

Draft 12-06-2016

Proposed Changes to Chapters 173-400 and 173-401 WAC

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## Proposed Changes to Chapters 173-400 and 173-401 WAC

### WAC 173-400-025 Adoption of federal rules.

Federal rules mentioned in this rule are adopted as they exist on ~~January 1, 2016~~ March 1, 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.

Commented [GE(1)]: Source: [40 CFR 63.11237](#)

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](#).

Ecology proposes to update its definition of VOC to align with the federal definition in [40 CFR 51.100\(s\)](#). We propose to add ten compounds that EPA has defined as VOC-exempt (current on 11/4/2016).

- (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 (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate.

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1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub> or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (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.

### WAC 173-400-035 Nonroad engines.

### 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.

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Commented [GE(2)]: 77 FR 37610, 6/22/2012

Commented [GE(3)]: 81 FR 9823, 2/12/2013

Commented [GE(4)]: 78 FR 23149, 4/18/2013

Commented [GE(5)]: 78 FR 62451, 10/22/2013

Commented [GE(6)]: 79 FR 17037, 3/27/2014

Commented [GE(7)]: 81 FR 9339, 2/25/2016

Commented [GE(8)]: 81 FR 50330, 8/1/2016

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

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:

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- (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

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- (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.

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

The permitting authority must select the appropriate method to provide public notice for all actions listed in subsection (3) of this section. The permitting authority must use the selected method to notify the public of all public notice actions under this section. The permitting authority may supplement the selected method by other noticing methods on individual permits or actions.

~~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.~~

(a) Public notice method options.

(i) Electronic posting on the permitting authority web site for the duration of the public comment period. Duration does not require uninterrupted web site access; or

~~(ii) 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.~~

(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 or other supplemental noticing methods as determined by the permitting authority.

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

The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection either on the permitting authority web site or in at least one location near the proposed project. The public notice method chosen to comply with (4) of this section determines the location of the information. 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.

**Commented [GE(9)]:** This provision allows us to provide notice by "other means of prominent advertisement" so we can continue to reach communities with limited computer access or no newspaper.

**Commented [GE(10)]:** The federal rules require us to post by our selected method so we can't continue to publish by "other means of prominent advertisement" instead of newspaper publication. We can supplement our selected noticing method- see previous comment.

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(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.

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

**(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 by the same method selected by subsection (4) of this section~~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 (e.g., by electronic means, email, 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 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.

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

(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

## WAC 173-400-740 Public involvement provisions (PSD)

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)~~ Make available for public inspection on ecology's web site 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. This includes analyses of the effects on air quality and air quality related values.

~~(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.

~~(a)(b)~~ Notify the public by:

~~(i)~~ Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC [173-400-730\(4\)](#). The date the public notice is published in the newspaper starts the required thirty-day comment period. Posting the information in subsection (3) of this section on ecology's web site for the

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duration of the public comment period. Duration does not require uninterrupted web site access. Ecology may supplement a web site posting by other noticing methods on individual permits.

~~(+)(ii)~~ If ecology grants a request to extend the public comment period, ecology must post the extension notice must ~~also be published in a newspaper on ecology's web site~~ as noted above and distribute a copy of the extension notice ~~sent by electronic means, email, or postal service to the organizations or individuals requesting 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.

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

~~(+)(iv)~~ If ecology determines a supplemental noticing method is appropriate, ~~the~~ applicant or other initiator of the action must pay the cost of providing this public notice.

~~(b)(c)~~ Send-Distribute 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.

~~(e)(d)~~ Send-Distribute 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 local 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;

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- (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 ~~web site where the documents are available and, if provided, the providing~~ location of a physical copy of the documents 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-web site~~ 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

## WAC 173-400-740 Public involvement provisions (PSD)

- (v) A cover letter that includes an explanation of how the final determination may be appealed.
- (b) Ecology shall ~~mail~~ distribute by electronic means, email, 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;
  - (ii) Other individuals who requested notification of PSD permits.
- (c) Ecology shall distribute by electronic means, email, 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.

## WAC 173-400-645 Emergency provision (Operating Permit Regulation)

Ecology proposes to delete this provision to mirror EPA's proposed action to remove 40 CFR 70.6(g). See [81 FR 38645](#) on June 14, 2016.

### WAC 173-401-645 Emergency provision.

[This section is no longer effective starting January 1, 2018.](#)

- (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 173-401-800 Public involvement. (Operating Permit Regulation)

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) ~~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. The permitting authority must select the appropriate method to provide public notice for all actions listed in (a) of this subsection.~~
    - (i) Public notice method options include:
      - (A) Electronic posting on the permitting authority web site for the duration of the public comment period. Duration does not require uninterrupted web site access; or
      - (B) Prominent advertisement in a newspaper of general circulation in the area affected by the facility applying for a permit.
    - (ii) The permitting authority must use the selected method to notify the public of all public notice actions.

## WAC 173-401-800 Public involvement. (Operating Permit Regulation)

- (iii) The permitting authority may supplement the selected method with other noticing methods on individual permits or actions.
- (iv) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805. 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 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 includes either electronic or hardcopy mailing list 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. 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. This requirement must be met by:

  - (i) Posting materials in the same location as the public notice on the permitting authority public web site if the permitting authority selected electronic web posting under (b)(i)(A) of this subsection. 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.

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~~(ii) Making these materials available at a physical location near the source if the permitting authority selected advertisement in a newspaper under (b)(i)(B) of this subsection.~~

~~(iii) 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 the public notice following the method chosen to comply with (2)(b)(i) of this section, 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.~~

~~(a)(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.

**Commented [GE(11)]:** Ecology proposes to de-link publication in the *Permit Register* with the start of the 30-day comment period. Now that agencies post on their web sites, the public has easy access to the information. Agencies must still post notice in the *Permit Register*; but that posting doesn't set