

WAC 173-460-090 Second tier review. (1) Applicability.

An applicant who cannot demonstrate compliance with WAC 173-460-070 using an acceptable source impact level analysis as provided in WAC 173-460-080, may submit a petition requesting that ecology perform a second tier review to determine a means of compliance with WAC 173-460-070. Petitions for second tier review must be submitted to ecology with a copy to the permitting authority with jurisdiction.

(2) Second tier petition submittal requirements. Ecology will evaluate a second tier petition only if:

(a) The permitting authority submits to ecology a preliminary order of approval that addresses all applicable new source review issues with the exception of the outcome of the second tier review, State Environmental Policy Act review, public notification, and prevention of significant deterioration review; and

(b) The emission controls contained in the preliminary order of approval represent at least tBACT; and

(c) The applicant has developed a health impact assessment protocol that has been approved by ecology;

(d) The ambient impact of the emissions increase of each TAP that exceeds acceptable source impact levels has been quantified using refined air dispersion modeling techniques as approved in the health impact assessment protocol; and

(e) The petition contains a health impact assessment conducted in accordance with the approved health impact assessment protocol.

Note: Contact ecology's air quality program for a copy of a guidance document to assist in the preparation of the health impact assessment protocol.

(3) Health impact assessment (HIA) protocol. The HIA presents data about the new or modified source and its built and natural environment. A HIA includes but is not limited to: Site description, TAP concentrations and toxicity, identification of exposed populations and an exposure assessment. The HIA protocol must be reviewed and approved by ecology prior to development of the HIA.

(4) The health impact assessment must utilize current scientific information. New scientific information on the toxicological characteristics of toxic air pollutants may be used by ecology to justify modifications of risk-based concentrations.

(5) Background concentrations of TAPs will be considered as part of a second tier review. Background concentrations can be estimated using:

(a) The latest National Ambient Toxics Assessment data for the appropriate census tracts; or

(b) Ambient monitoring data for the project's location; or

(c) Modeling of emissions of the TAPs subject to second tier review from all stationary sources within 1.5 kilometers of the source location.

(6) Reduction of TAPs from existing emission units. For the purpose of offsetting emissions of a particular TAP, an applicant may propose reductions in actual emissions of that TAP from existing, unmodified emission units at the source or existing, unmodified emission units at other nearby sources. The health impact analysis must evaluate the benefits of the emission reductions. The reductions in TAP emissions authorized by this subsection must be included in an approval order as enforceable emission limits and must meet all requirements of WAC 173-460-071.

(7) Approval criteria for second tier review. Ecology may recommend approval of a project that is likely to cause an exceedance of acceptable source impact levels for one or more TAPs only if it deter-

mines that the emission controls for the new and modified emission units represent tBACT and the applicant demonstrates that the increase in emissions of TAPs is not likely to result in an increased cancer risk of more than one in one hundred thousand and ecology determines that the noncancer hazard is found to be acceptable.

(8) Application processing. Within thirty days after receiving a second tier petition ecology must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information required to make it complete.

(9) Public involvement. All notice of construction approval orders with a second tier component are subject to the public notice and comment requirements of WAC 173-400-171, which may be integrated with the permitting authority's public notice and comment procedures.

(10) Recommendation. Within sixty days of determining that a petition is complete ecology must make a recommendation to the permitting authority.

(a) If ecology recommends approval of the second tier petition, the permitting authority may approve the notice of construction application. Any new emission limits or conditions specified by ecology must be incorporated into the approval order.

(b) If ecology recommends denial of the second tier petition, then the permitting authority may not approve the project.

[Statutory Authority: Washington Clean Air Act, RCW 70.94.152. WSR 09-11-131 (Order 05-19), § 173-460-090, filed 5/20/09, effective 6/20/09. Statutory Authority: Chapter 70.94 RCW. WSR 94-03-072 (Order 93-19), § 173-460-090, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. WSR 91-13-079 (Order 90-62), § 173-460-090, filed 6/18/91, effective 9/18/91.]