

WAC 173-406-106 Standard requirements. (1) Permit requirements.

(a) The designated representative of each affected source and each affected unit at the source shall:

(i) Submit a complete acid rain permit application under this part in accordance with the deadlines specified in WAC 173-406-301;

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

(b) The owners and operators of each affected source and each affected unit at the source shall:

(i) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the permitting authority; and

(ii) Have an acid rain permit.

(2) Monitoring requirements.

(a) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements pursuant to 40 C.F.R. part 75 and section 407 of the act and regulations implementing section 407 of the act.

(b) The emissions measurements recorded and reported in accordance with 40 C.F.R. part 75 and section 407 of the act and regulations implementing section 407 of the act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

(c) The requirements of 40 C.F.R. part 75 and regulations implementing section 407 of the act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the act, applicable requirements of Title 173 WAC, and other provisions of the operating permit for the source.

(3) Sulfur dioxide requirements.

(a) The owners and operators of each source and each affected unit at the source shall:

(i) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 C.F.R. 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(ii) Comply with the applicable acid rain emissions limitation for sulfur dioxide.

(b) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the act.

(c) An affected unit shall be subject to the requirements under (a) of this subsection as follows:

(i) Starting January 1, 2000, an affected unit under WAC 173-406-103 (1)(b); or

(ii) Starting on the later of January 1, 2000, or the deadline for monitor certification under 40 C.F.R. part 75, an affected unit under WAC 173-406-103 (1)(c).

(d) Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

(e) An allowance shall not be deducted, in order to comply with the requirements under (a)(i) of this subsection, prior to the calendar year for which the allowance was allocated.

(f) An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under WAC 173-406-104 and 173-406-105 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(g) An allowance allocated by the administrator under the acid rain program does not constitute a property right.

(4) Nitrogen oxides requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emissions limitation for nitrogen oxides.

(5) Excess emissions requirements.

(a) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 C.F.R. part 77, and submit a copy to the permitting authority.

(b) The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(i) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 C.F.R. part 77; and

(ii) Comply with the terms of an approved offset plan, as required by 40 C.F.R. part 77.

(6) Recordkeeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created.

(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 C.F.R. 72.24; the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(ii) All emissions monitoring information, in accordance with 40 C.F.R. part 75.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

(iv) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

(b) The five-year document retention period in (a) of this subsection may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the permitting authority.

(c) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under WAC 173-406-800 and 40 C.F.R. part 75.

(7) Liability.

(a) Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under WAC

173-406-104 or 173-406-105, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to section 113(c) of the act and by the permitting authority pursuant to RCW 70.94.431 and 70.94.435.

(b) Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to section 113(c) of the act and 18 U.S.C. 1001 and by the permitting authority pursuant to RCW 70.94.430.

(c) No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

(d) Each affected source and each affected unit shall meet the requirements of the acid rain program.

(e) Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

(f) Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under WAC 173-406-402 (Phase II repowering extension plans), section 407 of the act and regulations implementing section 407 of the act, and except with regard to the requirements applicable to units with a common stack under 40 C.F.R. part 75 (including 40 C.F.R. 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(g) Each violation of a provision of WAC 173-406-100 through 173-406-1000 and 40 C.F.R. parts 72, 73, 75, 77, and 78, and regulations implementing sections 407 and 410 of the act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the act.

(8) Effect on other authorities. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under WAC 173-406-104 or 173-406-105 shall be construed as:

(a) Except as expressly provided in Title IV of the act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the act, including the provisions of Title I of the act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

(b) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the act;

(c) Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;

(d) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

(e) Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-23-127 (Order 94-23), § 173-406-106, filed 11/23/94, effective 12/24/94.]