



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 16, 2018

TIME: 3:29 PM

WSR 18-17-111

Agency: Department of Ecology AO # 15-07

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain: Chapter 173-400 WAC includes the following provisions that remain in effect until the effective date of a Federal Register notice published by EPA that removes WAC 173-400-107 from Washington's State Implementation Plan (SIP):

- Unavoidable excess emissions – WAC 173-400-107
- Exemptions from opacity emission standards for soot blowing/grate cleaning and orchard heating

When EPA removes WAC 173-400-107 from the SIP, the following provisions become effective:

- Alternative opacity emission standards for
 - Soot blowing/grate cleaning
 - Hog fuel or wood-fired boiler with dry particulate matter controls
 - Furnace refractory
- Excess emissions reporting – WAC 173-400-108
- Unavoidable excess emissions – WAC 173-400-109

Purpose: The amendments focus on the General Regulations for Air Pollution Sources, the Operating Permit Regulation, and revising the State Implementation Plan (SIP). Because of federal court rulings, the US Environmental Protection Agency (EPA) has officially notified Washington (and 35 other states) to change their current rules and update their SIPs to correct the identified deficiencies (a SIP call).

The primary purpose of this revision is to align Chapter 173-400 WAC with federal court decisions holding that emission standards apply at all times, even during periods of startup, shutdown and malfunction (SSM), and without automatic or discretionary exemptions. These decisions and EPA's SIP call require us to correct overly broad enforcement discretion and other provisions that would bar enforcement by EPA or other parties in federal court. Existing Ecology rules exempt exceedances of an emission standard during SSM, or allow avoidance of enforcement actions against a company for these emissions.

Under Ecology's existing rule, facilities are not required to meet emission limits during periods of SSM, and EPA interprets our rule language to bar enforcement of excess emissions during periods of SSM under the federal Clean Air Act. Additionally, the state rule includes director's discretion provisions and automatic exemptions that violate the federal Clean Air Act. This rulemaking aligns our rule with the current federal requirements by:

- Removing impermissible provisions,
- Establishing new alternative standards for opacity during startup or shutdown, and
- Establishing a process to allow a facility's permit to contain a permit limit during startup and shutdown that exceeds a Washington State emissions standard for opacity, sulfur dioxide, and particulate matter in the SIP.

We also changed public notification procedures based on a recent EPA rule that allows website posting of public notice of the start of a public comment period and draft permits in the Prevention of Significant Deterioration (PSD) and Air Operating Permit programs. We extended website posting to these programs and our small source pre-construction permitting program. We will continue requiring publishing notice in a local newspaper until June 30, 2019, to provide a transition period to web-posting for communities that still rely on the one-day newspaper notice.

This rulemaking also addresses stakeholder concerns about impacts from small nonroad engines (such as lawnmowers, small generators, and outdoor power tools) while providing ongoing environmental protection by evaluating impacts from

nonroad engines on a project-by-project basis rather than on a site-wide basis. We concluded that a project basis is more representative of operations performed by nonroad engines and of the original intent for how the section would operate.

Other rule amendments include:

- Outlawing wigwam and silo burners.
- Updating the definition of volatile organic compounds (VOC) to reflect the current federal definition.
- Correcting typos and clarifying rule language without changing its effect.
- Updating the adoption by reference of federal rules from January 1, 2016 to January 24, 2018.
- Deleting redundant requirements for catalytic cracking unit and sulfuric acid plants.

Below is a summary of the rule amendments

Startup, shutdown, malfunction-related provisions:

- Remove exemptions from emissions standards and replace the exemptions with opacity standards for some types of sources.
- Create a process to establish facility specific permit limits that exceed a Washington State emissions standard in the SIP during startup and shutdown.
- Simplify the notification process related to excess emission events.
- Align unavoidable excess emission provisions with the current interpretation of the Clean Air Act, EPA policy, and the state law.

Other provisions:

- Require an agency to post notice of a public comment period and draft permits on its website instead of requiring publication in a newspaper and providing a physical location for permit materials for the following permit actions: Prevention of Significant Deterioration and Air Operating permits, permit actions with a mandatory public comment period, and permit actions with significant public interest. Publication in a newspaper is required through June 30, 2019.
- Outlaw existing and new wigwam and silo burners on January 1, 2020.
- Simplify the application of nonroad engine requirements.
- Update the definition of volatile organic compounds (VOC) to reflect the current federal definition.
- Delete requirements for catalytic cracking unit and sulfuric acid plants.
- Correct typos and clarify rule language without changing the effect.
- Update adoption by reference of federal rules from January 1, 2016 to January 24, 2018.

Citation of rules affected by this order:

New: WAC 173-400-082

Repealed: 0

Amended: WAC 173- 400-025, 030, 035, 040, 050, 070, 081, 107, 108, 109, 171, and 740; and WAC 173-401-800

Suspended: 0

Statutory authority for adoption: Chapter 70.94 RCW Washington Clean Air Act

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as [WSR 18-04-085](#) on [February 5, 2018](#) (date).

Describe any changes other than editing from proposed to adopted version: For more details, refer to the [Concise Explanatory Statement](#).

Chapter 173-400 WAC – throughout rule

- We retained the publication date of the Ecology “Source Test Manual - Procedures for Compliance Testing” because the date establishes the version of the document that had been available for review during the public comment period.
- We added both “malfunction or upset” when the text referenced either term because the provisions apply to both events, which are not the same thing.

WAC 173-400-025 Definitions

- Alternative emission limitation: Expanded to include “alternative emission limit.”
- Industrial furnace: Deleted the confusing and unnecessary definition.
- Federally enforceable: Deleted the reference to an engineering calculation that does not exist.
- Hog fuel: Clarified that the term includes hogged fuel.
- Volatile organic compound (VOC): Added alternate names of several chemicals that are not VOC.
- Excess emissions: Clarified that the term also applies to permit-established limits that could be lower than an applicable emission standard.

- Wood waste: Changed the name of the defined term to “waste wood” to remove confusion between air quality and solid waste rules, and clarified that the term also applies to wood materials from forest health logging, land clearing or pruning. Replaced “wood waste” with “waste wood” throughout rule.

WAC 173-400-040 (2) Visible emissions.

- (e)(i) We added omitted language that specified that a planned startup or shutdown of a hog fuel or wood fired boiler means the owner or operator provides notice. We clarified the period for a restart after an unplanned shutdown, and that an unplanned shutdown includes an upset, to distinguish that a malfunction and upset are not the same thing.
- (e)(vi) We deleted “work practice” because only one of the two requirements is a work practice requirement.
- (e)(vi)(B)(II) We clarified that the federal rule identifies what constitutes clean fuel.
- (e)(vi)(B)(III) We clarified that the rule requires compliance with the 20 percent opacity standard within four hours after the start of supplying useful thermal energy. We removed text to reduce confusion on whether the use of non-clean fuels or the start of supplying useful thermal energy is used as a reference to the four-hour limit.
- (f) To reduce confusion around our intent, we deleted “existing” to clarify that the provision applies to all lime kilns, both current and future. We also deleted “industrial furnace” because the proposed definition for this term was confusing and unnecessary; lime kilns and boilers more appropriately reflect the universe of sources covered by this provision.

WAC 173-400-050 Emission standards for combustion and incineration units.

- (1) We substituted the newly defined term “waste wood” for the undefined and therefore confusing phrase “wood derived fuels” to clarify intent.
- (4)(c)(ix) We clarified that the federal rule provides the definition for wood waste terms.

WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP.

- (2)(a)(iii) We revised the incorrect reference to WAC 173-415-030 (3).
- (3)(c)(iii) We corrected the term to “alternative emission limit.”
- (4)(a)(i)(B) We clarified the intent of the provision.

WAC 173-400-108 Excess emissions reporting.

- (2)(b) We consolidated all excess emissions reporting for chapter 401 sources (Title V) in one location.
- (4)(c) We removed unnecessary references to WAC 173-400-109 because only subsection (5) requires additional information.

WAC 173-400-109 Unavoidable excess emissions.

- (2) We corrected the reference from subsection 4 to 5.
- (5) We deleted “equipment” in “equipment malfunction” for consistent application of the term “malfunction.”

WAC 173-400-171 Public notice and opportunity for public comment.

- (6)(a)(vi), (7)(a) and (10)(a) We removed the requirement to exclude a Washington State holiday that falls within a public comment period from the day count because a simple count of days was easier to understand and reduced the possibility for errors in calculating the length of a public comment period.
- (6)(a)(vi) and (8) We removed “thirty-day” before “public comment period” because thirty-days is a minimum comment period.
- (6) We deleted the time to post notice by noon because that requirement is outside the scope of the content of a public notice.
- (6)(a)(vi) We simplified the requirement.
- (7)(a) We clarified existing requirements and simplified the method to count the days in a public comment period.
- (10)(a) We clarified that providing notice is mandatory.
- (10)(a)(i) We added a reference to subsection (7) for requirements on the length of a public comment period.

WAC 173-400-740 PSD permitting public involvement requirements.

- (2)(b)(i) We clarified the length of the website posting and simplified the method to count the days in a public comment period.
- (2)(b)(iii)(A) We clarified that Ecology must post an extension notice on the same location (web page) as the original notice.
- (2)(b)(iv) We clarified that Ecology must notify the public at least thirty days prior to the date of the hearing and keep the public comment period open through the hearing date.
- (3) We streamlined the content of a public notice by:
 - Removing the posting date because the notice must include the start and end date of the public comment period.
 - Consolidating requirements.
 - Simplifying the method to count days in a comment period.

- Removing the “thirty day” reference to a public comment period because this is a minimum length.
- Removing the requirement to exclude a Washington State holiday that falls within a public comment period from the day count because a simple count of days is easier to understand and reduces the possibility for errors in calculating the length of a public comment period.
- (4)(a) We removed the “thirty day” reference to a public comment period because this is a minimum length and added a reference to the subsection on the length of comment period.
- (6)(b) We clarified that an extension notice must be posted on the same location (web page) as the original notice.

WAC 173-401-800 Public involvement.

- (2)(d) We streamlined the content of a public notice by removing the:
 - Posting date because the notice already includes the start and end date of a public comment period.
 - “Thirty day” reference to a public comment period because this is a minimum length.
 - Requirement to exclude a Washington State holiday that falls within a public comment period from the day count because a simple count of days is easier to understand and reduces the possibility for errors in calculating the length of a public comment period.
- (2)(e)(i) We added the correct title of the technical support document for an air operating permit.
- (3)(a) We simplified the method to count the days in a public comment period.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Elena Guilfoil

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

Phone: 360-407-6855

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711)

Email: elena.guilfoil@ecy.wa.gov

Web site: <https://fortress.wa.gov/ecy/publications/SummaryPages/1802026.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	<u>7</u>	Repealed	___
Federal rules or standards:	New	___	Amended	<u>5</u>	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	<u>1</u>	Repealed	___
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The number of sections adopted on the agency’s own initiative:

New	<u>1</u>	Amended	<u>6</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	<u>4</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
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Pilot rule making:	New	___	Amended	___	Repealed	___
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Other alternative rule making: New ___ Amended ___ Repealed ___

Signature:

Date Adopted: 8/16/18

Name: Maia D. Bellon

Title: Director

Maia Bellon by Polly Zehm