in a newspaper of general circulation in the area where the source or sources are or will be located; and

(ii) Mail the notice of public hearing to the applicant and to any person who submitted written comments on the application or requested a public hearing.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) The applicant must pay all publishing costs associated with meeting the requirements of this subsection.

**(11) Notifying the EPA.** The permitting authority must send

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<sup>52</sup> The requirement to provide 30 days' notice of a public hearing has no basis in EPA's minimum public notice requirements, 40 CFR 51.161. It has the practical effect of increasing the public comment period to 75 days in every instance in which someone requests a public hearing in their comments filed on the 30th day. An agency should have the ability to schedule a public hearing on shorter notice than 30 days, so that the comment period can be limited to close to the 30 day period envisioned by 171(7).

a copy of the notice for all actions subject to the mandatory public comment period to the EPA Region 10 regional administrator.

**(12) Special requirements for ecology only actions.**

(a) Ecology must ((hold a hearing)) comply with the requirements of 40 CFR 51.102, in effect on July 1, 2010, 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 including plans for attainment, maintenance, and visibility protection;

(ii) A Washington state recommendation to EPA for designation, redesignation, or a change of boundaries of an attainment area, or nonattainment area, or an unclassifiable 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))~~ Class I, II, or III areas 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))~~ (b) The notice must comply with subsection (10) of this section.

**(13) 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.

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-171, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-171, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. 01-17-062 (Order 99-06), § 173-400-171, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. 95-07-126 (Order 93-40), § 173-400-171, filed 3/22/95, effective 4/22/95; 93-18-007 (Order 93-03), § 173-400-171, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-171, filed 2/19/91, effective 3/22/91.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 nonroad 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) (e))~~ 173-400-830 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~~) Compliance with WAC 173-400-171 is required for 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)~~) 173-400-830 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 subsection (5) of this section.

(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 (a) or (b) of this subsection 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 thirty-one days after an application for coverage is received by the permitting authority, 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 a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-560, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 actual 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

programs in WAC 173-400-110 and 173-400-800 through 173-400-860.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07),  
§ 173-400-700, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07,  
effective 6/8/07)

**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~~) can may 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~~) will:

(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:~~

| <u>Pollutant</u> | <u>Annual Average</u> | <u>24-Hour Average</u> | <u>8-Hour Average</u> | <u>3-Hour Average</u> | <u>1-Hour Average</u> |
|------------------|-----------------------|------------------------|-----------------------|-----------------------|-----------------------|
| CO               | -                     | -                      | 0.5 mg/m <sup>3</sup> | -                     | 2 mg/m <sup>3</sup>   |
| SO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup>    | -                     | 25 µg/m <sup>3</sup>  | 30 µg/m <sup>3</sup>  |
| PM <sub>10</sub> | 1.0 µg/m <sup>3</sup> | 5 µg/m <sup>3</sup>    | -                     | -                     | -                     |
| NO <sub>2</sub>  | 1.0 µg/m <sup>3</sup> | -                      | -                     | -                     | -                     |

~~An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.)) WAC 173-400-113 (1), (3), and (4).~~

(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;~~<sup>53</sup>

<sup>53</sup> This subsection addresses requirements with which a PSD permit must assure compliance. Paragraphs (iii) and (iv) of this subsection described permit processing requirements, but they are

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~~(v) WAC 173-400-116 - Increment protection;~~<sup>54</sup> and

~~((v))~~ (vi) The following subparts of 40 CFR 52.21, in effect on October ~~20~~~~(1, 2006)~~~~6~~, 2010, which are adopted by reference for purposes of WAC 173-400-700 through 750.<sup>55</sup>

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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.                                                                                |
| <del>((40 CFR 52.21 (x)</del> | <del>Vacated by federal Court Decision.</del>                                                     |
| <del>40 CFR 52.21 (y)</del>   | <del>Vacated by federal Court Decision.</del>                                                     |
| <del>40 CFR 52.21 (z)</del>   | <del>Vacated by federal Court Decision.)</del>                                                    |

not requirements that will be implemented through a permit.

<sup>54</sup> The increment protection requirements in WAC 173-400-115 are not new source review permit processing requirements. The obligation of a PSD permit applicant to show that the project will not cause increment exceedances is found in 40 CFR 52.21(k).

<sup>55</sup> The definitions that follow are not used in the nonattainment major NSR rules.

40 CFR 52.21 (aa) Actuals Plantwide  
Applicability Limitation.  
~~((40 CFR 52.21 (bb) Severability clause.~~  
40 CFR 52.21 (cc) ~~Vacated by federal Court  
Decision.))~~

~~Sections not listed above are adopted elsewhere in this rule, reserved, stayed, not part of the 40 CFR 51.166 requirements, or are not delegable.~~<sup>56</sup>

(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 (1) (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, 173-400-720, and 173-400-730."

<sup>56</sup> This statement is explanatory in nature, and should not be included in the rules.

(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 (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).

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Such report ~~((shall))~~ ~~will~~ shall<sup>57</sup> 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 (r) (6) (iii) of this section; 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

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<sup>57</sup> Imperatives in EPA rules should not be revised to suit the Code Reviser's style manual.

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 (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.

(F) 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.

(G) 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.

(H) 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).

(I) 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).

[Statutory Authority: RCW 70.94.395 and 70.94.331. 07-11-039 (Order 06-03), § 173-400-720, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-720, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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 40 CFR 52.21(aa)(3)-(5), except that public participation shall be managed as provided in WAC 173-400-720 (4) (b) (iii) (F).

(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)<sup>58</sup> Upon incorporation into the Washington SIP of the PSD

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<sup>58</sup> The rule that a PSD permit is effective 30 days after issuance comes from 40 CFR 124.15, the EPA permit processing rules. The 30 day waiting period prevents commencement of construction until the EAB appeal period has run. PSD permits issued by a SIP approved State program are not appealable to the EAB, and there is no automatic stay of a permit under RCW 70.94.152. 40 CFR 124.1(d) states expressly that "Part 124 does not apply to PSD permits issued by an approved State." The Coalition requests that PSD permits issued by Ecology take

program set forth in WAC 173-400-700 through 750 the effective date of a final determination shall be the date of issuance of the final determination, or a later date if specified in the final determination. Until then ~~†~~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

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effect immediately, so that the long waiting period imposed on any project that requires a PSD permit can be minimized.

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.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07), § 173-400-730, filed 1/10/05, effective 2/10/05.]

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

**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;

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(d) The revised PSD permit will continue to require BACT, ~~as defined at the time of the original PSD permit,~~<sup>59</sup> 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 (3)-(4), 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 chapter 173-455 WAC (~~(173-400-116 shall)~~) also (~~apply~~) applies.

(3) 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.

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<sup>59</sup> This requirement makes no sense, given that many applications to revise PSD permits seek to revise unachievable BACT determinations.

[Statutory Authority: RCW 70.94.152. 05-03-033 (Order 03-07),  
§ 173-400-750, filed 1/10/05, effective 2/10/05.]

NEW SECTION

**WAC 173-400-800 Major stationary source and major modification in a nonattainment area.** WAC 173-400-800 through 173-400-860 apply statewide except where a permitting authority has a permitting program for major sources in a nonattainment area incorporated into the Washington state implementation plan as replacement for these sections.

These requirements apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

[]

NEW SECTION

**WAC 173-400-810 Major stationary source and major modification definitions.** The definitions in WAC 173-400-030 are to be used in WAC 173-400-800 through 173-400-860 unless a term is defined differently in this section for use in the major source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860 or a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in WAC 173-400-850.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, for purposes of a PAL, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which

is representative of normal source operation. The permitting 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 unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an

emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner

or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by the administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline

actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) 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) except the activities of any vessel located at the new or modified stationary source unless performing stationary source functions. 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*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur

dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter

value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other

functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by

themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive

emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(8)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14) (a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-~~185b, sections 186 and 187, or sections 188~~  
through 190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty 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 (as determined under rules issued by the administrator);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in ~~(b)~~ paragraphs (i) through (vi) of this subsection shall apply in areas subject to sections 181-185~~B~~ of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional,

submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes in (e) of this subsection whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;

- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the act.

(15) (a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 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;

(iii) Use of an alternative fuel by reason of an order or

rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the

National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR part 51, Appendix S adopted by reference in WAC 173-400-850 shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185b, part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185b, part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major

stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14) (e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

(17) (a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2) (a) (ii) and (b) (iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) 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;

(c) An increase or decrease in actual emissions is creditable only if:

(i) 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; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to

the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(f) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(g) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165 or Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23) (a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14) (e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major

stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24) (a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under

NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming EPA rulemaking codifying emission test methods for condensable particulate matter), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 and PM-10 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 and PM-10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of this section.

(25) (a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the

meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not

appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

| Pollutant       | Emission Rate                                                                             |
|-----------------|-------------------------------------------------------------------------------------------|
| Carbon monoxide | 100 tons per year (tpy)                                                                   |
| Nitrogen oxides | 40 tons per year                                                                          |
| Sulfur dioxide  | 40 tons per year                                                                          |
| Ozone           | 40 tons per year of volatile organic compounds or nitrogen oxides                         |
| Lead            | 0.6 tons per year                                                                         |
| PM-10           | 15 tons per year                                                                          |
| PM-2.5          | 10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions |

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185b, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in

an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a)(i), (ii), and (v) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a)(i) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a)(i) and (ii) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185b of the Federal Clean Air Act shall be considered a significant net emissions increase.

(27) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(28) Source means "stationary source" as defined in WAC

173-400-030.

(29) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

[]

NEW SECTION

**WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements.** (1) Any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area shall use the following procedures to determine if the new stationary source or modification is subject to the permitting requirements of WAC 173-400-830 through 173-400-850.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major

modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the

definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a

regulated NSR pollutant shall comply with requirements in WAC 173-400-850.

(5) **Reasonable possibility:** Except as provided in (f) of this subsection, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of (f) of this subsection, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) 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 the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) and an

explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) 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 units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection (c), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source

categories.

(d) The owner or operator shall submit a report to the permitting authority within sixty days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) 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 (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within sixty days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) 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).

(f) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in

either:

(i) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23) (b) (iii) sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (f) (ii) of this subsection, and not also within the meaning of (f) (i) of this subsection, then (c) through (f) of this subsection does not apply to the project.

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in chapter 173-401 WAC.

[]

NEW SECTION

**WAC 173-400-830 Permitting requirements.** (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, ~~may~~shall<sup>60</sup> be permitted to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary 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) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The proposed new major stationary source or a major modification of an existing major stationary source and 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.

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<sup>60</sup> “Must” or “will” would suffice here.

(c) The proposed new major stationary source or a major modification of an existing major stationary source 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, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants, except that it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source or major modification to an existing major stationary source is major.

(e) 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. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(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 is a major stationary source within the meaning of WAC 173-400-810, or the proposed modification is a major modification within the meaning of WAC 173-400-810, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where the administrator of the environmental protection agency has granted a NO<sub>x</sub> waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification

becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

[]

NEW SECTION

**WAC 173-400-840 Emission offset requirements.** (1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

- (a) In any marginal nonattainment area for ozone - 1.1:1;
- (b) In any moderate nonattainment area for ozone - 1.15:1;
- (c) In any serious nonattainment area for ozone - 1.2:1;

(d) In any severe nonattainment area for ozone - 1.3:1; and

(e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185b of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185b of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185b of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) The requirements of this section applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(6) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(7) 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.

(8) Emission offsets not included in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration

explicitly includes the preshutdown or curtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (b)(iii)(A)(I) of this subsection.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where

the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

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NEW SECTION

**WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL).** The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of July 1, 2010, is adopted by reference with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review

permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 CFR 70.6(a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

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#### NEW SECTION

**WAC 173-400-860 Public involvement procedures.** The public involvement procedures in WAC 173-400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued under this section must comply with WAC 173-400-171.

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NEW SECTION

**WAC 173-400-930 Emergency engines. (1) Applicability.**

(a) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(b) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(c) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

(d) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

**(2) Operating requirements for emergency engines.**

Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines, contained in 40 CFR Parts 89 and 1039, as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015%

sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance and testing.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Provide electric power for the facility when the

electric utility provider takes its power distribution equipment offline to service that equipment for any reason that does not qualify as an emergency use; or

(iv) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance.

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## **Appendix B: Transcripts from public hearings.**

*Terri Costello:* Let the record show it is 6:30 PM on Tuesday, November 9, 2010, and this hearing is to hear testimony for Washington State Proposed Rule Amendment to Chapter 173-300 WAC, General Regulations for Air Pollution Sources. It's being held on the second floor conference room in the Department of Ecology Eastern Regional Office Building, located at 4601 North Monroe Street, in Spokane, Washington. Legal notice of this hearing was published on October 8, 2010 in the Spokesman Review and the Daily Journal of Commerce. In addition the Rule Proposal notice was sent to over 3,000 interested parties. Comments must be received by 5:00 PM on Friday, November 12, 2010. Let the record show that it is now 6:31 and this hearing is officially closed. We had zero attendees and zero testimonies.

*Linda Witcher:* Thank you. Linda.

*Linda Grubbs:* Where was it published here?

*Linda Witcher:* Spokane and the Daily Journal of Commerce.

*Linda Grubbs:* Let the record show that it's 6:31 p.m. on Tuesday, November 9, 2010, and this hearing is to hear testimony for the Washington State Department of Ecology's Proposed Rule Amendment to Chapter 173-400 WAC, W-A-C, General Regulations for Air Pollution Sources. It's being held in the auditorium at the Department of Ecology headquarters office building located at 300 Desmond Drive, Lacey, Washington. Legal notice of this hearing was published on October 8, 2010, in the Spokesman Review and the Daily Journal of Commerce. In addition the Rule Proposal notice was sent to over 3,000 interested parties. Written comments must be submitted to the Department of Ecology by 5:00 PM on Friday, November 12. Let the record show that it is now 6:32 PM and this hearing is officially closed. No attendees and no testimony.

