

January 1, 2017 version

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WAC 173-400-025 Adoption of federal rules.

Federal rules mentioned in this rule are adopted as they exist on ~~January 1, 2016~~ March 15, 2017. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

WAC 173-400-030 Definitions.

Useful thermal energy means energy (steam or hot water) that meets the minimum operating temperature, flow, and/or pressure required by any energy use system that uses energy provided by the affected boiler.

Industrial furnace means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 CFR 260.10.

- (95) **"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 (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃ 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 (HCOOCH₃); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF₂OCF₂H (HFE-134); HCF₂OCF₂OCF₂H (HFE-236cal2); HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13); HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2-Tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane; and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear completely fluorinated alkanes;
 - (ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
 - (iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
 - (iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- (b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 C.F.R. 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, the authority, or EPA the amount of negligibly reactive compounds in the source's emissions.
- (d) 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.

Ecology is revising this provision to clarify its intent. See also revised definition of nonroad engine.

WAC 173-400-035 Nonroad engines.

- (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) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work center, garage, or engine pool. Such engines may be operated at these facilities only for the purpose of engine maintenance, testing, and repair.
 - (d) A back-up engine demonstrated to have the same or lower emissions than the primary power nonroad engine.
- (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.
 - (d) Chapter 173-460 WAC.
- (3) All days that a nonroad engine provides the same function for the source, regardless of where within the boundaries of the source the function is performed, shall be included in determining whether the engine has become a stationary engine.
- ~~(3)~~**(4) 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). A facility that receives deliveries of only ultra low sulfur diesel or ultra low sulfur bio-diesel is deemed to be compliant with this fuel standard.

~~(4)~~(5) > **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. For 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 the records of the current engine and equipment activity in hard copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.

~~(5)~~(6) > **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). The notification of intent to operate must contain at a minimum the information in (5)(a) above.
- (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 (4)(b) and (c) of this section.

- (c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (4)(b) and (c) of this section.

(7) Criteria specific to projects on Department of Defense and Department of Energy facilities.

- (a) Department of Defense and Department of Energy facilities over 50 acres in size may exclude engines below 50 brake horsepower to determine cumulative maximum engine horsepower.**
- (b) Ecology may designate the size of the location at the Department of Energy Hanford facility.**
- (c) Ecology may establish specific criteria to assist it and the Departments of Defense and Energy to determine when a particular nonroad engine becomes a stationary engine.**

(d7) Integrated review. 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](#)).

(e8) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

(f9) 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.

(g10) 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.

(h11) 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](#).

(i12) 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).

WAC 173-400-040 General standards for maximum emissions.(1) General requirements.

(a) 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 takes precedence over a general emission standard listed in this chapter.

(b) 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.

(c) 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, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(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 the permitting authority must be advised of the schedule.~~

~~(b)~~(a) 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.

~~(e)~~(b) When two or more emission units are connected to a common stack, the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

~~(d)~~(c) When an alternate opacity limit has been established per RCW 70.94.331(2)(c).

- (d) When emissions occur due to start-up of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity but not exceed 40 percent opacity for more than 3 minutes in a one hour period. Determine opacity using ecology method 9A (*Ecology Source Test Manual*). Visible emissions may not exceed twenty percent for more than 3 minutes in an hour when the earlier of:
- (i) The dry electrostatic precipitator or baghouse has met its minimum operating temperature, at which time the control is to be operated; or
 - (ii) Four hours has elapsed since the beginning of supplying useful thermal energy.
- (e) When the emissions occur due to soot blowing or grate cleaning of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity but not exceed 40 percent opacity on a 6 minute average, for more than one fifteen minute period in any eight consecutive hours.
- (i) Determine opacity using EPA Method 9 – Visual determination of the opacity of emissions from stationary sources in Appendix A to Part 60.
 - (ii) To use this alternate standard, the soot blowing and/or grate cleaning must be scheduled for the same approximate time(s) each day and the permitting authority must be advised of the schedule.
 - (iii) Determine data reduction method based on the *Ecology Source Test Manual*.
- (f) Visible emissions that occur during curing of furnace refractory after maintenance repair or replacement in an existing industrial furnace or boiler may exceed 20 percent opacity, on a 6 minute average, but not exceed 40 percent opacity, on a 6 minute average, provided the following requirements are met:
- (i) Determine opacity using EPA Method 9 – Visual determination of the opacity of emissions from stationary sources – in Appendix A to Part 60; and
 - (ii) The total duration of refractory curing does not exceed 36 hours, unless provided for in a NOC approval or regulatory order issued under WAC 173-400-082; and
 - (iii) The owner/operator has supplied the permitting authority a copy of the manufacturer’s instructions on curing refractory in the furnace, boiler, or lime kiln; and

- (iv) The manufacturer's instructions on curing refractory are followed, including all instructions on temperature increase rates and holding temperatures and time; and
- (v) The emission controls are engaged as soon as possible during the curing process; and
- (vi) The owner/operator notifies the permitting authority at least one working day prior to the start of the refractory curing process.

~~(f)~~(g) 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 C.F.R. 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 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.
 - (iv) Established as an alternate emission limit under WAC 173-400-082.
- (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.

- (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.
- (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~~their property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.
- (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.
- (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. Alternate unit specific emission standards are:
- (a) Sulfur recovery unit alternate emission standard. During startup or shutdown of a sulfur recovery unit described in 40 CFR 63.1579, the owner or operator shall:
 - (i) Follow the facility's written startup, shutdown, or maintenance procedures; and
 - (ii) Limit emissions to less than 100 pounds/hour from the event instead of the numeric limit prescribed by this subsection.
 - (b) Sulfur dioxide alternate emission standard. The permitting authority may, by regulatory order, approve for a specific emission unit(s) an alternative to the sulfur dioxide emission limit imposed by this subsection (WAC 173-400-040(7)).
 - (i) An order issued under this subsection which approves an alternative limit instead of the sulfur dioxide standard, shall not take effect until EPA approves the alternative sulfur dioxide limit as an amendment to the SIP.

- (ii) The owner or operator of a source requesting approval of an alternative sulfur dioxide limitation applicable to specific operating scenario(s) must demonstrate all of the following to the satisfaction of the permitting authority:

 - (A) The NAAQS and Washington ambient air quality standards for oxides of sulfur in chapter 173-476 WAC will not be exceeded as a result of the proposed alternative limitation, based on worst-case emission rates. The ambient air quality standards analysis must include the effects of background sulfur dioxide concentrations and sulfur dioxide emissions from adjacent facilities.
 - (B) Demonstrate that all practicable steps will be made to minimize the quantity and impact of emissions during the alternative operating scenario.
 - (C) The alternative limitation would not exceed the levels allowed by an applicable sulfur dioxide emission standard in 40 CFR Parts 60, 61, 62, 63, or 72.
 - (D) It is not technologically feasible to use the existing control system or an operating scenario that would avoid the need for an alternative emission standard.
 - (E) The operating characteristics of the emission unit(s) for which an alternative emission standard is being requested that prevent meeting the sulfur dioxide standard in this subsection during the specific operating scenario(s).
- (iii) The permitting authority must follow the mandatory public comment period requirements specified in WAC 173-400-171.
- (iv) An order issued under this subsection shall include:

 - (A) The name or other designations used by the source to identify the specific the emission unit(s) at the source subject to the alternative emission limitation
 - (B) The criteria defining when the alternative emission limitation is applicable.
 - (C) The alternative sulfur dioxide limit. The alternative sulfur dioxide limitation approved under this subsection may be a numerical limitation, technology requirement or a work practice standard.

- (D) Requirements to minimize the frequency and duration of the approved alternative operating scenario;
 - (E) A requirement that the emission unit(s) involved are operated in a manner consistent with good operating practices for minimizing emissions;
 - (F) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with any condition established in the order.
 - (v) The permitting authority may assess and collect fees at the rate prescribed by the permitting authority's fee schedule.
- (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.
- (9) **Fugitive dust.**
- (a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.
 - (b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).
- (10) Requirement to minimize emissions. At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
- (11) Operation of installed air pollution control equipment. When an emission unit or source is in operation, air pollution control equipment installed on an emission unit or source must be operated at all times, including startup, shutdown, and periods of malfunction, recognizing limitations imposed by the need to protect of personnel and equipment from fire and to meet personnel and fire safety requirements.

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

(7) Sewage sludge incineration units constructed on or before October 14, 2010. Sewage sludge incineration units constructed on or before October 14, 2010, must comply with 40 C.F.R. Part 62, Subpart LLL.

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.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner may operate until midnight December 31, 2019 provided it complies with the following:
 - (a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) or ~~173-400-115 (40 C.F.R. Part 60, subpart DDDD)~~ 40 C.F.R. Part 62, Subpart III as applicable.
 - (b) All wigwam and silo burners 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) The permit authority may establish additional requirements for wigwam 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(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 fuelboilers.~~

- ~~(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)~~(2) 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 for more than 3 minutes in a one hour period determined using ecology method 9A, ~~except during the first thirty minutes after such device or material is ignited.~~

~~(4)~~(3) 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)~~(4) **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 and 050. In addition, wood waste burners subject to WAC 173-400-050(4) or ~~173-400-115 (40 C.F.R. 60 subpart DDDD)~~ 40 CFR Part 62, Subpart III 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 H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.~~

~~(8)~~(5) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.**

WAC 173-400-081 Emission limits during startup and shutdown.

- (1) In promulgating technology-based emission standards and establishing emission limits when making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting ~~authorities~~ authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.
- (2) ~~Where~~ When the permitting authority determines, as part of its control technology determination, 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 limitation or standard during startup or shutdown, the permitting authority must include in the standard or regulatory order appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions.
- (3) In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, 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.
- (4) Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in Washington's state implementation plan shall not take effect until approved by EPA as a SIP amendment.

(NEW) WAC 173-400-082 Establishing an emissions limitation for startup and shutdown when exceeding a standard in the SIP.

- (1) The owner or operator of a source or stationary source may request an alternative emission limitation applicable to specific operating scenario(s). The owner or operator must demonstrate to the satisfaction of the permitting authority. The demonstration must show:
 - (a) The NAAQS and Washington ambient air quality standards in chapter 173-476 WAC will not be exceeded as a result of the proposed alternative limitation, based on worst-case emission rates. The ambient air quality standards analysis must include the effects of background concentrations and emissions from adjacent facilities.
 - (b) Demonstrate that all practicable steps will be made to minimize the quantity and impact of emissions during the alternative operating scenario.
 - (c) The alternative limitation would not exceed the levels allowed by an applicable emission standard in 40 CFR Parts 60, 61, 62, 63, or 72.

- (d) It is not technologically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit, source, or stationary source to comply with the emission standard and avoid the need for an alternative emission standard.
- (e) The alternative emission limitation will be in place for the shortest practicable amount of time.
- (f) The alternative emission limitation proposed must:

 - (i) Reflect best operational practices for the emission unit(s) involved; and
 - (ii) Minimize the extent, duration, and emissions resulting from the alternative operating scenario.
- (g) The operating characteristics of the emission unit(s) for which an alternative emission standard is being requested that prevent meeting the emission standard during the specific operating scenario(s).
- (2) The permitting authority may approve an alternative emission limit applicable to an emission unit(s) during startup or shutdown, or both, that will apply instead of one or more of the emission standards listed below. The applicable emission standards may include but are not limited to:

 - (a) Opacity standard in WAC 173-400-040 (2);
 - (b) Sulfur dioxide emission standard in WAC 173-400-040 (7) and WAC 173-405-040 (11);
 - (c) Particulate matter standards in WAC 173-400-050 and 060;
 - (d) Chapter 173-405 WAC: particulate matter [total suspended particulate], opacity standards, and sulfur dioxide emission standard;
 - (e) Chapter 173-410 WAC: particulate matter [total suspended particulate], and sulfur dioxide emission standard; and
 - (f) WAC 173-415-040 (6).
- (3) The permitting authority may approve a numerical limitation, technology requirement, or a work practice standard as an alternative emission limitation under this provision.
- (4) Regulatory order.

 - (a) The permitting authority must include the alternative emission limitation in a regulatory order.

- (b) The regulatory order must specify the emission unit(s) at the source or stationary source subject to the alternative emission limitation and the criteria defining when the alternative emission limitation is applicable.
- (c) The permitting authority must follow the mandatory public comment period requirements specified in WAC 173-400-171.
- (d) An order issued under this subsection must include:

 - (i) The name or other designations used by the source to identify the specific the emission unit(s) at the source subject to the alternative emission limitation
 - (ii) The criteria defining when the alternative emission limitation is applicable.
 - (iii) The alternative sulfur dioxide limit. The alternative sulfur dioxide limitation approved under this subsection may be a numerical limitation, technology requirement or a work practice standard.
 - (iv) Requirements to minimize the frequency and duration of the approved alternative operating scenario;
 - (v) A requirement that the emission unit(s) involved are operated in a manner consistent with good operating practices for minimizing emissions; and
 - (vi) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with any condition established in the order.
- (e) The permitting authority may assess and collect fees at the rate prescribed by the permitting authority's fee schedule.
- (5) An order issued under this provision that increases permitted emissions over levels authorized in the SIP must not take effect until EPA approves the order as a SIP amendment.

WAC 173-400-107 Excess emissions.

This section is in effect until December 31, 2017.

~~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.

WAC 173-400-108 Excess emissions reporting. [State-only requirement not federally enforceable]

~~This section takes effect 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 must be reported to the permitting authority.

(a) Notification requirements:- When the owner or operator becomes aware that a source's emissions exceeded permitted levels, the owner or operator must notify the permitting authority as soon as possible, but no later than:

(i) Emissions represent potential threat to human health or safety: twelve hours after the owner or operator becomes aware of the excess emissions; or 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.

(ii) Upsets or malfunctions thought to be unavoidable: **twenty four hours** after the owner or operator becomes aware of the excess emissions. Excess emissions which the owner or operator of the source believes to be unavoidable, per the criteria under WAC, must be reported to the permitting authority **as soon as possible** after the excess emissions were discovered.

(b) Reporting schedule. The owner or operator must report ~~Other~~ excess emissions ~~must be reported~~ to the permitting authority:

(i) Within thirty days after the end of the month during which the event occurred; or

(ii) As part of the routine emission monitoring reports; or

(iii) As provided in WAC 173-401-615 for chapter 173-401 WAC sources.

~~(1)(2) For those sources not required to report under WAC 173-401-615, t~~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 other than opacity, 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.
- (f) Exemption. This subsection does not apply to sources required to report under WAC 173-401-615.

~~(2)~~(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) All additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

WAC 173-400-109 Unavoidable excess emissions. [State-only requirement not federally enforceable]

~~This section takes effect 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) — 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)~~(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, regulation~~rule~~, permit, or regulatory order.

- (a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source.
- (b) Excess emissions determined by the permitting authority to be unavoidable are:
 - (i) A violation subject to WAC 173-400-230 (3), (4), and (6); and
 - (ii) Not subject to civil penalty under WAC 173-400-230(2).

Note: Nothing in state rule affects the statutory authority of the courts to determine liability and impose remedies from provisions of the federal CAA.

~~Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority, however, in a federal enforcement action filed under 42 U.S.C. § 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (3), (4), and (5) of this section.~~

~~(3)~~(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) and~~ (4) 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.~~

~~(e)~~(b) This section does not apply to exceedances of emission standards promulgated ~~under~~ in 40 C.F.R. Parts 60, 61, 62, 63, and 72, or a permitting authority's adoption by reference of ~~such~~ these federal standards.

~~(d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.~~

~~(4) 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~~

~~(5)~~(3) Excess emissions that occur due to upsets or malfunctions during ~~routine~~ startup or shutdown are treated as upsets or malfunctions under subsection ~~(5)~~(4) of this section.

~~(6) Maintenance. Excess emissions during scheduled maintenance may 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.~~

~~(7)~~(4) 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 to the permitting authority 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) When the operator knew or should have known that an emission standard or permit condition was being exceeded, theThe 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~~-. Actions taken could includeing slowing or shutting down the emission unit or source 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)~~ If the emitting equipment had to continue operation during the malfunction for safety reasons to prevent the loss of life, prevent personal injury, or to minimize overall emissions, repairs were made in an expeditious fashion;
- ~~(d)~~(e) 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~~;~~
- ~~(f)~~ The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible~~;~~ and
- ~~(g)~~ All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

Ecology proposes to amend this section to align with EPA's rule on electronic notice and access. See [81 FR 71613](#).

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

The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to 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 [173-400-700](#) through [173-400-750](#). 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 notice of application.**

- (a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.
- (b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.
- (c) The internet posting 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.
- (d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, fax, or electronic ~~means~~ during the fifteen-day internet posting period.
- (e) A public comment period must be provided 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 internet posting period.

(3) **Actions subject to a mandatory public comment period.**

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:

- (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 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 acceptable source impact level for that toxic air pollutant as regulated under chapter [173-460](#) WAC; or
- (c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC [173-400-025](#)) as part of review under WAC [173-400-110](#), [173-400-113](#), or [173-400-117](#); or
- (d) Any order to determine reasonably available control technology, RACT; or
- (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](#).
- (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
- (g) An order to authorize a bubble; or
- (h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC [173-400-136](#); or
- (i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or
- (j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or
- (k) Any order issued under WAC [173-400-091](#) that establishes limitations on a source's potential to emit; or
- (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

(m) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) Any application or other action for which the permitting authority determines that there is significant public interest; or

(o) An order issued under WAC 173-400-082.

(4) **Advertising the mandatory public comment period.**

[Ecology is asking for suggestions on how to reduce the impact from this change.]

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must be given by: ~~prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal.~~

(i) Newspaper publication. [Name Clean Air Agency] must provide public notice by prominent advertisement in the area affected by the proposal; or

(ii) Posting on the permitting authority web site for the duration of the public comment period. Duration does not require uninterrupted web site access. The following permitting authorities must post notice on their web site:

(A) Ecology;

(B) Insert names of permitting authorities.

(b) This public notice can be published or given 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.

(c) The notice must be published or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied.

(d) The applicant or other initiator of the action must pay the publishing cost of providing public notice in a newspaper.

(5) **Information available for public review.**

(a) Administrative record.

(i) 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. A permitting authority may comply with this

requirement by making these materials available at a physical location or on their web site, except for the [Name clean Air Agency].

(ii) The administrative record for [Name Clean Air Agency (newspaper posting agency)] must be available at a physical location and include the draft permit.

(b) The permitting authority directed by (4)(a)(ii) of this subsection to post notice on their web site must post the following information for the duration of the public comment period:

(A) Public notice components in subsection (6) of this section;

(B) Draft permit; and

(C) Information on how to access the administrative record.

(c) 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.

(6) Public 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 where those documents made available for public inspection may be reviewed;
 - (v) A thirty-day period for submitting written comment to the permitting authority;
 - (vi) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;
 - (vii) 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, as required by WAC [173-400-117](#), public notice 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.

- (7) **Length of the public comment period.**
- (a) The public comment period must extend at least thirty days prior to any hearing.
 - (b) If a public hearing is held, the public comment period must extend through the hearing date.
 - (c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.
- (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 ~~means-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 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.
- (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) Give public hearing notice ~~as directed by (4)(a) of this subsection; by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal;~~ and
 - (ii) ~~Mail-Distribute by electronic means, and/or postal service~~ the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.
 - (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) In the case of a permit action, the applicant must pay all publishing costs associated with meeting the requirements of this subsection.
- (11) **Notifying the EPA.**
The permitting authority must ~~send-distribute by electronic means, and/or postal service~~ a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

- (a) This subsection applies to ecology only actions including:
- (i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;
 - (ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC [173-400-118](#), and rules to strengthen the SIP.
- (b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.
- (c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 (in effect on the date in WAC [173-400-025](#)).

(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

Ecology proposes to amend this section to align with EPA's rule on electronic notice and access. See 81 FR 71613.

WAC 173-400-740 Permitting public involvement requirements.

- (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:
- (a) Any preliminary determination to approve or disapprove a PSD permit application; or
 - (b) An extension of the time to begin construction or suspend construction under a PSD permit; or
 - (c) A revision to a PSD permit, except an administrative amendment to an existing permit; or
 - (d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.
- (2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:
- (a) Administrative record. Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Ecology may comply with this requirement by making these materials available at a physical location or on ecology's web site.
 - (i) Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post online on a web site but may be made available as part of the permit record either as hardcopy or on a data storage device.
 - (ii) Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.
 - (b) Notify the public by:

~~Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty-day comment period.~~

- (i) Posting the following information on ecology's web site for the duration of the public comment period.
 - (A) Public notice elements in in subsection (3) of this section;
 - (B) Draft permit; and
 - (C) Information on how to access the administrative record.
 - (D) Duration does not require uninterrupted web site access.
- (ii) If ecology grants a request to extend the public comment period, ecology must:
 - (A) Post the extension notice that includes the closing date of the extended comment period on the same web site where the original notice was posted; the extension notice must also be published in a newspaper as noted above and
 - (B) Distribute a copy of the extension notice sent by electronic means and/or postal service to whomever requested the extension and the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.
- ~~(i)(iii)~~ If a hearing is held, the public comment period must extend through the hearing date.
- ~~(ii)(iv)~~ If ecology determines supplemental noticing is appropriate, ~~the~~The applicant or other initiator of the action must pay the cost of providing this public notice. Supplemental notice may include, but is not limited to, publication in a newspaper.
- (c) ~~Send~~Distribute by electronic means and/or postal service a copy of the public notice to:
 - (i) Any Indian governing body whose lands may be affected by emissions from the project;
 - (ii) The chief executive of the city where the project is located;
 - (iii) The chief executive of the county where the project is located;
 - (iv) Individuals or organizations that requested notification of the specific project proposal;
 - (v) Other individuals who requested notification of PSD permits;
 - (vi) Any state within 100 km of the proposed project.
- (d) ~~Send~~Distribute by electronic means and/or postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:

- (i) The applicant;
- (ii) The affected federal land manager;
- (iii) EPA Region 10;
- (iv) The permitting authority with authority over the source under chapter 173-401 WAC;
- (v) Individuals or organizations who request a copy; and
- (vi) The location for public inspection of material required under (a) of this subsection if a physical copy is made available to the public.

- (3) **Public notice content.** The public notice shall contain at least the following information:
- (a) The name and address of the applicant;
 - (b) The location of the proposed project;
 - (c) A brief description of the project proposal;
 - (d) The preliminary determination to approve or disapprove the application;
 - (e) How much increment is expected to be consumed by this project;
 - (f) The name, address, and telephone number of the person to contact for further information;
 - (g) A brief explanation of how to comment on the project;
 - (h) An explanation on how to request a public hearing;
 - (i) The location of the ~~documents-draft permit and information on how to access the administrative record~~made available for public inspection;
 - (j) There is a thirty-day period from the date of ~~publication-posting on the web site of~~ the notice for submitting written comment to ecology;
 - (k) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;
 - (l) The length of the public comment period in the event of a public hearing;
 - (m) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.
- (4) **Public hearings.**
- (a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.
 - (b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).
 - (c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).
- (5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the

public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same locations where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

- (a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:
- (i) A copy of the final PSD permit or the determination to deny the permit;
 - (ii) A summary of the comments received;
 - (iii) Ecology's response to those comments;
 - (iv) A description of what approval conditions changed from the preliminary determination; and
 - (v) A cover letter that includes an explanation of how the final determination may be appealed.
- (b) Ecology shall ~~mail-distribute by electronic means or postal service~~ a copy of the cover letter that accompanies the final determination to:
- (i) Individuals or organizations that requested notification of the specific project proposal; ~~and~~
 - (ii) Other individuals who requested notification of PSD permits.
- (c) ~~Ecology shall distribute by electronic means or postal service~~ Ecology shall distribute by electronic means or postal service ~~A a~~ copy of the final determination ~~shall be sent~~ to:
- (i) The applicant;
 - (ii) U.S. Department of the Interior - National Park Service;
 - (iii) U.S. Department of Agriculture - Forest Service;
 - (iv) EPA Region 10;
 - (v) The permitting authority with authority over the source under chapter 173-401 WAC;
 - (vi) Any person who commented on the preliminary determination; and
 - (vii) The location for public inspection of material required under subsection (2)(a) of this section.

Ecology proposes to delete this provision to mirror EPA's proposed action to remove 40 CFR 70.6(g). These enforcement provisions are inconsistent with enforcement structure of the federal Clean Air Act. See [81 FR 38645](#) on June 14, 2016.

WAC 173-401-645 Emergency provision.

Starting January 1, 2018 this section is no longer effective. A permitting authority must remove this provision from an individual operating permit during the first possible periodic permit renewal, permit modification, or permit reopening after this date.

- (1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of subsection (3) of this section are met.
- (3) Criteria. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (a) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (b) The permitted facility was at the time being properly operated;
 - (c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (d) The permittee submitted notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency or shorter periods of time specified in an applicable requirement. This notice fulfills the requirement of WAC [173-401-615](#) (3)(b) unless the excess emissions represent a potential threat to human health or safety. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (5) Relationship to other rules. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

WAC 173-401-724 Off-permit changes.

- (1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification of the FCAA or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.
- (2) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.
- (3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under WAC 173-401-530. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.
- (4) The change shall not qualify for the permit shield under WAC 173-401-640.
- (5) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.
- (6) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

Ecology proposes to amend this section to align with EPA's rule on electronic notice and access. See 81 FR 71613.

WAC 173-401-800 Public involvement.

(1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

(a) The permitting authority shall provide public notice for the following actions:

- (i) Issuance of a draft permit or permit renewal;
- (ii) Intended denial of a permit application;
- (iii) Issuance of a draft permit modification;
- (iv) Issuance of a draft general permit;
- (v) Scheduling of a public hearing under subsection (4) of this section; and
- (vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) ~~Notice shall be given by the following methods: Public notice shall be provided by the permitting authority by prominent advertisement in the area affected by the facility applying for a permit. Publication in *Ecology's Operating Permit Register* does not satisfy this requirement. Prominent advertisement may be by publication in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.~~

(i) Newspaper publication. [Name Clean Air Agency] must provide public notice by prominent advertisement in the area affected by the facility applying for a permit.

(ii) Permitting authority web site. The following permitting authorities must post notice on their web site for the duration of the public comment period. Duration does not require uninterrupted web site access:

(A) Ecology;

(B) xx

- (iii) A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newsletter or press release.
- (iv) Permit Register.
 - (A) Ecology shall publish notice in the Permit Register according to WAC 173-401-805.
 - (B) The permitting authority shall send information on any action requiring publication in the Permit Register to ecology within three days of the action.
- (c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive ~~such~~ this notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. The mailing list may be electronic or hardcopy, or both. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.
- (d) Public notice must include:
 - (i) Name and address of the permitting authority;
 - (ii) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;
 - (iii) A brief description of the business conducted at the facility and activity involved in the permit action;
 - (iv) Name, address, and telephone number of a person from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;
 - (v) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and
 - (vi) A description of the emission change involved in any permit modification.
- (e) Availability for public inspection.
 - (i) Administrative record. The permitting authority must make available for public inspection, in at least one location near the chapter 401 source, all nonproprietary information contained in the permit application, ~~draft permit~~ and supporting materials for the duration of the comment period. Public inspection may be at a physical location or on the permitting authority web site.

(ii) The permitting authority must make the draft permit and technical support document available:

(A) [Name Clean Air Agency]: At a physical location near the source.

(B) All other permitting authorities: On their web site. Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post online on a web site but may be made available as part of the permit record either as hardcopy or on a data storage device.

~~Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.~~

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section.

(a) This comment period begins on the date of: ~~publication of~~ publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later. ;

(i) [Name Clean Air Agency]: publication of notice in the newspaper of largest general circulation in the area of the facility; or

(i) All other permitting authorities: posting of notice on their web site.

(b) No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

(5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.