

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-020 Applicability. (1) The provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW ((70.94.141)) 70A.15.2040 and ((70.94.331)) 70A.15.3000.

(2) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

(a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.

(b) Automobiles, trucks, aircraft.

(c) Those sources under the jurisdiction of the energy facility site evaluation council.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-030 Definitions. The definitions in this section apply statewide except where a permitting authority has redefined a specific term. Except as provided elsewhere in this chapter, the definitions in this section apply throughout the chapter:

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

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

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

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

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

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

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to

human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

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

(a) The applicable standards as in 40 C.F.R. Part 60, 61, 62, or 63;

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

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

(6) **"Alternative emission limit"** or **"alternative emission limitation"** means an emission limitation that applies to a source or an emissions unit only during a specifically defined transient mode of operation. An alternative emission limitation is a component of a continuously applicable emission limit. An alternative emission limit may be a numerical limit or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

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

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

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

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

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

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

(13) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter ((70.94)) 70A.15 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part

60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

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

(15) "**Brake horsepower (BHP)**" means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(16) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW ((70.94.155)) 70A.15.2240 and WAC 173-400-120.

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

(18) "**Class I area**" means any area designated under section 162 or 164 of the federal Clean Air Act (42 U.S.C., Sec. 7472 or 7474) as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

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

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

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

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

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

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

(22) "**Criteria pollutant**" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 C.F.R. Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃) sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

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

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

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

(26) "**Electronic means**" means email, fax, FTP site, or other electronic method approved by the permitting authority.

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

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

(29) "**Emission standard,**" "**emission limitation**" and "**emission limit**" means a requirement established under the federal Clean Air Act or chapter ((70.94)) 70A.15 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the federal Clean Air Act or chapter ((70.94)) 70A.15 RCW.

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

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year
Fluorides:	3 tons per year
Hydrogen sulfide (H ₂ S):	10 tons per year
Lead:	0.6 tons per year
Nitrogen oxides:	40 tons per year
Particulate matter (PM):	25 tons per year of PM emissions 10 tons per year of PM-2.5 15 tons per year of PM-10 emissions
Reduced sulfur compounds (including H ₂ S):	10 tons per year
Sulfur dioxide:	40 tons per year
Sulfuric acid mist:	7 tons per year
Total reduced sulfur (including H ₂ S):	10 tons per year
Volatile organic compounds:	40 tons per year

(31) "**Emissions unit**" or "**emission unit**" means any part of a stationary source or source which emits or would have the potential to

emit any pollutant subject to regulation under the federal Clean Air Act, chapter ((70.94)) 70A.15 or ((70.98)) 70A.388 RCW.

(32) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard or an emission limit established in a permit or order, including an alternative emission limit.

(33) "**Excess stack height**" means that portion of a stack which exceeds the greater of ((sixty-five)) 65 meters or the calculated stack height described in WAC 173-400-200(2).

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

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

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

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

(37) "**Federal land manager**" means the secretary of the department with authority over federal lands in the United States.

(38) "**Federally enforceable**" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 C.F.R. Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 C.F.R. 52.21 or under a SIP approved new source review regulation, emissions limitation orders issued under WAC 173-400-081(4), 173-400-082, or 173-400-091.

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

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

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

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

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

(44) "**Greenhouse gases (GHGs)**" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(45) "**Hog fuel**" (hogged fuel) means waste wood that is reduced in size to facilitate burning.

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

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

(48) **"Mandatory Class I federal area"** means any area defined in Section 162(a) of the federal Clean Air Act (42 U.S.C., 7472(a)). The following areas are the mandatory Class I federal areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness;

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

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

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

(52) **"National Ambient Air Quality Standard (NAAQS)"** means an ambient air quality standard set by EPA at 40 C.F.R. Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

(53) **"National Emission Standards for Hazardous Air Pollutants (NESHAP)"** means the federal rules in 40 C.F.R. Part 61.

(54) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 C.F.R. Part 63.

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

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

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

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

(57) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 C.F.R. Part 60.

(58) **"Nonattainment area"** means a geographic area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(59) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act (42 U.S.C., Sec. 7521); or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the federal Clean Air Act (42 U.S.C., Sec. 7411); or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than (~~twelve~~) 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(60) **"Notice of construction application"** means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

(61) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

(62) **"Outdoor burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Waste wood disposal in wigwam burners or silo burners is not considered outdoor burning.

(63) **"Order"** means any order issued by ecology or a local air authority pursuant to chapter (~~70.94~~) 70A.15 RCW, including, but not limited to RCW (~~70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141~~) 70A.15.3010, 70A.15.2210, 70A.15.2220, 70A.15.2230, and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

(64) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of con-

struction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(65) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 C.F.R. Part 82.

(66) "**Particulate matter**" or "**particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(67) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

(68) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

(69) "**Permitting authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

(70) "**Person**" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(71) "**PM-10**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix J and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(72) "**PM-10 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51, Appendix M (in effect on the date in WAC 173-400-025) or by a test method specified in the SIP.

(73) "**PM-2.5**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix L and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(74) "**PM-2.5 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) or by a test method specified in the SIP.

(75) "**Portable source**" means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(76) "**Potential to emit**" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

- (77) "**Prevention of significant deterioration (PSD)**" means the program in WAC 173-400-700 to 173-400-750.
- (78) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.
- (79) "**Reasonably attributable**" means attributable by visual observation or any other technique the state deems appropriate.
- (80) "**Reasonably available control technology (RACT)**" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.
- (81) "**Regulatory order**" means an order issued by a permitting authority that requires compliance with:
- (a) Any applicable provision of chapter ((70.94)) 70A.15 RCW or rules adopted thereunder; or
 - (b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.
- (82) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
- (83) "**Shutdown**" means, generally, the cessation of operation of a stationary source or emission unit for any reason.
- (84) "**Source**" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.
- (85) "**Source category**" means all sources of the same type or classification.
- (86) "**Stack**" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.
- (87) "**Stack height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.
- (88) "**Standard conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(89) **"Startup"** means, generally, the setting in operation of a stationary source or emission unit for any reason.

(90) **"State implementation plan (SIP)"** or **"Washington SIP"** means the Washington SIP in 40 C.F.R. Part 52, Subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

(91) **"Stationary source"** means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the federal Clean Air Act (42 U.S.C., 7550(11)).

(92) **"Sulfuric acid plant"** means any facility producing sulfuric acid by the contact process or by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(93) **"Synthetic minor"** means any source whose potential to emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

(94) **"Total reduced sulfur (TRS)"** means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by 40 C.F.R. Part 60, Appendix A, Test Method 16 (in effect on the date in WAC 173-400-025) or an EPA approved equivalent method and expressed as hydrogen sulfide.

(95) **"Total suspended particulate"** means particulate matter as measured by the method described in 40 C.F.R. Part 50 Appendix B.

(96) **"Toxic air pollutant (TAP)"** or **"toxic air contaminant"** means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(97) **"Transient mode of operation"** means a short-term operating period of a source or an emission unit with a specific beginning and end, such as startup, shutdown, or maintenance.

(98) **"Unclassifiable area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 C.F.R. Part 81.

(99) **"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

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

(101) **"Visibility impairment"** means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(102) **"Volatile organic compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or

carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ($n-C_3F_7OCH_3$ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236ca12); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (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 saturations;
- (iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and
- (iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 C.F.R. Part 60, Appendix A (in effect on the date in WAC 173-400-025). 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.

(103) "**Wigwam**" or "**siloburner**" means a cone-shaped or cylindrical structure that burns waste wood for disposal. A siloburner is a cylinder and may be made with refractory material rather than metal.

(104) "**Wood-fired boiler**" means an enclosed device using controlled flame combustion of wood or waste wood with the primary purpose of recovering thermal energy in the form of a steam or hot water boiler that burns wood or waste wood for fuel for the primary purpose of producing hot water or steam by heat transfer. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or air feed rates are controlled.

(105) "**Waste wood**" means wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, and the handling and storage of raw materials, trees, and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, log sort yard waste, and wood materials from forest health logging, land clearing or pruning, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP. (1) Applicability. The owner or operator may request an alternative emission limit for a specific emission unit(s) that exceeds a limit in the SIP. The new limit would apply during a clearly defined transient mode of operation. An alternative emission limit established under this section becomes a facility-specific SIP emission standard once EPA approves the new limit in the SIP. This section does not apply to the approval of a revised emission limit that does not exceed a limit in the SIP.

(2) Pollutant scope. An alternative emission limit may be established under this section for any of the following emission standards in Washington's SIP in 40 C.F.R. 52.2470:

(a) Opacity emission standard in:

- (i) WAC 173-400-040(2);
- (ii) WAC 173-405-040(6);
- (iii) WAC 173-415-030(3); and
- (iv) WAC 173-434-130(4).

(b) Sulfur dioxide emission standard in:

- (i) WAC 173-400-040(7);
- (ii) WAC 173-405-040(11);
- (iii) WAC 173-410-040(1);
- (iv) WAC 173-415-030(5); and
- (v) WAC 173-434-130(3).

(c) Particulate matter emission standards in:

- (i) WAC 173-400-050(1) and 173-400-060;
- (ii) WAC 173-405-040 (1) (a), (2), (3) (a), and (5);
- (iii) WAC 173-410-040(2);
- (iv) WAC 173-415-030(2); and

(v) WAC 173-434-130(1).

(d) Emission standards or limits in a local air pollution control authority rule, order, or plan referenced in 40 C.F.R. 52.2470.

(3) Requirements for an owner or operator requesting an alternative emission limit.

(a) The owner or operator may request an alternative emission limit for a specific transient mode of operation for an emission unit that exceeds a standard in the SIP.

(b) A request for an alternative emission limit must be submitted to the permitting authority in writing. The permitting authority shall determine the adequacy of the information.

(c) A request for an alternative emission limit must provide data and documentation sufficient to:

(i) Specify which emission unit(s) and specific transient mode(s) of operation the requested alternative emission limit is to cover;

(ii) Demonstrate that the operating characteristics of the emission unit(s) prevent meeting the applicable emission standard during the specific transient mode of operation. Operating characteristics may include the operational variations in the emission unit, installed emission control equipment, work practices, or other means of emission control that could affect the frequency, or duration and quantity of emissions during the transient mode of operation;

(iii) Demonstrate why it is not technically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit to comply with the SIP emission standard, and avoid the need for an alternative emission limit;

(iv) Demonstrate that PSD increments, when applicable, and ambient air quality standards in chapter 173-476 WAC will not be exceeded by emissions from the proposed alternative limit;

(v) Determine best operational practices for the emission unit(s) involved;

(vi) Demonstrate that the frequency and duration of the specific transient mode of operation is limited to the shortest practicable amount of time;

(vii) Demonstrate the quantity and impact of the emissions resulting from the specific transient mode of operation are the lowest practicably possible; and

(viii) Demonstrate that the emissions allowed by the alternative emission limit will not exceed an applicable emission standard in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption in any of these federal rules does not apply.

(4) Requirements for processing a request for an alternative emission limit.

(a) Completeness determination.

(i) Within (~~sixty~~) 60 days of receiving a request, the permitting authority must:

(A) Notify the applicant that the request is complete or incomplete;

(B) Specify the reason(s) for determining the request is incomplete, if applicable.

(ii) The permitting authority may request or accept additional information after determining a request complete.

(b) Denial. The permitting authority or ecology may deny a request. The denial must include the basis for the denial.

(c) Final determination.

(i) Within (~~ninety~~) 90 days of receipt of a complete application, the permitting authority must:

(A) Initiate notice, a (~~thirty~~) 30-day public comment period (required by WAC 173-400-171), and a mandatory hearing (when required by RCW (~~70.94.380~~) 70A.15.3050) followed as promptly as possible by a final decision; and

(B) Send the draft order and supporting materials electronically to ecology at least (~~thirty~~) 30 days in advance of the public hearing.

(ii) A permitting authority may extend the deadline for making a determination due to the complexity of the request.

(iii) Ecology recommends combining the public comment period for the draft order (permitting authority responsibility) and the ecology approval and SIP hearing (ecology responsibility).

(iv) A permitting authority shall not issue a final order until ecology notifies the permitting authority in writing that the proposed alternative emission limit is consistent with the purposes of the Washington Clean Air Act as required by RCW (~~70.94.380~~) 70A.15.3050. If on review, ecology denies the request, ecology will inform the permitting authority and the applicant of the reason(s) for the denial; and

(v) The final order shall not be effective until the effective date of EPA's approval of the order as a SIP amendment.

(5) The draft regulatory order must include:

(a) The name or other designation to identify the specific emission unit(s) subject to the alternative emission limit;

(b) A clearly defined specific transient mode of operation during which the alternative emission limit applies, including parameters for determining the starting and stopping point, and when the alternative emission limit applies;

(c) The emission limit for the specific transient mode of operation;

(d) A requirement that the applicable emission unit(s) be operated consistent with good operating practices for minimizing emissions during the time the alternative emission limit applies; and

(e) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with each condition in the order.

(6) Fees. A permitting authority may assess and collect fees for processing the request for an alternative emission limit according to its fee schedule for processing a permit application.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-091 Voluntary limits on emissions. (1) Upon request by the owner or operator of a new or existing source or stationary source, the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and the permitting authority with jurisdiction.

(2) A condition contained in an order issued under this section shall be less than the source's or stationary source's otherwise allowable annual emissions of a particular contaminant under all appli-

cable requirements of ((the)) chapter ((70.94)) 70A.15 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or stationary source complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

(4) Any order issued under this section must comply with WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section are enforceable. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-400-101 Registration issuance. (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required must register the source emission unit with the permitting authority. The owner or operator must make reports containing information required by the permitting authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration. Sources must provide registration information in a manner and time prescribed by the permitting authority and must provide the required information within the time specified by the permitting authority. Sources must list each emission unit within the facility separately unless the permitting authority determines that the facility may combine certain emission units into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative must sign the registration form for each source. The owner or operator of the source is responsible for notifying the permitting authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction must maintain an operation and maintenance plan for process and control equipment. The plan must reflect good industrial practice and must include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The source owner or operator must review and update the plan at least annually. The source owner or operator must make a copy of the plan available to ecology upon request.

(5) Report of closure. The owner or operator must file a report of closure with the permitting authority within (~~ninety~~) 90 days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator must report to the permitting authority within (~~ninety~~) 90 days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW (~~70.94.030~~) 70A.15.1030(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-110 New source review (NSR) for sources and portable sources. (1) Applicability.

(a) WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations.

(b) This section applies to new sources and stationary sources as defined in RCW (~~70.94.030~~) 70A.15.1030, and WAC 173-400-030, but does not include nonroad engines.

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;

(ii) "New source" includes:

(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030;

(B) The construction, modification, or relocation of a portable source as defined in WAC 173-400-030, except those relocating in compliance with WAC 173-400-036;

(C) The establishment of a new or modified toxic air pollutant source, as defined in WAC 173-460-020; and

(D) A major modification to an existing major stationary source, as defined in WAC 173-400-710 and 173-400-810.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications and orders of approval for new sources that are not major stationary sources, as defined in WAC 173-400-710 and 173-400-810, shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9) or during a department-conducted remedial action, through the procedures outlined in WAC 173-340-710(9).

(2) **Preconstruction approval requirements.** The applicant must evaluate the proposed project and submit an application addressing all applicable new source review requirements of this chapter.

(a) A notice of construction application must be filed and an order of approval must be issued by the permitting authority prior to the establishment of any new source or modification except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.

(b) If the proposed project is a new major stationary source or a major modification, located in a designated nonattainment area, and if the project emits the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and the project meets the applicability criteria in WAC 173-400-820, then the project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860.

(c) If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, then the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(d) If the proposed project will increase emissions of toxic air pollutants regulated under chapter 173-460 WAC, then the project must meet all applicable requirements of that program.

(3) **Modifications.** New source review is required for any modification to a stationary source that requires:

(a) An increase in a plant-wide cap; or

(b) An increase in an emission unit or activity specific emission limit.

(4) **Emission unit and activity exemptions.** The construction or modification of emission units or an activity in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission unit or an activity exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

(iv) Paving application and maintenance. This provision does not exempt asphalt plants from this chapter;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, house keeping, plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application and maintenance;

(viii) Insulation application and maintenance;

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that do not result in new or modified stationary sources or portable stationary sources.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks. This provision does not exempt wholesale distributors of lubricating oils from this chapter;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cubic feet);

(vi) Operation, loading and unloading of storage tanks, \leq 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC, max. VP 550 mm mercury at 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) New or modified emission units with combined aggregate heat inputs to combustion units (excluding emergency engines exempted by subsection (4)(h)(xxxix) of this section), less than or equal to all of the following, as applicable:

(i) \leq 500,000 Btu/hr using coal with \leq 0.5% sulfur or other solid fuels with \leq 0.5% sulfur;

(ii) \leq 500,000 Btu/hr using used oil, per the requirements of RCW (~~(70.94.610)~~) 70A.15.4510;

(iii) \leq 400,000 Btu/hr using wood waste or paper;

(iv) \leq 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with \leq 0.05% sulfur;

(v) \leq 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is \leq 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm mercury at 21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers using only gases that are not toxic air pollutants listed in chapter 173-460 WAC;

- (ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;
- (iii) Installation or modification of a single laboratory fume hood;
- (iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.
- (v) Laboratory calibration and maintenance equipment.
- (g) Monitoring/quality assurance/testing:
 - (i) Equipment and instrumentation used for quality control/assurance or inspection purpose;
 - (ii) Hydraulic and hydrostatic testing equipment;
 - (iii) Sample gathering, preparation and management;
 - (iv) Vents from emission monitors and other analyzers.
- (h) Miscellaneous:
 - (i) Single-family residences and duplexes;
 - (ii) Plastic pipe welding;
 - (iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
 - (iv) Comfort air conditioning;
 - (v) Flares used to indicate danger to the public;
 - (vi) Natural and forced air vents and stacks for bathroom/toilet activities;
 - (vii) Personal care activities;
 - (viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
 - (ix) Tobacco smoking rooms and areas;
 - (x) Noncommercial smokehouses;
 - (xi) Blacksmith forges for single forges;
 - (xii) Vehicle maintenance activities, not including vehicle surface coating;
 - (xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);
 - (xiv) Wax application;
 - (xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
 - (xvi) Ozone generators and ozonation equipment;
 - (xvii) Solar simulators;
 - (xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
 - (xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;
 - (xx) Pulse capacitors;
 - (xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
 - (xxii) Fire suppression equipment;
 - (xxiii) Recovery boiler blow-down tank;
 - (xxiv) Screw press vents;
 - (xxv) Drop hammers or hydraulic presses for forging or metal working;
 - (xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
 - (xxvii) Kraft lime mud storage tanks and process vessels;

- (xxviii) Lime grits washers, filters and handling;
 - (xxix) Lime mud filtrate tanks;
 - (xxx) Lime mud water;
 - (xxxii) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
 - (xxxiii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
 - (xxxiv) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;
 - (xxxv) Surface coating, aqueous solution or suspension containing ≤ 1% (by weight) VOCs, or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC;
 - (xxxvi) Cleaning and stripping activities and equipment using solutions having ≤ 1% VOCs (by weight) or ≤ 1% (by weight) toxic air pollutants. Acid solutions used on metallic substances are not exempt;
 - (xxxvii) Dip coating operations, using materials less than 1% VOCs (by weight) or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC.
 - (xxxviii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.
 - (xxxix) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.
 - (xl) Stationary emergency internal combustion engines with an aggregate brake horsepower that is less than or equal to 500 brake horsepower.
 - (xli) Gasoline dispensing facilities with annual gasoline throughputs less than those specified in WAC 173-491-040 (4)(a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.
- (5) **Exemptions based on emissions.**
- (a) Except as provided in this subsection:
 - (i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in Table 110(5) Exemption levels is exempt from new source review.
 - (ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in Table 110(5) Exemption levels of this subsection is exempt from new source review.
 - (b) Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emission unit, may request that the permitting authority impose emission limits and/or operation limitations for greenhouse gas in any new source review order of approval.

Table 110(5) Exemption levels:

POLLUTANT	LEVEL (TONS PER YEAR)
Carbon monoxide	5.0
Lead	0.005

POLLUTANT	LEVEL (TONS PER YEAR)
Nitrogen oxides	2.0
PM-10	0.75
PM-2.5	0.5
Total suspended particulates	1.25
Sulfur dioxide	2.0
Volatile Organic Compounds, total	2.0
Ozone Depleting Substances, total	1.0
Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

(6) **Portable source with order of approval.** A portable source is authorized to operate without obtaining a site-specific or a permitting authority specific approval order to relocate if the portable source complies with the provisions of WAC 173-400-036.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-112 Requirements for new sources in nonattainment areas—Review for compliance with regulations. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations. The permitting authority that is reviewing an application required by WAC 173-400-110(2) to establish a new source in a nonattainment area shall issue the order of approval if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter ((70.94)) 70A.15 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will achieve LAER for any air contaminants for which:

(a) The area has been designated nonattainment; and

(b) (i) The proposed new source is major; or

(ii) The existing source is major and the major modification is significant.

(3) The proposed new source will employ BACT for those air contaminants not subject to LAER that the new source will emit or for which the proposed modification will cause an emissions increase.

(4) The proposed new source or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(5) If the proposal is a new major stationary source or a major modification as those terms are defined in WAC 173-400-810 then it must also comply with WAC 173-400-800 through 173-400-860.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-113 New sources in attainment or unclassifiable areas—Review for compliance with regulations. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations. The permitting authority that is reviewing an application to establish a new source or modification in an attainment or unclassifiable area shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter ((70.94)) 70A.15 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

(3) Allowable emissions from the proposed new source or the increase in emissions from the proposed modification will not cause or contribute to a violation of any ambient air quality standard. If the modeled concentrations of allowable emissions from the proposed new source or the increase in emissions from the proposed modification are below the levels in Table 4a, the proposed source does not contribute to a violation of an ambient air quality standard.

(4)(a) If the projected impact of the allowable emissions from the proposed new major stationary source (as defined in WAC 173-400-810) or the projected impact of the increase in allowable emissions from the proposed major modification (as defined in WAC 173-400-810) at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment, then the proposed new source or modification will not be considered to cause or contribute to a violation of an ambient air quality standard:

Table 4a:
Cause or Contribute Threshold Values for Nonattainment Area Impacts

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-		0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³			
NO ₂	1.0 µg/m ³	-	-	-	-

(b) If the projected impact of the allowable emissions from the proposed new major stationary source (as defined in WAC 173-400-810) or the projected impact of the increase in allowable emissions from

the proposed major modification (as defined in WAC 173-400-810) results in a projected impact at any location inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction or other method identified in 40 C.F.R. Part 51 Appendix S, Sections III and IV.A which reduce the projected impacts to the above values or less. If the owner or operator of the proposed new major stationary source or major source proposed to be modified is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new major stationary source or major modification.

(5) If the proposal is a new major stationary source or a major modification as defined in WAC 173-400-720, then it must also comply with WAC 173-400-700 through 173-400-750.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.

(1) Any **person** proposing to replace or substantially alter the **emission** control technology installed on an existing **stationary source** or **emission unit** shall file a **notice of construction application** with the appropriate **authority**, or with **ecology** in areas or for **sources** over which **ecology** has jurisdiction. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

(2) A project to replace or substantially alter emission control technology at an existing stationary source that results in an increase in emissions of any air contaminant is subject to new source review as provided in WAC 173-400-110. For any other project to replace or significantly alter control technology the permitting **authority** may:

(a) Require that the owner or operator employ **RACT** for the affected **emission unit**;

(b) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(c) Prescribe other requirements as authorized by chapter ((70.94)) 70A.15 RCW.

(3) Within ((~~thirty~~)) 30 days of receipt of a **notice of construction application** under this section **ecology** or the **authority** shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within ((~~thirty~~)) 30 days of receipt of a complete **notice of construction application** under this section **ecology** or the **authority** shall either issue an **order of approval** or a proposed **RACT** determination for the proposed project.

(4) Construction shall not "**commence**," as defined in WAC 173-400-030, on a project subject to review under this section until **ecology** or the **authority** issues a final **order of approval**. However, any **notice of construction application** filed under this section shall be deemed to be approved without conditions if **ecology** or the **authori-**

ty takes no action within (~~thirty~~) 30 days of receipt of a complete **notice of construction application**.

(5) Approval to replace or substantially alter **emission** control technology shall become invalid if construction is not **commenced** within (~~eighteen~~) 18 months after receipt of such approval, if construction is discontinued for a period of (~~eighteen~~) 18 months or more, or if construction is not completed within a reasonable time. **Ecology** or the **authority** may extend the (~~eighteen~~) 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within (~~eighteen~~) 18 months of the projected and approved commencement date.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

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 website.

(b) The internet posting must remain on the permitting authority's website for a minimum of (~~fifteen~~) 15 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, or electronic means during the (~~fifteen~~) 15-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~~) 15-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~~) 65 meters, by means of a fluid model or a field study, for the purposes of establishing an emission limit; or

(g) An order to authorize a bubble; or

(h) An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

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

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

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

(o) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP.

(4) Advertising the mandatory public comment period.

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must be posted on the permitting authority website for the duration of the public comment period.

(i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. The applicant or other initiator of the action must pay the publishing cost for all supplemental noticing.

(ii) A permitting authority must publish a notice of the public comment period in a newspaper of general circulation in the area of the proposed action until June 30, 2019. We recommend that a permit-

ting authority continue publishing a notice in a newspaper for a project with high interest. The applicant or other initiator of the action must pay this publishing cost.

(b) This public notice can be posted 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 posted or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied.

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

(a) Administrative record. 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. A permitting authority may comply with this requirement by making these materials available on its website or in at least one physical location near the proposed project.

(b) The permitting authority must post the following information on its website for the duration of the public comment period:

(i) Public notice complying with subsection (6) of this section;

(ii) Draft permit, order, or action; and

(iii) 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~~)) 70A.15.2510 and chapter 173-03 WAC.

(6) **Public notice components.**

(a) The notice must include:

(i) The date the notice is posted;

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

(iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(v) The location where those documents made available for public inspection may be reviewed;

(vi) Start date and end date for a public comment period consistent with subsection (7) of this section;

(vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

(viii) The name, address, and telephone number and email 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 consist of a minimum of (~~thirty~~) 30 days and start at least (~~thirty~~) 30 days prior to any hearing. The first day of the public comment period begins on the next calendar day after the permitting authority posts the public notice on their website.

(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 public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, or electronic means. 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~~) 30 days prior to the hearing the permitting authority must provide notice of the hearing as follows:

(i) Post the public hearing notice on the permitting authority website as directed by subsections (4) and (7) of this section;

(ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community; and

(iii) Distribute by electronic means or via the United States 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 supplemental notice costs when the permitting authority determines a supplemental notice is appropriate. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(11) **Notifying the EPA.** The permitting authority must distribute by electronic means or via the United States 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~~) 30 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.

AMENDATORY SECTION (Amending WSR 05-03-033, filed 1/10/05, effective 2/10/05)

WAC 173-400-175 Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW (~~70.94.205~~) 70A.15.2510, is available for public inspection at the issuing agency. This includes copies of notice of construction applications, orders, and applications to modify orders.

AMENDATORY SECTION (Amending WSR 07-19-005, filed 9/6/07, effective 10/7/07)

WAC 173-400-180 Variance. Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to ecology for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW (~~70.94.181~~) 70A.15.2310.

(1) **Jurisdiction.** Sources in any area over which a local air pollution control authority has jurisdiction shall make application to that authority rather than ecology. Variances to state rules shall require ecology's approval prior to being issued by an authority. Ecology or the authority may grant such variance, but only after public involvement per WAC 173-400-171.

(2) **Full faith and credit.** Variances granted in compliance with state and federal laws by an authority for sources under their jurisdiction will be accepted as variances to this regulation.

(3) **EPA concurrence.** No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the USEPA.

(4) Fees relating to this section can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending WSR 93-05-044, filed 2/17/93, effective 3/20/93)

WAC 173-400-230 Regulatory actions. Ecology may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 43.21B.300 which is incorporated by reference.

(1) **Enforcement actions by ecology—Notice to violators.** At least (~~thirty~~) 30 days prior to the commencement of any formal enforcement action under RCW (~~(70.94.430)~~) 70A.15.3150 and (~~(70.94.431)~~) 70A.15.3160, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, ecology may require that the alleged violator or violators appear before it for the purpose of providing ecology information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with ecology prior to the commencement of enforcement action.

(2) **Civil penalties.**

(a) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter (~~(70.94)~~) 70A.15 or (~~(70.120)~~) 70A.25 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW (~~(70.94.431)~~) 70A.15.3160. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW (~~(70.94.431)~~) 70A.15.3160 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the (~~(ninety-first)~~) 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the (~~(thirty-first)~~) 31st day following final resolution of the appeal.

The maximum penalty amounts established in RCW (~~(70.94.431)~~) 70A.15.3160 may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(d) All penalties recovered under this section by ecology shall be paid into the state treasury and credited to the air pollution con-

trol account established in RCW ((70.94.015)) 70A.15.1010 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by ecology under subsection (a) of this section shall be reduced by the amount of the payment.

(e) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(f) Public or private entities that are recipients or potential recipients of ecology grants, whether for air quality related activities or not, may have such grants rescinded or withheld by ecology for failure to comply with provisions of this chapter.

(g) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ((ninety)) 90 days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) **Assurance of discontinuance.** Personnel of ecology or an authority may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or any order issued thereunder which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) **Restraining orders, injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the director, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) **Emergency episodes.** Ecology may issue such orders as authorized by chapter 173-435 WAC via chapter ((70.94)) 70A.15 RCW, whenever an air pollution episode forecast is declared.

(6) **Compliance orders.** Ecology may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-400-240 Criminal penalties. Persons in violation of Title 173 WAC may be subject to the provisions of RCW ((70.94.430)) 70A.15.3150.

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

(1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

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

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; 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 on ecology's website or at a physical location.

(i) Some materials comprising the administrative record (such as air quality modeling data) may be too large to post on a website but may be made available as part of the record either in hard copy 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~~)) 70A.15.2510 and chapter 173-03 WAC.

(b) Notify the public.

(i) Public notice must be posted on ecology's website for a minimum of ((~~thirty~~)) 30 days. Day one of the public comment period begins on the next calendar day after ecology posts the public notice.

(ii) The following information must be posted for the duration of the public comment period:

(A) Public notice elements in subsection (3) of this section;

(B) PSD draft permit;

(C) PSD technical support document; and

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

(iii) If ecology grants a request to extend the public comment period, ecology must:

(A) Post the extension notice on the same web page where the original notice was posted;

(B) Specify the closing date of the extended comment period in the extension notice; and

(C) Distribute a copy of the extension notice by electronic means or via the United States postal service to whomever requested the ex-

tension and the organizations and individuals listed in (c) and (d) of this subsection.

(iv) If a hearing is held, the public comment period must extend through the hearing date and comply with the notice requirements in subsection (4)(c) of this section.

(v) If ecology determines a supplemental notice is appropriate, the applicant or other initiator of the action must pay the cost of providing this supplemental public notice. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(c) Distribute by electronic means or via the United States 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) Distribute by electronic means or via the United States 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; and

(v) Individuals or organizations who request a copy.

(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 start date and end date of the public comment period consistent with subsection (2)(b)(i) of this section;

(j) A statement that a public hearing may be held if ecology determines within the public comment period that significant public interest exists;

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

(l) 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 public comment period established consistent with subsection (2)(b)(i) of this section. 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~~) 30 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 website 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 post the final determination on the same web page where the draft permit and public notice was posted according to subsection (2)(b) of this section.

(c) Ecology shall distribute by electronic means or via the United States 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.

(d) Ecology shall distribute a copy of the final determination 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; and

(vi) Any person who commented on the preliminary determination.

WAC 173-400-930 Emergency engines. (1) Applicability.

(a) This section applies statewide except where a permitting authority has not adopted this section in rule.

(b) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(c) This section is not applicable to emergency engines proposed to be installed as part of a new major stationary source, as defined in WAC 173-400-710 and 173-400-810, or major modification, as defined in WAC 173-400-710 and 173-400-810.

(d) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(e) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW ((70.94.152)) 70A.15.2210 and chapter 173-460 WAC.

(f) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(g) If an applicant cannot meet the requirements of this section, then they must file a notice of construction application.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines in 40 C.F.R. 89.112 Table 1 and 40 C.F.R. 1039.102 Tables 6 and 7 (in effect on the date in WAC 173-400-025), as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur bio-diesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of ((fifty)) 50 hours per year for maintenance and testing or other nonemergency use.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure or loss of all or part of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

- (i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or
- (ii) Train personnel on emergency activities; or
- (iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or
- (iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.