

second quarter price deflator for 1990. The maximum annual fee for 1990 shall be fifty dollars.

[Statutory Authority: Chapter 70.95E RCW. 91-08-040 (Order 90-56), § 173-305-220, filed 4/1/91, effective 5/2/91.]

WAC 173-305-230 Due dates. (1) Fees imposed by RCW 70.95E.030 shall be first due on July 1, 1991, for facilities that are required to prepare plans in 1992, on July 1, 1992, for facilities that are required to prepare plans in 1993, and on July 1, 1993, for facilities that are required to prepare plans in 1994. Fees for facilities that are required to prepare plans following 1994 shall be first due on July 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste and/or are required to report under Section 313 of Title III of the Superfund Amendments and Reauthorization Act.

(2) If a facility pays a fee in anticipation of preparing a plan the following year, and circumstances change so that the facility is no longer required to prepare a plan, the facility may request a refund of the fee from the department and, upon verification of the information submitted, it shall be granted. This request is made by letter to the department.

[Statutory Authority: Chapter 70.95E RCW. 91-08-040 (Order 90-56), § 173-305-230, filed 4/1/91, effective 5/2/91.]

WAC 173-305-240 Responsibilities of the departments of ecology and revenue. (1) The legislature has provided that the primary responsibility of the department of ecology is to provide the department of revenue by April 30 of each year with a list of persons subject to the fee and the amount of their fee. The fees shall be calculated based on the formulas in WAC 173-305-220(3).

(2) The department of ecology shall subtract any overpayment of the fee in the previous year from the fee for the current year. The department shall also subtract any interest accrued on an overpayment from the fee for the current year if the overpayment was made due to an error which was the responsibility of the department or an over estimate of rate per risk pound for the prior year.

(3) If there are resubmissions of hazardous waste annual reports and/or toxic release inventory reports, the department shall add any underpayment of the fee in previous years to the fee for the current year.

(4) The legislature has provided that the primary responsibility of the department of revenue is to collect the fees from those identified in subsection (1) of this section.

[Statutory Authority: Chapter 70.95E RCW. 91-08-040 (Order 90-56), § 173-305-240, filed 4/1/91, effective 5/2/91.]

Chapter 173-306 WAC

SPECIAL INCINERATOR ASH MANAGEMENT STANDARDS

WAC

173-306-010	Authority and purpose.
173-306-050	Applicability.
173-306-100	Definitions.
173-306-150	Prohibition of surface impoundments, land treatment and municipal solid waste codisposal of ash.
173-306-200	Generator management plans.
173-306-300	Permit requirements for disposal facilities.
173-306-310	Permit procedures.

(1995 Ed.)

173-306-320	Demonstration and class-use permits.
173-306-330	Application contents for permits.
173-306-340	Engineering reports, plans and specifications required in permits.
173-306-345	Construction quality assurance plan.
173-306-350	Incinerator ash siting standards for disposal facilities.
173-306-400	Ash disposal facility standards.
173-306-405	General facility operational standards.
173-306-410	General closure and post-closure requirements.
173-306-440	Ash monofill facility standards.
173-306-450	Liner and final cap design and construction standards.
173-306-470	Financial assurance.
173-306-480	Treatment (including solidification and stabilization) standards.
173-306-490	Ash utilization standards.
173-306-495	Other methods of ash disposal.
173-306-500	Monitoring and sampling methods.
173-306-900	Variances.
173-306-9901	Maximum contaminant levels for ground water.

WAC 173-306-010 Authority and purpose. This chapter is promulgated under the authority of chapter 70.138 RCW, to protect human health, the environment, and employees during the management and disposal of special incinerator ash. It is also the purpose of this chapter to enhance and encourage the higher waste management priorities as spelled out in chapter 70.138 RCW. This chapter is intended to establish consistent, enforceable management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70.105 RCW, the Hazardous Waste Management Act. This chapter is not intended to address ash residues that are classed as hazardous waste under federal regulations, 40 CFR Part 261, unless the Environmental Protection Agency decides such wastes are not subject to Subtitle C of the Resource Conservation and Recovery Act.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-010, filed 4/30/90, effective 5/31/90.]

WAC 173-306-050 Applicability. This chapter applies to municipal solid wastes intended for incineration or energy recovery and special incinerator ash as those terms are defined in WAC 173-306-100. (Incinerator ash whose designation status is unknown shall be considered special incinerator ash until data developed under WAC 173-306-500(4) is submitted to the department.) This chapter shall not apply to the following wastes:

(1) Solid waste as defined in WAC 173-306-100 that is not regulated as hazardous waste under chapter 70.105 RCW and that is not intended for incineration or energy recovery;

(2) Hazardous wastes regulated under the Federal Resource Conservation and Recovery Act, 42 U.S.C. sec. 6901 et seq.;

(3) Incinerator ash from the operation of incineration or energy recovery facilities burning only tires, woodwaste, infectious waste, sewage sludge, or any other single type of refuse other than municipal solid waste; and

(4) Incinerator ash from the operation of incineration or energy recovery facilities burning municipal solid waste at a rate of twelve tons of municipal solid waste per day or less.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-050, filed 4/30/90, effective 5/31/90.]

WAC 173-306-100 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Active area" means that portion of a facility where ash disposal operations are being, are proposed to be, or have been conducted. Buffer zones shall not be considered part of the active area of a facility.

(2) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(3) "Ash" means special incinerator ash.

(4) "Ash cell" or "cell" means an active disposal phase of the site which shall be divided into a series of phases to minimize the active ash disposal area.

(5) "Beneficial use" means the water uses as defined by the water resources management program established by the Water Resources Act of 1971 and chapter 173-500 WAC.

(6) "Bottom ash" means ash residues remaining on the incineration or energy recovery facility grates or in the combustion chambers after combustion. Bottom ash may or may not be a special incinerator ash.

(7) "Buffer zone" means that part of a facility that lies between the active area and the property boundary.

(8) "Closure" means those actions taken by the owner or operator of an ash facility to cease disposal operations. A closure notice will be provided to the department with the exact date to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period and using best engineering practices.

(9) "Construction quality assurance plan" means a plan describing the methods by which the professional engineer in responsible charge of inspection of the project will determine that the facilities were constructed without significant change from the department approved plans and specifications.

(10) "Contaminate" means to discharge a substance into ground water that would cause:

(a) The concentration of that substance in the ground water to exceed the maximum contamination level specified in WAC 173-306-9901;

(b) A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contaminant level specified in WAC 173-306-9901; or

(c) A statistically significant increase above background in the concentration of a substance which:

(i) Is not specified in WAC 173-306-9901; and

(ii) Is present in the ash; and

(iii) Has been determined to present a substantial risk to human health or the environment in the concentration found at the point of compliance by the department in consultation with the department of health.

(11) "Critical habitat" means habitat defined as critical by the Endangered Species Act of 1973 (P.L. 93-205).

(12) "Department" means the department of ecology.

(13) "Department's approval" means an approval letter by the director after the review of all engineering reports, plans and specifications, and any other engineering documents by a registered engineer.

(14) "Director" means the director of the department of ecology or the director's designee.

(15) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(16) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incinerator ash.

(17) "Disposal facility" means all structures, other appurtenances, improvements and land used for recycling, storing, treating, or disposing of special incinerator ash.

(18) "Domestic water" means any water used for human consumption, other domestic activities, livestock watering or for any use for which a water right has been granted.

(19) "Energy recovery" means the recovery of energy in a usable form from mass burning, fluidized bed or refuse-derived fuel incineration, pyrolysis, or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

(20) "Existing disposal facility" means a disposal facility which is owned or leased and in operation, or for which construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state and local statutes, regulations, and ordinances.

(21) "Existing residential development" means any existing development of residential dwelling units with a density of at least one unit per acre and a total of more than ten dwellings at time of permit application.

(22) "Expanded disposal facility" means a disposal facility adjacent to an existing facility for which the land is purchased and approved by the department after the effective date of this chapter. A vertical expansion approved and permitted after the effective date of this chapter shall be considered an expanded disposal facility.

(23) "Fault" means a fracture along which rocks or soils on one side have been displaced with respect to those on the other side.

(24) "Facility" means disposal facility.

(25) "Flyash" or "flyash/scrubber residue" means ash swept from the incineration or energy recovery facility combustion chamber and collected from the boilers, economizers, and air pollution control devices such as scrubbers, baghouses, and electro-static precipitators. Flyash or flyash/scrubber residues may or may not be special incinerator ash.

(26) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.

(27) "Generator" means any incineration facility owner/operator who generates a special incinerator ash. An existing generator is any generator whose facility is in operation on the effective date of this chapter.

(28) "Holocene" means the most recent epoch of the Quaternary period extending from the end of the Pleistocene to the present.

(29) "Incineration" means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

(30) "Independent third party" means, for the purpose of liner construction, a person, approved by the department, with demonstrated experience in successful liner installation or inspection, who is financially and organizationally independent of the generator or facility owner/operator, the raw material producer (such as the resin manufacturer or the

bentonite producer), the liner manufacturer, the liner installer, or any other person who might have a financial or organizational connection to the facility.

(31) "Land treatment" means the practice of applying ash waste onto or incorporating into the soil surface. If the waste will remain after the facility is closed, this practice is disposal.

(32) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.

(33) "Monofill" means a disposal facility or part of a facility, which is not a land treatment facility, at which only special incinerator ash is finally deposited in or on.

(34) "New disposal facility" means a facility which begins operation or construction after the effective date of this chapter.

(35) "One hundred year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

(36) "Perennial surface water bodies" are normally continuous bodies of water with natural flows throughout the year including lakes, rivers, ponds, irrigation canals, streams, reservoirs, inland waters, salt waters, and all other waters of the state (not to include man-made lagoons or impoundments for waste treatment or storage) within the jurisdiction of the state of Washington as defined by chapter 90.48 RCW, the Water Pollution Control Act.

(37) "Permeability" means the ability with which a porous material allows liquid or gaseous fluids to flow through it.

(38) "Permit" means a special incinerator ash disposal permit.

(39) "Person" means any person, firm, association, county, public, municipal, or private corporation, agency, or other entity whatsoever.

(40) "Pile" means any noncontainerized accumulation of ash that is used for treatment or utilization.

(41) "Plans and specifications" means the detailed drawings and specifications used in the construction or modification of ash disposal facilities.

(42) "Point of compliance" means that part of ground water that lies beneath the perimeter of a disposal facility's active area as that active area would exist at the closure of the facility.

(43) "Post-closure" means the requirements placed upon disposal facilities after closure to ensure their environmental safety for a thirty-year period or until the site becomes stabilized (i.e., cap integrity maintained, little or no settlement or leachate generation).

(44) "Processing" means an operation to convert ash into a useful product or to prepare it for disposal.

(45) "Reclamation" means to process an ash waste in order to recover usable products.

(46) "Utilization" means consuming, expending, exhausting or using an ash waste.

(47) "Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to section 1424e of the Safe Drinking Water Act (P.L. 93-523).

(48) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof,

and recyclable commodities. This includes all liquid, solid, and semisolid materials which are not the primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes, but is not limited to, sludge from wastewater treatment plants, septage from septic tanks, woodwaste, dangerous waste, and problem wastes.

(49) "Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70.105 RCW; and (b) are not regulated as a hazardous waste under the Federal Resource Conservation and Recovery Act, 42 U.S.C. Sec 6901 et seq.

(50) "Spill" means any accidental discharges or overflow of fluids or processed water from contained areas or holding tanks to floor drains or a municipal sewer system.

(51) "Stabilization" or "solidification" means a technique that limits the solubility and mobility of waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes a waste by bonding or chemically reacting with the stabilizing material.

(52) "Storage" means the temporary holding (no longer than forty-five days from date of production) of a limited amount (not to exceed thirty days worth of daily production) of special incinerator ash.

(53) "Subsidence" means a sinking of the land surface due to the removal of solid mineral matter or fluids from the subsurface.

(54) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling and aeration pits, ponds or lagoons, but does not include injection wells.

(55) "Treatment" means those engineered physical or chemical processes to make special incinerator ash safer for transport, amenable for energy or material resource recovery, amenable for storage or disposal, or reduced in volume.

(56) "Unstable slopes" means any area where the mass movement of earthen materials i.e., landslides, rockfalls, mudslides, slumps, earth flows, or debris flow is likely to occur.

(57) "Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-100, filed 4/30/90, effective 5/31/90.]

WAC 173-306-150 Prohibition of surface impoundments, land treatment and municipal solid waste codisposal of ash. No person shall manage any special incinerator ash in a surface impoundment, land treatment facility as defined in WAC 173-306-100, or codispose with municipal solid waste.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-150, filed 4/30/90, effective 5/31/90.]

WAC 173-306-200 Generator management plans.

(1) Applicability. These standards apply to special incinerator ash generators, incinerating more than twelve tons of municipal solid waste per day. Existing generators shall meet the requirements of this section within six months after the effective date of this chapter.

(2) Management plans procedures.

(a) Prior to generating or managing any special incinerator ash, any generator subject to this section shall submit a generator management plan to the department for review and approval. The department may publish guidelines on the form and content of management plans consistent with this chapter. Within thirty days of receipt, the department shall determine if the plan is factually complete and so notify the generator.

(b) Upon receipt of a complete generator management plan, the department shall give notice of its receipt of a proposed management plan to the public and to interested persons for public comment for thirty days after the date of publication.

(c) The department shall also perform the following additional public notification requirements:

(i) Mailing the notice to persons who have expressed an interest in being notified;

(ii) Mailing the notice to other state agencies and local governments with a regulatory interest in the proposal;

(iii) The public notice shall include a statement that any person may express their views in writing to the department within thirty days of the last date of publication;

(iv) Any person submitting written comment or any other person may, upon request, obtain a copy of the department's final decision;

(v) The department shall add the name of any person, upon request, to a mailing list to receive copies of notices for all applications within the state or within a geographical area.

(d) The department shall review each generator management plan to determine whether the generator management plan complies with this chapter and chapter 70.138 RCW, including whether the necessary ash disposal permit has been or is likely to be issued.

(e) Within sixty days of receipt of a complete generator management plan, the department shall approve, approve with conditions, or reject the submitted generator management plan. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements such as waste and ash segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(f) All generators shall comply with their approved management plan. No generator may construct and operate an incineration or energy recovery facility without an approved management plan.

(g) Any generator operating under an approved generator management plan shall notify the department and the department may require resubmission of the generator management plan when there is a proposed material change in the ash management of the special incinerator ash collection and/or handling system.

Upon receipt of the revised generator management plan,

the department shall proceed according to subsection (2) of this section.

(3) Generator management plan requirements. Prior to managing special incinerator ash, all applicable generators shall develop generator management plans. Generator management plans shall show how the following requirements are met:

(a) Planning requirements:

(i) All generators shall demonstrate how the management of ash, including disposal, has complied with the city and county comprehensive solid waste management plan of RCW 70.95.080, as applicable.

(ii) All generators shall demonstrate how ash management areas comply with or are a part of the spill prevention plans.

(b) Requirements for managing solid waste to reduce ash toxicity and ash quantity. All generators shall:

(i) Conduct annual municipal solid waste compositional studies to identify kinds and amounts of toxic metals, including cadmium and lead, other hazardous materials, halogenated plastics, and other substances that contribute to the toxicity of special incinerator ash;

(ii) Establish policies, procedures, incentives, and treatment methods to remove toxic metals in municipal solid waste prior to incineration or energy recovery;

(iii) Establish procedures to insure that dangerous wastes are not knowingly accepted at the incineration or energy recovery facility including developing lists of consumer or commercial items that may or may not be acceptable for incineration;

(iv) Establish a timetable for implementing (b)(i), (ii), and (iii) of this subsection, and a method for evaluating the effectiveness of the program in reducing the toxicity and volume of special incinerator ash.

(c) Collection and handling requirements.

(i) All incineration or energy recovery facilities shall be designed and operated to prevent fugitive dust emissions and direct exposure of the ash to the weather. Special incinerator ash shall be collected, stored, and handled in enclosed buildings or the equivalent (e.g., covered conveyors and transfer points). This requirement is not applicable to ferrous metal separated from bottom ash.

(ii) Floor or surface drains serving ash collection, storage, and handling areas shall not be connected to uncontaminated storm water run-off drains. Spills and process waters shall be handled in one or more of the following methods:

(A) Reused in the process;

(B) Discharged to surface waters under a National Pollution Discharge Elimination System Permit issued pursuant to chapter 173-220 WAC;

(C) Discharged to surface water, ground water, or a municipal sewer system under a state discharge permit issued pursuant to chapter 173-216 WAC;

(D) Injected through wells under an underground injection control permit issued pursuant to chapter 173-218 WAC; or

(E) Managed in another method approved by the department.

(iii) All incineration and energy recovery facilities shall be designed and operated to comply with chapter 296-62 WAC, the general occupational health standards.

(iv) The percentage of carbon in bottom ash shall not exceed six percent by weight, dry, as determined by ASTM D3178-84 or other methods approved by the department. Alternative carbon content limits may be established by the department, upon a demonstration by the owner or operator that methane generation and settlement shall not exceed levels associated with bottom ash meeting the six percent carbon standard. Representative samples shall be taken according to the guidelines established by the department.

(d) Storage requirements.

(i) Storage of ash shall be in totally-enclosed buildings, in leak-proof containers, or in tanks;

(ii) Storage shall not exceed forty-five days from the date of generation of the ash, and/or the storage amount shall not exceed thirty days of daily production;

(iii) Storage shall be in an area served by the floor and surface drain requirements in (c)(ii) of this subsection.

(e) Transport of ash from an incineration or energy recovery facility to an off-site or on-site disposal facility shall be in covered and sealed vehicles or containers to avoid wind dispersal or fluid leakage. Owners and operators shall prevent ash trackout onto the site and the public right-of-way by employing tire washing or any equivalent means. Contaminated washwaters shall be disposed of according to (c)(ii) of this subsection.

(f) Waste management accountability. All owners or operators of incineration or energy recovery facilities shall:

(i) Establish procedures acceptable to the department for tracking movements of special incinerator ash from the point of generation and/or handling to the site of final deposit or disposal. Such tracking method may include inventory control and tracking systems, scale/ticket/receipt tracking, gate logs, operating logs, or material balances;

(ii) File a report with the department if the owner or operator has not confirmed that an ash waste has been received at the intended destination within forty-five days of the date the waste was accepted by the transporter. The report must include:

(A) A legible copy of the shipping paper or manifest for which the owner or operator does not have confirmation of delivery; and

(B) A cover letter signed by the generator or his representative explaining the efforts taken to locate the waste and the results of these efforts.

(g) Other state and local requirements. All generators shall comply with all federal, state, and local environmental and industrial hygiene right-to-know laws and regulations, including chapter 197-11 WAC, the State Environmental Policy Act rules; chapter 173-304 WAC, the Minimum Functional Standards for Solid Waste Handling; and chapter 173-434 WAC, the air emission rules for incinerators.

(4) Annual report requirements. All generators shall submit annual reports to the department by March 1 of the following calendar year on forms specified by the department specifying:

(a) Annual amounts, in tons, of:

(i) Municipal solid waste incinerated;

(ii) Bottom ash generated; and

(iii) Flyash/scrubber residue generated.

(b) Disposal sites for all special incinerator ash. For multiple disposal sites, the amounts of disposal that are occurring in tons per year;

(c) Permittee's name, address, telephone number, date of permit issuance and expiration date for the disposal sites listed in (b) of this subsection;

(d) Designation test results. The results of testing bottom ash and flyash/scrubber residues separately and combined flyash and bottom ash on representative samples taken each quarter of the year and subjected to the criteria of WAC 173-303-100, and results of testing bottom ash quarterly for carbon residue according to subsection (3)(c)(iv) of this section unless otherwise approved by the department. After one year of testing, the department may reduce this requirement if a less frequent program can provide adequate data to determine the effectiveness of an ash toxicity reduction program. Representative sampling methods shall follow guidelines specified by the department;

(e) Toxics separation test results. The results of testing bottom ash and flyash separately for toxic metals from samples taken in (d) of this subsection, in order to judge the progress made in toxic metals separation and reduction;

(f) Special test results. The results of testing bottom ash and flyash separately for dioxins and dibenzo-furans on a composite sample made from the eight quarterly samples taken in (d) of this subsection; and

(g) Ambient lead and cadmium samples taken in the air and soil respectively at the property boundary to demonstrate compliance with the performance standard of WAC 173-306-440 (2)(b) and (c). The samples shall be taken annually for cadmium and quarterly for lead, unless otherwise approved by the department.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-200, filed 4/30/90, effective 5/31/90.]

WAC 173-306-300 Permit requirements for disposal facilities. (1) Applicability. The permit standards of WAC 173-306-300 through 173-306-330 apply to disposal facilities as defined in WAC 173-306-100. These standards do not apply to generators of special incinerator ash who only handle, store and collect ash on-site and transport ash off-site, nor to facilities specifically excluded under WAC 173-306-400 through 173-306-490.

(2) No disposal facility shall be established, constructed, altered, expanded, or closed, until the owner or operator has obtained a permit issued pursuant to this chapter or a modified permit issued pursuant to WAC 173-306-310(3).

(3) Effective dates for permit requirements. The permit requirements of this section apply to all applicable existing, new or expanding disposal facilities within six months after the effective date of this chapter.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-300, filed 4/30/90, effective 5/31/90.]

WAC 173-306-310 Permit procedures. (1) Application procedures.

(a) Persons owning or operating new or expanded ash disposal facilities shall apply to the department for a permit, prior to accepting any special incinerator ash for disposal. These procedures apply for permit renewal. Monofill owners who have successfully complied with the requirements for Type B design in WAC 173-306-450 (4)(a)(i) during the eighteen-month demonstration period shall apply for a permit prior to using the Design B liner. Applicants

shall file two copies of the application with the department that have:

(i) Been signed and notarized as correct by the owner and operator; and

(ii) Attached evidence of compliance with the requirements of chapter 197-11 WAC, the State Environmental Policy Act rules.

(b) Permit applications must contain the information set forth in WAC 173-306-330 in order to be considered complete. Upon receipt of a permit application, the department shall review the application for completeness and notify the permit applicant accordingly.

(c) Within thirty days of receipt of a complete application, the department shall give notice of its receipt of a proposed complete permit application to the public and to interested persons for public comment for thirty days after the date of publication.

(d) The department will perform the following additional public notification requirements:

(i) Mailing the notice to persons who have expressed an interest in being notified;

(ii) Mailing the notice to other state agencies and local governments with a regulatory interest in the proposal;

(iii) The public notice shall include a statement that any person may express their views in writing to the department within thirty days of the last date of publication;

(iv) Any person submitting written comment or any other person may, upon request, obtain a copy of the department's final decision; and

(v) The department shall add the name of any person, upon request, to a mailing list to receive copies of notices for all applications within the state or within a geographical area.

(2) Issuance procedures.

(a) The department shall review each completed application to determine:

(i) Whether the disposal facility meets the requirements of this chapter;

(ii) Whether the disposal facility has been adequately addressed in the city and county comprehensive solid waste management plan as applicable; and

(iii) Whether the disposal facility complies with other environmental laws and regulations.

(b) The department shall approve, deny, or conditionally approve a completed permit application within sixty days of receipt of the department's notice.

(c) The department shall issue up to five-year term permits for ash disposal; applications for reissuance of permits shall be made at least six months prior to permit expiration. The applicant and the department shall follow the procedures of WAC 173-306-310 (1) and (2) in applying for and reissuing permits.

(3) Modification and revocation procedures. When the department obtains any information justifying, or the applicant applies for modification of an existing permit, the department may modify or revoke and reissue the permit according to the procedures of this section. An updated application may be requested if necessary. When a permit is modified only the conditions subject to modification are reopened. If a permit is revoked and reissued the entire permit is reopened and subject to revision and the permit is reissued for a new term.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-310, filed 4/30/90, effective 5/31/90.]

WAC 173-306-320 Demonstration and class-use permits. (1) Demonstration permits. Demonstration permits must be required for persons utilizing ash (see WAC 173-306-490 (2)(b)). In addition, persons applying for a utilization permit demonstrate that the proposed utilization will successfully meet the requirements of WAC 173-306-490 (2)(b)(ii) before full scale reuse or utilization is practiced.

(a) The demonstration permit will be issued in accordance with the procedures of WAC 173-306-310;

(b) The demonstration permit shall address those requirements necessary to meet the standards of WAC 173-306-490 (2)(b)(ii) and (iii), and show that a disposal facility meeting the requirements of this chapter is available in case the demonstration fails or this permit is revoked;

(c) The demonstration permit shall provide a specific time period and a limit on the quantity of ash which will be used for the demonstration; the department may extend the demonstration period as a modification of the demonstration permit;

(d) Unless otherwise approved by the department, the permittee shall submit a report to the department within ninety days of the end of the demonstration. The report shall contain the results of all field tests and laboratory analyses and all data developed during the demonstration period. The department shall then use the information to determine whether or not there is adequate information to issue a class-use permit which will incorporate conditions sufficient to provide compliance with all requirements of WAC 173-306-490 (2)(b)(ii) and (iii). If the information is adequate, the department will proceed to issue a class-use permit under the provisions of this section. If the information is inadequate, the department may, as the situation warrants, either issue a modification to the demonstration permit in accordance with the procedures of WAC 173-306-310(3) and this subsection, or deny the class-use permit application.

(2) Class-use permits. Class-use permits are required for persons who distribute utilized ash on the land in a manner constituting disposal; the permit is issued to the seller or distributor of utilized ash or ash products to a class of users.

(a) The class-use permit will be issued in accordance with the procedures of WAC 173-306-310;

(b) The class-use permit shall contain those requirements necessary to meet the standards of WAC 173-306-490 (2)(b), including reporting requirements; and

(c) The department will place limitations on the class of users of utilized ash or ash products if it is shown that such limits are necessary to protect human health and the environment.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-320, filed 4/30/90, effective 5/31/90.]

WAC 173-306-330 Application contents for permits. (1) Application contents for permits for new or expanded facilities.

(a) All permit applications shall contain the following:

(i) A general description of the facility;

(ii) The types of ash to be handled at the facility;
 (iii) The plan of operation required by WAC 173-306-405(3) (except for demonstration and class-use permits, WAC 173-306-320);

(iv) The operating log required by WAC 173-306-405(4) (except for demonstration and class-use permits, WAC 173-306-320);

(v) The inspection schedule and inspection log required by WAC 173-306-405.

(b) Application contents for monofill facilities. In addition to the requirements of (a) of this subsection, each monofill application for a permit must contain:

(i) A hydrogeological assessment of the facility that addresses:

(A) Local/regional geology and hydrology, including holocene faults within two hundred feet of the active area and three thousand feet of all other faults, unstable slopes, and subsidence areas on site; or a department approved geologic hazard assessment study;

(B) Evaluation of bedrock and soil types and properties;

(C) Depths to ground water and/or aquifer(s);

(D) Direction and flow rate of the uppermost aquifer;

(E) Direction of regional ground water;

(F) Quantity, location, and construction (where available) of private and public wells within a two thousand foot radius of site;

(G) Tabulation of all water rights for ground water and surface water within a two thousand foot radius of the site;

(H) Identification and description of all surface waters within a one-mile radius of the site;

(I) Background and surface water quality assessment, and for expanded facilities, identification of impacts to date of applicant's existing facilities upon ground and surface waters from monofill leachate discharges;

(J) Calculation of a site water balance;

(K) Conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and, where applicable, a vadose zone monitoring plan;

(L) Land use in the area, including nearby residences;

(M) Topography of the site and surrounding areas; and

(N) Drainage pattern of the site and surrounding areas.

(ii) Preliminary engineering report/plans and specifications that address:

(A) How the facility will meet the siting standards of WAC 173-306-350;

(B) Relationship of facility to city and county solid waste comprehensive plan as applicable and the basis for calculating the facility's life;

(C) The design of bottom and side liners;

(D) Identification of materials for daily cover and borrow sources for final cover and soil liners;

(E) Interim/final leachate collection, treatment, and disposal;

(F) Leachate detection where applicable;

(G) Fugitive dust controls;

(H) Trench design, fill methods, elevation of final cover and bottom liner, and equipment requirements;

(I) The run-on and run-off system;

(J) The design to avoid washout;

(K) Filling phases, interim cover and final cap elevation; interim cover should be minimized depending on site specific topography and projected filling phases;

(L) Closure/post-closure design, construction, maintenance, and land use;

(M) Signs, fencing, and road paving; and

(N) Scales, employee amenities, communication, and unloading areas.

(iii) An operation plan that addresses:

(A) Operation and maintenance of leachate collection, treatment, and disposal systems;

(B) Operation and maintenance of fugitive dust controls;

(C) Monitoring plans for ground water, surface water, soils and ambient air to include sampling technique, frequency, handling, and analysis requirements;

(D) Safety and emergency accident/fire plans;

(E) Routine filling, grading, cover, and housekeeping; and

(F) Record system to address records on weights (or volumes), number of vehicles, and the types of waste received.

(iv) A closure plan that addresses:

(A) Estimate of closure season/year;

(B) Capacity of site in volume and tonnage;

(C) Maintenance of active fill versus completed, final covered acreage;

(D) Estimated closure construction timing and notification procedures;

(E) Inspection by regulatory agencies;

(F) Items required in WAC 173-306-410(3); and

(G) Identification of final closure cost including cost calculations and funding mechanisms.

(v) A post-closure plan that addresses:

(A) Estimated time period for post-closure activities;

(B) Site monitoring of ash monofill, soil, air, ground water, and surface water;

(C) Deed clause changes, land use, and zoning restrictions;

(D) Maintenance activities to maintain cover and run-off systems;

(E) Items required in WAC 173-306-410(6);

(F) Identification of post-closure costs including cost calculations and funding mechanisms; and

(vi) Other information as required by the department.

(c) Application contents for treatment (including solidification and stabilization) standards. In addition to the requirements of (a) of this subsection, each application for a treatment permit must contain:

(i) Preliminary engineering reports/plans and specifications that address:

(A) The chemical and physical principle(s) upon which the treatment is based, including laboratory, pilot plant, prototype, or full-scale data with sufficient detail to assure the department that the treatment process is feasible and to allow the department to specify capacity and operating conditions;

(B) Tank, reaction vessel, furnace, total-enclosed treatment facility and container designs and the basis for selecting the materials of construction and the thickness of the treatment device (such as corrosion data) or protective lining;

(C) Fugitive dust controls, including conveyor, transport, unloading, and building design;

(D) Instrumentation and process control design to assure operating within conditions specified in the permit;

(E) Warning signs and occupational health and safety engineering controls;

(F) Monitoring equipment; and

(G) Other factors as required by the department.

(ii) An operation plan that addresses:

(A) Operation and maintenance of the treatment device;

(B) Operation and maintenance of fugitive dust controls;

(C) Monitoring as required in WAC 173-306-500 and the department on a case-by-case basis; and

(D) Safety, occupational health, and emergency accident/fire plans.

(iii) A closure plan that addresses:

(A) Estimate of closure year and cost;

(B) Methods of removing wastes and cleaning or decontaminating reaction devices and final disposal of both;

(C) Closure timing and notification procedures;

(D) Final inspection by regulatory agencies;

(E) Items required in WAC 173-306-410(3); and

(iv) Other information as required by the department.

(d) Application contents for utilization facilities. In addition to the requirements of (a) of this subsection, each application for utilization must contain:

(i) For accumulation prior to utilization facilities:

(A) The method of calculating the percent of ash being reused within a calendar year; and

(B) Compliance with the generator management plan storage requirements of WAC 173-306-200 (3)(d)(i) and (ii) if accumulation is by the generator; or

(C) Compliance with the monofill facility standards of WAC 173-306-440 if accumulation is by a disposal facility.

(ii) For reuse constituting disposal facilities:

(A) Information supplied by the applicant pertaining to the factors of WAC 173-306-490 (2)(b)(iii); and

(B) Other information as required by the department.

(2) Application contents for permits for existing facilities. Existing facilities applying for a permit to comply with the requirements of WAC 173-306-310 shall:

(a) Include the information required in subsection (1)(a) of this section; and

(b) Other information as required by the department.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-330, filed 4/30/90, effective 5/31/90.]

WAC 173-306-340 Engineering reports, plans and specifications required in permits. (1) Prior to construction or modification of disposal facilities, final engineering reports, plans and specifications shall be submitted to and approved by the department according to a compliance schedule specified in the permit. The engineering report for a disposal facility shall be sufficiently final so that plans and specifications can be developed from it without substantial changes.

(2) All final engineering reports, plans and specifications should be submitted by the owner or operator consistent with the compliance schedule in the permit and at least thirty days prior to the time approval is needed. The department will review and either approve (or conditionally approve),

comment on, or disapprove such plans and reports within the thirty-day period unless circumstances prevent, in which case the owner or operator will be notified and informed of the reason for the delay.

(3) The final engineering report may be submitted prior to or concurrently with the final plans and specifications.

(4) The department will review the documents to ascertain that the proposed facility will be:

(a) Designed, constructed, operated, maintained, and closed to meet the requirements of the permit issued pursuant to this chapter; and

(b) Consistent with good engineering practices.

(5) Within thirty days following acceptance by the owner or operator of or modification to an ash disposal facility, a professional engineer in responsible charge of inspection of the project shall submit to the department one complete set of record drawings or as-builts, and a declaration stating the facilities were constructed in accordance with the provisions of the construction quality assurance plan and without significant change from the department approved plans and specifications.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-340, filed 4/30/90, effective 5/31/90.]

WAC 173-306-345 Construction quality assurance plan. (1) Prior to construction or modification, a detailed plan must be submitted to and approved by the department, showing how adequate and competent construction inspection will be provided to insure compliance with the requirements of this chapter and the approved engineering documents. Submission of the plan shall be according to a schedule specified in the permit.

(2) The construction quality assurance plan shall include:

(a) A construction schedule summarizing planned construction activities, noting sequence interrelationships, durations, and terminations;

(b) Description of construction management, organization management procedures, lines of communication, and responsibility;

(c) Description of anticipated quality control testing, including type of test, frequency, and who will perform the tests;

(d) Description of construction inspection program including inspection responsibilities, anticipated inspection frequency, deficiency resolution, and inspector qualifications; and

(e) For monofills, how WAC 173-306-440 (4)(d) is to be met.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-345, filed 4/30/90, effective 5/31/90.]

WAC 173-306-350 Incinerator ash siting standards for disposal facilities. (1) Applicability. These standards apply to all new or expanded monofills. These standards do not apply to:

(a) Existing monofills or monofills that have closed before the effective date of this chapter; or

(b) Treatment, utilization, or processing facilities.

(2) Siting standards.

All applicable disposal facilities shall at the time of permit application meet the following locational standards:

(a) **Geology.** No facility shall be located within two hundred feet, measured horizontally, from a fault that has had displacement in holocene times, and all faults within three thousand feet of a facility must be identified and evaluated in WAC 173-306-330(1), where such existing geologic information is available or can be obtained with reasonable effort. For sites for which fault information cannot reasonably be obtained, a geologic hazard assessment performed by an experienced, qualified geologist may be substituted for this siting criteria, if the study methods are reviewed and approved by the department prior to the investigation.

(b) **Ground water.**

(i) No facility shall be located where the depth from the lowest point of the bottom liner to the seasonal high water level of the upper most aquifer of beneficial use is less than ten feet or 120 days travel time hydraulically, whichever is greater.

(ii) No facility shall be located over a sole source aquifer.

(iii) No facility's active area shall be located closer than one thousand feet to the nearest downgradient ground water intake for domestic water in use and existing at the time of permit application unless the owner or operator can show that the active area is no less than one hundred twenty days travel time hydraulically to the nearest downgradient ground water intake for domestic water.

(c) **Natural soils.** No facility shall be located:

(i) Where known subsidence exists within the facility boundary;

(ii) In an area where unstable slopes may impact the active area of the facility;

(iii) Where weak or unstable soils exist within the proposed facility boundary, unless the structural stability of the soils is mitigated through engineering practices. (The following soils or conditions are defined as weak or unstable: Organic soils, expansive soils, liquefaction sands, soft clays, sensitive clays, loess and quick conditions.)

(d) **Flooding.** No facility's active area shall be located within the one hundred-year flood elevation as indicated in the most current Federal Emergency Management Agency maps.

(e) **Surface water.** No facility's active area shall be located within five hundred feet, measured horizontally, of the ordinary high water mark of any perennial surface water body.

(f) **Sensitive areas.** No facility shall be located:

(i) In an area that would result in the taking of species or the direct elimination of critical habitat for federal or state listed threatened or endangered species;

(ii) In a wetland as defined by the United State Fish and Wildlife Service (Cowardin et al. 1979);

(iii) In a shoreline of the state under the jurisdiction of the Shoreline Management Act;

(iv) In an area classified as a wilderness area as defined by the Wilderness Act of 1964 (P.L. 88-577);

(v) In a state or federally designated wildlife refuge or a game farm;

(vi) In an area with city, county, state, or federal designation as a park or recreation area or any area provided for under chapter 79.70 RCW, natural area preserves; and

(vii) In an area with city, county, state, or federal designation as an archaeological or historic area or a national monument.

(g) **Land use.** No facility shall be located so that its active area is closer than two hundred feet to the facility property line. The active area may be no closer than one thousand feet to the nearest housing unit in an existing residential development. The one thousand-foot rule may be evaluated on a case-by-case basis in rural areas and unincorporated towns.

(h) **Climatic factors.** No facility shall be located in an area that has a history of severe climatic factors without engineered protection to mitigate those factors. Severe climatic factors, include but are not limited to, high annual rainfall, extreme temperatures (high or low), and high winds.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-350, filed 4/30/90, effective 5/31/90.]

WAC 173-306-400 Ash disposal facility standards.

(1) **Applicability.** The standards of WAC 173-306-405 through 173-306-470 are the ash disposal standards and apply to all disposal facilities except ash disposal facilities that have engaged in closure or have closed before the effective date of this chapter.

(2) **Standards for permits.** The standards of WAC 173-306-405 through 173-306-470 shall be used as the basis for permitting as required in WAC 173-306-300.

(3) **Effective dates.**

(a) All existing ash disposal facilities not in conformance with these standards shall be placed upon compliance schedules as part of the permit issued in WAC 173-306-300. Full compliance shall be within three years of the effective date of this chapter; however, the following facility standards shall be met within eighteen months of the effective date of this chapter:

(i) The general facility standards of WAC 173-306-405;

(ii) The operating and maintenance standards of WAC 173-306-440(5); and

(iii) The monitoring requirements of WAC 173-306-500.

(b) All new and expanded facilities shall meet the ash disposal facility standards of WAC 173-306-405 to 173-306-470 after the effective date of this chapter.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-400, filed 4/30/90, effective 5/31/90.]

WAC 173-306-405 General facility operational standards. (1) **Applicability.** All special incinerator ash disposal facilities shall meet the requirements of this section.

(2) **Imminent hazard.** Notwithstanding any provisions of this chapter, enforcement actions may be brought in the event that the management practices of an ash disposal facility present an imminent and substantial hazard to the health of employees, the public health or the environment.

(3) **Plan of operation.** Each owner or operator shall develop and use the plan of operation required during the permitting process in WAC 173-306-300. The plan shall describe the facility's operation and shall convey to the operating personnel the concept of operation intended by the

designer. The facility shall be operated in accordance with the plan; modifications to the plan must be approved by the department. The plan of operation shall be available for inspection at the request of the department. Each plan of operation shall include:

- (a) Ash management during the facility's active life;
- (b) Frequency and methods of inspections and monitoring;
- (c) Employee safety and training, addressing protection from exposure and contact with ash, employee training, and medical monitoring; also a safety plan or procedure;
- (d) Actions to take for sudden release of ash to surface water or dispersal by wind;
- (e) Modifications to the plan permit and/or plan of operation in the event of ground water contamination;
- (f) Equipment maintenance, particularly for leachate collection and treatment; and
- (g) Other such details as required by the department.

(4) Recordkeeping. The facility owner or operator shall keep a written operating record at his facility that must be furnished upon request and made available at all reasonable times, to any employee of the department.

(a) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

- (i) The type and quantity of each ash shipment received or managed on-site and the method(s) and date(s) of management at the facility;
- (ii) Records and inspection results as required by subsections (5) and (6) of this section;
- (iii) Monitoring, testing, or analytical data where required by WAC 173-306-500;
- (iv) All closure and, for final deposit, post-closure cost estimates required for the disposal facility; and
- (v) Deviations from the plan of operation specified in subsection (3) of this section.

(b) The retention period for all facility records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the department.

(5) Reporting. Each owner or operator shall prepare and submit a copy of the annual report to the department by March 1 of the following year. The annual report shall cover facility activities during the previous year and must include the following information:

- (a) The name and address of the disposal facility;
- (b) The calendar year covered by the report;
- (c) Annual quantity in tons and the type of ash accepted by the disposal facility and the method of management;
- (d) Results of soil, air quality, and ground water monitoring required in WAC 173-306-440;
- (e) The most recent closure cost estimate and, for final deposit monofills, post-closure cost estimates under WAC 173-306-410; and
- (f) Other information required by the department.

(6) Inspections. The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of ash to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment. The owner or

operator shall keep an inspection log or summary including, at a minimum, the date and time of inspection, the printed name and the hand-written signature of the inspector, a notation of observations made and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be made available to the department upon request.

(7) Other state and local requirements. All ash disposal facilities shall comply with all state and local laws and regulations such as zoning, land use, fire protection, industrial safety and hygiene, water pollution, air pollution, nuisance and aesthetics.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-405, filed 4/30/90, effective 5/31/90.]

WAC 173-306-410 General closure and post-closure requirements. (1) Applicability. The closure requirements of subsections (2), (3), and (4) of this section apply to all disposal facilities. The post-closure requirements of subsections (5), (6), and (7) apply to monofills subject to WAC 173-306-440.

(2) Closure performance requirements. Each owner and operator shall close their facility in a manner that:

- (a) Minimizes the need for further maintenance;
- (b) Controls, minimizes, or eliminates threats to human health and the environment from post-closure escape of ash constituents, leachate, monofill gases, contaminated rainfall or ash decomposition products to the ground or soil, ground water, surface water, and the atmosphere; and
- (c) Prepares the facility for the post-closure period.

(3) Closure plan and amendment. Closure as defined in WAC 173-306-100 includes, but is not limited to, grading, seeding, landscaping, contouring and screening.

(a) Each owner or operator shall develop and use a plan of closure approved by the department as part of the permitting process of WAC 173-306-310.

(b) The closure plan shall project time intervals at which closure activities are to be implemented, identify estimated closure costs and project fund withdrawal intervals from the approved financial assurance instrument, where applicable.

(c) No owner or operator shall commence disposal operations in any part of a facility until a closure plan for the entire facility has been approved by the department, and until a financial assurance instrument has been provided, as required by WAC 173-306-470.

(d) The department may determine at its discretion and for cause that a facility closure plan is invalid and require an owner or operator to:

- (i) Amend the facility closure plan and obtain the department's written approval; and/or
 - (ii) Cease facility operation or closure activities in whole or in part until an approved closure plan is obtained.
- (e) Each owner or operator shall close the facility in accordance with the approved closure plan and all approved amendments.

(4) Closure procedures.

(a) Each owner or operator shall notify the department and, where applicable, the financial assurance instrument trustee, of the intent to implement the closure plan in whole

or in part, no later than one hundred eighty days prior to the projected final receipt of waste at part of or at the entire facility.

(b) The owner or operator shall commence implementation of the closure plan in part or whole within thirty days after receipt of a final volume of ash and/or attaining the final monofill elevation at part of or at the entire facility as identified in the approved facility closure plan.

(c) Ash shall not be accepted for use in closure except as identified in the closure plan approved by the department, as required in subsection (3)(a) of this section.

(d) When facility closure is completed in part or whole, each owner or operator shall submit to the department:

(i) Facility closure plan sheets signed by a professional engineer registered in the state of Washington. The plan shall reflect all as-built changes to final closure construction as approved in the closure plan; and

(ii) An affidavit signed by the owner or operator and a professional engineer registered in the state of Washington that the site has been closed in accordance with the approved closure plan.

(e) Maps and a statement of fact concerning the location of the final ash disposal shall be recorded as part of the deed with the county auditor not later than three months after closure. Records and plans specifying ash amounts, locations and periods of operation shall be submitted to the local zoning authority or the authority with jurisdiction over land use and be made available for inspection.

(f) When the department finds the facility has been closed in accordance with the specifications of the approved closure plan and the closure requirements of this section, the department shall:

(i) Issue a certificate of closure for the site to the owner or operator and the department; and

(ii) Notify the owner or operator and the department that the facility post-closure period has begun in whole or in part on a specified date.

(5) Post-closure performance standard. Monofill owners or operators shall provide post-closure activities as needed to protect human health and the environment.

(6) Post-closure plan and amendment. Post-closure includes monitoring of ground water, surface water, and air quality; maintenance of the facility, facility structures, and monitoring systems; and other activities deemed appropriate by the department.

(a) The owner or operator shall develop and use a post-closure plan approved as a part of the permitting process in WAC 173-306-310. The post-closure plan shall address facility maintenance and monitoring activities for a thirty-year period.

(b) The post-closure plan shall project time intervals at which post-closure activities are to be implemented, and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(c) No owner or operator shall commence disposal operations in any part of a facility until a post-closure plan for the entire facility has been approved by the department, and until a financial assurance instrument has been provided, where applicable, as required by WAC 173-306-470. Facility post-closure activities must be completed in accor-

dance with the approved post-closure plan or the plan must be so amended with the approval of the department.

(d) The department may determine at its discretion and for cause that a facility post-closure plan is invalid and require an owner or operator to:

(i) Amend the facility post-closure plan and obtain the department's written approval; and/or

(ii) Cease facility operation or closure activities in part or wholly until an approved post-closure plan is obtained.

(7) Post-closure procedures.

(a) Each owner or operator shall commence post-closure activities after completion of closure activities outlined in subsection (4)(d)(i) and (ii) of this section. The department may direct that post-closure activities cease until the owner or operator has received the department's certification of closure and a notice to proceed with post-closure activities.

(b) When post-closure activities are complete, the owner or operator shall submit an affidavit to the department, signed by the owner or operator and a professional engineer registered in the state of Washington, stating why post-closure activities are no longer necessary.

(c) If the department finds that post-closure activities have stabilized the facility, the department may, at its discretion, authorize the owner or operator to gradually reduce or discontinue post-closure maintenance and monitoring activities. The department shall certify the end of the post-closure care period by issuance of a certificate of post-closure completion to the facility owner or operator.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-410, filed 4/30/90, effective 5/31/90.]

WAC 173-306-440 Ash monofill facility standards.

(1) Applicability. This section applies to owners and operators of facilities that monofill special incinerator ash, except as WAC 173-306-400 provides otherwise.

(2) Minimum standards for performance.

(a) Ground water. Monofill owners or operators shall not contaminate underlying ground water beyond the point of compliance. Contamination and point of compliance are defined in WAC 173-306-100.

(b) Soil. Soils at the property boundary shall not exceed the following limits for cadmium due to the facility based upon annual samples:

(i) The annual increase in cadmium loading in the upper six inches of soil with a pH equal to or greater than 6.5 shall not exceed 0.5 kilograms per hectare annually or a total accumulation of 20 kilograms per hectare; and

(ii) The annual increase in cadmium loading in the upper six inches of soil with a pH less than 6.5 shall not exceed a total accumulation of 5.0 kilograms per hectare.

(c) Air quality. Monofill owners or operators shall not cause a violation of an emission standard from any emission of particulates, dusts or gases associated with the operation and/or closure/post-closure of the landfill nor any ambient air quality standard at the property boundary including the following ambient lead standard:

The level of lead and its compounds measured as elemental lead in suspended particulate matter measured during a twenty-four hour sample taken at the downwind facility boundary shall not exceed 1.5 micrograms per cubic meter of air due to the facility's operation or the latest

national ambient air quality standards. The sampling frequency will be monthly unless otherwise approved by the department.

(d) Surface waters. Monofill owners or operators shall not cause a violation of any receiving water quality standard or violate chapter 90.48 RCW from discharges of surface run-off, leachate, or any other liquid associated with a monofill.

(3) Siting standards. Monofill owners or operators receiving special incinerator ash shall comply with incinerator ash siting standards of WAC 173-306-350(2).

(4) Minimum design standards.

(a) Minimizing liquids. Monofill owners or operators shall minimize liquids admitted to active areas by:

(i) Covering according to subsection (5)(e) of this section.

(ii) Disposing of no ash containing free liquids unless approved by the department;

(iii) Designing, constructing, and maintaining run-off controls to restrict the chance of a run-off event from releasing contaminated run-off waters to an annual probability of one percent or less (one hundred-year event or greater). In meeting this requirement the following items are to be considered:

(A) The design of the containment structure(s) should be selected based on the ability of the facility to store, test, and/or treat the run-off during a twenty-four hour or longer storm event.

(B) The design storm event occurs during the final year of the active life of the monofill or at a time when the facility is most vulnerable to a storm which could produce the release of contaminated waters. The method of placement of the ash should be considered when determining the volume available for storage of run-off.

(C) A minimum of one foot of freeboard (measured from the invert of the emergency spillway) should be maintained following the occurrence of the design storm.

(D) An emergency spillway is to be constructed for the containment structure to provide controlled release of excess run-off waters in the case where the design storm is exceeded.

(iv) Design, construct, and maintain diversion channels, channel containment berms, culverts, pipes, and other drainage control features to pass and/or store run-on to restrict the chance of failure of the drainage control features to an annual probability of one percent or less (one hundred-year event or greater). In meeting this requirement the following items are to be considered:

(A) For those cases where the run-on waters are to be stored and/or treated, selection of the design storm should be based on the appropriate procedures governing run-off controls.

(B) For those cases where the run-on waters are to be diverted around the facility, the drainage control features should be sized to pass the run-on peak discharge (design flood) of a magnitude having an annual exceedance probability of one percent or less (one hundred-year flood peak discharge or greater).

(C) Sufficient erosion protection and freeboard (one foot minimum) are to be provided for all drainage control features to preclude failure of those features during passage of the design flood.

(v) Submit engineering plans and specifications for any containment barrier equalling or exceeding as storage capacity of ten acre-feet to the department's dam safety section for review under RCW 90.03.350.

(b) Leachate systems. Monofill owners or operators shall:

(i) Install a department-approved leachate collection system sized according to water balance calculations or using other accepted engineering methods;

(ii) Install a leachate collection system so as to prevent no more than one foot of leachate developing at the topographical low point of the active area; and

(iii) Install a leachate treatment to meet requirements of WAC 173-306-200 (3)(c)(ii)(B) through (E).

(c) Liner and final cap design. Ash monofill owners or operators shall comply with the requirements of WAC 173-306-450.

(d) Liner construction and inspection. Ash monofill owners or operators shall:

(i) Comply with the requirements of WAC 173-306-450.

(ii) Employ an independent third party as defined in WAC 173-306-100 to inspect the liners during construction and installation for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, foreign materials) and quality of construction; immediately after construction and installations inspect:

(A) Synthetic liners and covers for tight seams and joints and the absence of tears, punctures or blisters; and

(B) Soil-based and admixed liners and covers for imperfections (e.g., lenses, cracks, channels, root holes) or structural nonuniformities that may affect liner permeability.

(e) Filling requirements for ash cells. Monofill owners or operators shall design and fill ash monofills in phases or cells, as defined in WAC 173-306-100. Only one cell shall be open and in use at one time; each cell shall be graded and covered with a flexible high density polyethylene liner or other material of equivalent mechanical strength and chemical resistance during the interim period before reaching final elevation. The liner shall be 60 mils and have the ability to withstand weather conditions. The owner or operator shall provide, as part of the interim cover, a method of detecting and/or monitoring/inspecting the integrity and any possible failure of the interim cover.

(f) Fugitive dust controls. Monofill owners and operators shall:

(i) Employ tire washing for all ash-carrying vehicles as they leave the site or any equivalent method to prevent the trackout of ash onto the site and the public right of way. Contaminated wash-waters shall be disposed of according to WAC 173-306-200 (3)(c);

(ii) Orient the major axis of the active area of the monofill with respect to the prevailing wind directions so as to minimize the effect of wind upon dispersion of special incinerator ash unless engineering designs can provide equivalent protection; and

(iii) Provide for paved approach and exit roads outside the active area with traffic separation and traffic control on-site and at the site entrance.

(g) Other design requirements. Monofill owners and operators shall:

(i) Post signs at each entrance to the active portion and at other locations, in sufficient numbers to be seen from any

approach to the active portion. Signs must bear the legend "Danger - unauthorized personnel keep out" or an equivalent legend, and must be legible from a distance of twenty-five feet;

(ii) Have either:

(A) A twenty-four-hour surveillance system which continuously monitors and controls entry onto the active portion of the facility; or

(B) An artificial or natural barrier; or

(C) A combination of both, which completely surrounds the active portion of the facility, with a means to control access through gates or other entrances to the active portion of the facility at all times.

(iii) Provide for monitoring according to WAC 173-306-500 using a design approved by the department;

(iv) Weigh all incoming ash on scales or provide an equivalent method of measuring ash tonnage;

(v) Provide for employee facilities including shelter, toilets, handwashing facilities, and potable drinking water;

(vi) Provide for unloading area(s) to be as small as possible, consistent with traffic patterns and safe operation; and

(vii) Provide communication (such as telephones) between employees working at the monofill and on-site or off-site management offices to handle emergencies.

(5) Standards for operation and maintenance. All owners and operators shall:

(a) Prohibit the co-disposal of any other solid or hazardous waste in a special incinerator ash landfill;

(b) Comply with the requirements of the general operation standards, WAC 173-306-405;

(c) Control fugitive dust by wetting, by the use of dust suppressing substances, covering, compacting, or otherwise managing the active area of the monofill to control wind dispersal and prevent visible emissions of windblown dust. Road dust on unpaved roads shall also be similarly controlled.

(d) Clearly mark the active area boundaries authorized in the permit, with permanent posts or using an equivalent method clearly visible for inspection purposes.

(e) Compact and cover ash daily prior to adding successive layers according to the requirements of WAC 173-306-450.

(f) Maintain the monitoring systems required in subsection (4)(g)(iii) of this section;

(g) Inspect the monofill weekly while it is in operation and after major storms to detect evidence of any of the following:

(i) Deterioration, malfunctions, or improper operation of run-on and run-off control systems and interim cover;

(ii) The presence of liquids in leak detection systems, where installed to comply with subsection (4)(b) of this section. The department shall be notified of any leaks into the leak detection system within seven days after detecting the leak and immediately remove any accumulated liquid. Notification shall include a schedule for determining the cause of the leak and any remedial measures or increased ground water monitoring to assure that the performance standards of subsection (2)(a) of this section are met;

(iii) The presence of leachate in, and proper functioning of, leachate collection and removal systems; and

(iv) Proper functioning of engineered wind dispersal control systems.

(h) Record the inspections in the log as required in WAC 173-306-405(6).

(6) Closure and post-closure requirements.

(a) At final closure of the monofill or upon closure of any cell, the owner or operator must cover the monofill or cell with a final cover designed and constructed according to subsection (4)(d) of this section and comply with all closure requirements of WAC 173-306-410;

(b) After final closure, the owner or operator must comply with all post-closure requirements of WAC 173-306-410, and must:

(i) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(ii) Prevent run-on and run-off from eroding or otherwise damaging the final cover;

(iii) Maintain and monitor the leak detection system in accordance with subsection (4)(b) of this section, where such a system is present; the owner or operator shall immediately remove any accumulated liquid and notify the department of any leaks into the leak detection system within seven days after detecting the leak. Notification shall include a schedule for determining the cause of the leak and any remedial measures or increased ground water monitoring to assure that the performance standards of subsection (2)(a) of this section are met;

(iv) Operate the leachate collection and removal system; and

(v) Maintain and operate the monitoring systems of WAC 173-306-500.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-440, filed 4/30/90, effective 5/31/90.]

WAC 173-306-450 Liner and final cap design and construction standards. (1) Applicability. This section applies to owners or operators of facilities that monofill combined or separated special incinerator ash, except as WAC 173-306-400 provides otherwise.

(2) Liner design.

(a) Owners or operators that monofill combined or separated fly ash and bottom ash shall comply with the requirements of Design A, subsection (3) of this section.

(b) Owners or operators that demonstrate ability to maintain the permeability requirements of Design B during an eighteen-month demonstration period may seek approval to use Design B following the demonstration period.

(3) Design A.

(a) General requirements. Owners or operators shall comply with the liner inspection requirements of WAC 173-306-440 (4)(d) and siting and design requirements of WAC 173-306-440 (3) and (4). In addition, owners or operators shall:

(i) Thoroughly compact ash residues. Owners or operators shall compact ash residues thoroughly by using compaction equipment.

(ii) Provide daily cover to prevent fugitive dust emissions and run-on and run-off discharges. Cover material

may include high density polyethylene or any department approved equivalent material.

(b) Liner design. The liner shall be an engineered liner of the following design from bottom to top:

(i) A foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; foundation slope shall be a minimum of two percent;

(ii) Next, a single composite liner consisting of an engineered soil liner at least two feet thick having permeability of 1×10^{-7} cm/sec or the equivalent upon which a synthetic liner of sixty mils high density polyethylene or other material of equivalent mechanical strength and chemical resistance is placed; liner slopes shall be a minimum of four percent;

(iii) Next, a leachate detection system consisting of a minimum of twelve inches of sand or equivalent material with a permeability greater than or equal to 1×10^{-2} cm/sec with drain pipes;

(iv) Next, a synthetic liner of sixty mils high density polyethylene or other material of equivalent mechanical strength and chemical resistance;

(v) Next, a leachate collection and removal system consisting of a minimum of twelve inches of sand or equivalent material with a permeability greater than or equal to 1×10^{-2} cm/sec with drain pipes; and

(vi) A fabric filter placed between the drainage layer and the first lift of special incinerator ash.

(4) Design B. Owners or operators that monofill combined or separated fly and bottom ash shall comply with these design criteria.

(a) General requirements. Owners or operators shall comply with the liner inspection requirements of WAC 173-306-440 (4)(d) and siting and design requirements of WAC 173-306-440 (3) and (4). In addition, owners or operators shall:

(i) Compact ash residues to a permeability of 1×10^{-5} cm/sec. All ferrous material will be removed using magnetic separation or an equivalent method approved by the department so that the pozzolanic effect of compacted ash will not be impeded.

(ii) Lifts will be tested for ash permeability using guidance established by the department. Lift thickness prior to compaction shall not exceed one foot.

(A) Design B liner design may be used as long as lift permeability tests at 1×10^{-5} cm/sec or less.

(B) If the ash permeability requirement cannot be maintained, the owner or operator shall immediately close the Design B cell according to the closure requirements of WAC 173-306-410 and subsection (5) of this section and recommence disposal activities using the Design A liner.

(iii) Provide daily cover to prevent fugitive dust emissions and run-on and run-off discharges. Cover material may include high density polyethylene or any department approved equivalent material.

(b) Liner design. The liner shall be an engineered liner of the following design:

(i) A foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settle-

ment, compression, or uplift; foundation slope shall be a minimum of two percent;

(ii) Next, a single composite liner consisting of an engineered soil liner at least two feet thick having a permeability of 1×10^{-7} cm/sec or the equivalent upon which a synthetic liner of sixty mils high density polyethylene or other material of equivalent mechanical strength and chemical resistance rests; liner slopes shall be a minimum of four percent;

(iii) Next, a leachate collection system consisting of a minimum of twelve inches of sand or equivalent material with a permeability greater than or equal to 1×10^{-2} cm/sec with drain pipes; and

(iv) A fabric filter placed between the drainage layer and the first layer of special incinerator ash.

(5) Final cap design. All owners or operators of special incinerator ash monofills shall comply with the following design requirements.

(a) The final cap shall maintain a surface slope between two and five percent and side slope of no more than thirty-three percent and consist, from bottom to top, of:

(i) Two feet of ash, well graded (with ferrous material removed and having proportional size distribution of ash particles) and thoroughly compacted;

(ii) Next, a layer, system or mechanism capable of detecting cap failure;

(iii) Next, a fabric filter overlaid by at least two feet of clay having a permeability of 1×10^{-7} cm/sec upon which a synthetic liner of sixty mils high density polyethylene or other material of equivalent mechanical strength and chemical resistance rests; and

(iv) Eighteen inches of native soil covered by six inches of topsoil.

(b) Final cap inspections shall be done in accordance with the liner inspection requirements of WAC 173-306-440 (4)(d).

(c) In case of cap failure, immediately notify the department with a plan for remedial action.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-450, filed 4/30/90, effective 5/31/90.]

WAC 173-306-470 Financial assurance. (1) Applicability.

These standards apply to all new and expanded monofill facilities, and to existing monofill facilities that have not closed before or within twelve months after the effective date of this chapter.

(2) Cost estimate for closure.

(a) Each owner or operator shall prepare a written closure cost estimate as part of the facility closure plan. The closure cost estimate must be in current dollars and represent the cost of closing the facility in accordance with the closure requirements in WAC 173-306-410.

(i) The cost estimate shall be based on a reasonable cost estimate for completing design, purchase, construction, and other activities as identified in the facility closure plan as required under WAC 173-306-410;

(ii) The closure plan shall project intervals for withdrawal of closure funds from the closure financial assurance instrument to complete the activities identified in the approved closure plan;

(iii) The closure cost estimate shall not be reduced by allowance for salvage value of equipment, ash or the resale value of property or land.

(b) Each owner or operator must prepare a new closure cost estimate in accordance with (a) and (c) of this subsection whenever:

(i) Changes in operating plans or facility design affect the closure plan;

(ii) There is a change in the expected year of closure that affects the closure plan; or

(iii) The department directs the owner or operator to revise the closure plan or closure cost estimate.

(c) Each owner or operator shall review the closure cost estimate thirty days prior to the anniversary date of the date on which the first closure cost estimate was prepared. The review shall examine all factors, including inflation, involved in estimating the closure cost. Any cost changes shall be factored into a revised closure cost estimate and the revised cost estimate submitted to the department.

(d) During the operating life of the facility, the owner or operator shall make available for review the closure cost estimate prepared in accordance with (a) and (b) of this subsection, and when this estimate has been adjusted in accordance with (c) of this subsection.

(e) The department shall evaluate each cost estimate and may accept, or at its discretion require revision of, the cost estimate in accordance with its evaluation.

(f) The department may require the facility owner or operator to adjust the cost estimate in accordance with the department's review and direction.

(3) Financial assurance account for closure. Each owner or operator of special incinerator ash monofill facility shall establish a financial assurance account in an amount that, over the life of the facility, will accumulate funds at a rate that will enable premature closure during the monofill life. The total amount shall be equal to the closure cost estimate prepared in accordance with subsection (2) of this section.

(a) Applicable monofill facilities that accept special incinerator ash must choose from the following financial assurance account options or combination of options:

(i) For monofill disposal facilities owned or operated by municipal corporations, the closure and post-closure reserve account shall be handled in one of the following ways:

(A) Cash and investments accumulated and restricted for closure with an equivalent amount of fund balance reserved in the fund accounting for special incinerator ash activity; or published Budget Accounting Reporting System Manual; or

(B) The cash and investments held in a nonexpendable trust fund.

(ii) Closure trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The wording of the trust agreement must be acceptable to the department. The purpose of the closure trust fund is to receive and manage any funds paid by the owner or operator and to disburse those funds only for closure activities as identified in the approved closure plan.

(b) For private disposal facilities that accept public waste, established closure financial assurance accounts shall not constitute an asset of the facility owner or operator.

(c) Any income in excess of the closure cost estimate accruing to the established closure financial assurance

account will be at the owner's discretion as to the use of said funds.

(d) Excess moneys remaining in the closure financial assurance account after the department has certified the completion of closure as identified in WAC 173-306-410 (4)(f)(i) shall be returned to the owner or operator.

(4) Cost estimate for post-closure.

(a) Each owner or operator shall prepare a written post-closure cost estimate as part of the facility post-closure plan. The post-closure cost estimate must be in current dollars and represent the total cost of completing post-closure activities for the facility for a thirty-year post-closure period in accordance with the post-closure requirements in WAC 173-306-410.

(i) The post-closure cost estimate shall be based on a reasonable cost estimate for completing post-closure monitoring, maintenance, and other activities identified in the approved facility post-closure plan as required under WAC 173-306-410;

(ii) The post-closure plan shall project intervals for withdrawal of post-closure funds from the post-closure financial assurance instrument to complete the activities identified in the approved post-closure plan;

(iii) The post-closure cost estimate shall not be reduced by allowance for salvage, value of equipment, ash, or the resale value of property or land.

(b) Each owner or operator shall prepare a new post-closure costs estimate for the remainder of the post-closure care thirty-year period in accordance with (a) and (c) of this subsection, whenever:

(i) Change in the post-closure plan increases the cost of post-closure care; or

(ii) The department directs the owner or operator to revise the post-closure plan or post-closure cost estimate.

(c) Each owner or operator shall review the post-closure cost estimate thirty days prior to the annual date on which the first post-closure cost estimate was prepared. The review shall examine all factors, including inflation, involved in estimating the post-closure cost. Any cost changes shall be factored into a revised post-closure cost estimate and the revised cost estimate submitted to the department.

(d) During the operating life of the facility, the owner or operator shall keep the latest post-closure cost estimate prepared in accordance with (a) and (b) of this subsection available for review.

(5) Financial assurance account for post-closure. Each owner or operator of an applicable monofill facility shall establish a financial assurance account in an amount equal to the post-closure cost estimate prepared in accordance with subsection (4) of this section.

(a) Applicable monofill facilities that accept special incinerator ash shall choose from the following options or combinations of options for accounting for the financial assurance account:

(i) For monofill disposal facilities owned or operated by municipal corporations, the post-closure reserve shall be handled in one of the following ways:

(A) Cash and investments accumulated and restricted for post-closure with an equivalent amount of fund balance reserved in the fund accounting for special incinerator ash activity; or

(B) Cash and investments held in a nonexpendable trust fund.

(ii) Post-closure trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The wording of the trust agreement must be acceptable to the department. The purpose of the post-closure trust fund is to receive and manage any funds paid by the owner or operator and to disburse those funds only for post-closure activities as identified in the approved post-closure plan.

(b) For private disposal facilities that accept public waste, established post-closure financial assurance accounts shall not constitute an asset of the facility owner or operator.

(c) Any income accruing to the established post-closure financial assurance account will be at the owner's discretion as to the use of said excess funds.

(d) Excess moneys remaining in the post-closure financial assurance account after the department has certified the completion of post-closure as identified in WAC 173-306-410 (7)(c) shall be returned to the owner or operator.

(6) Closure/post-closure financial assurance account establishment and reporting.

(a) Closure and post-closure financial assurance funds shall be generated at each facility by transferring a percentage of the facility user fees to the selected financial assurance instrument at the agreed upon rate to be specified in the closure and post-closure plans, such that adequate closure and post-closure funds will be generated to ensure full implementation of the approved closure and post-closure plans.

(b) Each applicable facility owner or operator shall establish a procedure with the financial assurance instrument trustee for notification of nonpayment of funds to be sent to the Department of Ecology, Solid and Hazardous Waste Program, Mailstop PV-11, Olympia, WA 98504-8711.

(c) Each owner or operator shall file with the department an annual audit of the financial assurance accounts established for closure and post-closure activities, and a statement of the percentage of user fees, diverted to the financial assurance instruments.

(i) For monofill disposal facilities owned and operated by municipal corporations, the closure reserve account shall be audited according to the audit schedule of the office of state auditor and shall be filed with the department of ecology, including each of the post-closure care years.

(ii) For monofill disposal facilities not owned or operated by municipal corporations:

(A) Annual audits shall be conducted by a certified public accountant licensed in the state of Washington, and shall be filed with the department no later than March 31 of each year for the previous calendar year, including each of the post-closure care years.

(B) The audit shall also include calculations demonstrating the proportion of closure completed during the preceding year as specified in the closure and post-closure plans.

(d) Existing monofill disposal facilities may submit a written request with their annual audit to the department requesting a waiver from utilizing user fees to generate the moneys necessary for the closure and/or post-closure financial assurance account.

(i) The waiver request should provide documentation to demonstrate the facility user fees are prohibitively high, and include alternate method(s) for funding the facility's closure and/or post-closure financial assurance account;

(ii) The waiver request review procedure will be according to WAC 173-306-900.

(7) Authorization for financial assurance account fund withdrawal for closure and post-closure activities.

(a) Each owner or operator will withdraw funds from the closure and/or post-closure financial assurance instrument as specified in the approved closure/post-closure plans;

(b) If the withdrawal of funds from the financial assurance instrument exceeds by more than five percent the withdrawal schedule stated in the approved closure and/or post-closure plan, the closure and/or post-closure plan shall be amended.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-470, filed 4/30/90, effective 5/31/90.]

WAC 173-306-480 Treatment (including solidification and stabilization) standards. (1) Applicability. The standards of this section apply to treatment, as defined in WAC 173-306-100, of any special incinerator ash subject to this chapter. These standards do not apply to the manual or mechanical removal of ferrous metal from ash residues.

(2) Requirements. All owners and operators shall design, construct, operate, maintain, and close treatment facilities so as to:

(a) Meet the general facility standards of WAC 173-306-405;

(b) Only treat special incinerator ash in tanks, reaction vessels, furnaces (such as glass furnaces), containers, or totally enclosed treatment facilities (such as pipelines). No treatment process shall be designed to occur in ash piles, surface impoundments, or land treatment facilities;

(i) The department shall review and approve tank and reaction vessel design. All tanks and reaction vessels will be closed or otherwise designed to avoid emissions of dusts or vapors to the atmosphere. Tanks and reaction vessels shall be of sufficient thickness and corrosion resistance to prevent rupture;

(ii) Totally enclosed treatment facilities in good condition and of a design and construction to avoid rupture under maximum operating conditions and capable of being inspected periodically; and

(iii) Furnaces in good condition structurally, designed and operated to accept only special incinerator ash and capable of being inspected periodically. The department may review and approve furnace design.

(c) Meet the performance standards of WAC 173-306-440(2). The department shall specify the type and frequency of all sampling and monitoring necessary to assure compliance.

(d) Assure that treatment of special incinerator ash occurs under conditions spelled out in prototype, pilot plant or full scale operation. The department shall approve the design and specify operating conditions.

(e) Control fugitive dust emissions in the handling of special incinerator ash by:

(i) Collecting and handling in enclosed buildings or the equivalent (e.g., covered conveyors and transfer points); and

(ii) Adding moisture, dust suppressants, or other methods as necessary.

(f) Comply with chapter 296-62 WAC, the general occupational health standards.

(g) Assure that treated special incinerator ash is disposed of according to this chapter or chapter 173-304 WAC, the minimum functional standards for solid waste, if the residues are designated as solid waste.

(h) Close the treatment facility according to the requirements of WAC 173-306-410.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-480, filed 4/30/90, effective 5/31/90.]

WAC 173-306-490 Ash utilization standards. (1) Applicability.

(a) These standards apply to persons who utilize special incinerator ash including:

- (i) Generators of special incinerator ash;
- (ii) Owners and operators of disposal facilities; and
- (iii) Persons who neither generate nor dispose of special incinerator ash but are involved in the reuse or utilization of special incinerator ash.

(b) These standards do not apply to the following wastes and waste processes:

- (i) Ferrous metal separation from ash;
- (ii) Special incinerator ash that is reinjected into the incinerator or energy-recovery facility from which it was produced;
- (iii) Reclamation of nonferrous metals.

(2) Standards.

(a) Accumulation prior to reuse or utilization.

(i) All ash for utilization shall be stored in totally enclosed buildings.

(ii) Floor or surface drains serving storage areas shall not be connected to uncontaminated storm water run-off drains. Contaminated water shall be processed according to WAC 173-306-200 (3)(c)(ii).

(iii) All ash not utilized within one calendar year of generation shall be subject to:

(A) The management plan requirements of WAC 173-306-200 if a generator is accumulating the ash; or

(B) The permitting and facility standard requirements of WAC 173-306-300 and 173-306-400, if a disposal facility is accumulating the ash.

(b) Use constituting disposal. Use constituting disposal is applying ash to the land or placing ash on the land in a manner constituting disposal, or applying ash contained in a product to the land or placing ash products on the land in a manner constituting disposal. Placement on the land includes placement in water (such as in reef construction).

(i) Persons wishing to reuse or utilize ash in a manner constituting disposal shall apply for a permit under WAC 173-306-310.

(ii) Persons reusing or utilizing ash in a manner constituting disposal are subject to the following sections of the general facility standards:

- (A) WAC 173-306-405(2);
- (B) WAC 173-306-405 (3)(b);
- (C) WAC 173-306-405 (5)(a), (b), (c), and (f); and
- (D) WAC 173-306-405(7).

(iii) The department will base its decision on whether to issue a permit upon the following factors:

(A) The effectiveness of the utilized ash or ash product for the claimed use;

(B) The degree to which the utilized ash is like an analogous product;

(C) The extent to which the utilized ash or ash product minimizes loss or escape to the environment;

(D) The extent to which the utilized ash or ash product impacts public health, the environment and employee health given a reasonable worst case exposure, risk assessment analyses and compliance with the performance standards of WAC 173-306-440(2);

(E) The extent to which an end market for the utilized ash and ash product is guaranteed;

(F) The time period between generating the ash and utilization;

(G) The degree to which the end uses (and users) can be tracked and recorded; and

(H) Other factors as appropriate.

(iv) The department may require that applicants apply for a demonstration permit or class use permit under WAC 173-306-320, if available information exists to satisfy the informational requirements of (b)(ii) and (iii) of this subsection.

(c) Utilization as ingredients in industrial products, or as effective substitutes. The utilization of ash in industrial products or as effective substitutes for commercial products are activities that ordinarily are not considered to be waste management because they are like normal production processes and/or the products are used like commercial products. (E.g., ash as a substitute in cement construction blocks is an example.)

(i) The department may grant requests for classifying such reuse or utilization for solely commercial purposes, if:

(A) The applicant shows that the ash or ash products are recycled in a manner such that they closely resemble products or raw materials rather than waste; and

(B) The applicant addresses the factors of (b)(iii) of this subsection (except for (2)(b)(iii)(G)).

(ii) Public review of the decision to grant or deny such request shall be according to WAC 173-306-900 (4), (5), and (6).

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-490, filed 4/30/90, effective 5/31/90.]

WAC 173-306-495 Other methods of ash disposal.

(1) Applicability. This section applies to other methods of ash disposal not specifically identified elsewhere in this chapter, nor excluded from this chapter.

(2) Requirements. Owners and operators of other methods of ash disposal shall:

(a) Comply with the requirements in WAC 173-306-405;

(b) Obtain a permit under WAC 173-306-300 from the department, by submitting an application containing information required in WAC 173-306-330, and such other information as may be required by the department including:

(i) Preliminary engineering reports and plans and specifications; and

(ii) A closure plan.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-495, filed 4/30/90, effective 5/31/90.]

WAC 173-306-500 Monitoring and sampling methods. (1) Applicability. These requirements apply to owners and operators of incinerators, energy recovery facilities, disposal facilities, and management facilities that are required to perform ash sampling, analyses and testing, ground water and air quality monitoring under this chapter.

(2) Ground water monitoring requirements.

(a) The ground water monitoring system:

(i) Must consist of at least one background or up-gradient well and three down-gradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the active portion of the facility.

(ii) Must represent the quality of background water that has not been affected by leakage from the active area; and

(iii) Must represent the quality of ground water passing the point of compliance. Additional wells may be required by the department in complicated hydrogeological settings or to define the extent of contamination detected.

(b) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, other substrata aquifers and waterbearing strata. Construction shall be in accordance with chapter 173-160 WAC, minimum standards for construction and maintenance of water wells.

(c) The ground water monitoring program shall include, at a minimum, procedures and techniques for:

(i) Decontamination of drilling and sampling equipment;

(ii) Sample collection;

(iii) Sample preservation and shipment;

(iv) Analytical procedures and quality assurance;

(v) Chain of custody control; and

(vi) Procedures to ensure employee health and safety during well installation and monitoring.

(d) Sample constituents.

(i) All facilities shall test for the following parameters:

(A) Temperature;

(B) Conductivity;

(C) pH;

(D) Chloride;

(E) Nitrate, nitrite, and ammonia as nitrogen;

(F) Sulfate;

(G) Dissolved iron, cadmium, lead, and mercury;

(H) Dissolved zinc and manganese;

(I) Chemical oxygen demand;

(J) Total organic carbon;

(K) Calcium and sodium; and

(L) Gamma radiation.

(ii) The department may specify additional or fewer constituents depending upon the leachate analyses, the composition of the ash, and other information.

(iii) Test methods used to detect the parameters of (d)(i) of this subsection shall be EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste Physical/Chemical Methods."

(e) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(f) The owner or operator shall use a department-approved statistical procedure for determining whether a significant change over background has occurred.

(g) The owner or operator must determine ground water quality at each monitoring well at the compliance point at least quarterly from start-up through the post-closure care period. The owner or operator must express the ground water quality at each monitoring well in a form necessary for the determination of statistically significant increases.

(h) The owner or operator must determine and report the ground water flow rate and direction in the uppermost aquifer at least annually.

(i) If the owner or operator determines that there is a statistically significant increase for parameters or constituents at any monitoring well at the compliance point, the owner or operator must:

(i) Notify the department of this finding in writing within seven days of receipt of the sampling data. The notification must indicate what parameters or constituents have shown statistically significant increases;

(ii) Immediately resample the ground water in all monitoring wells and determine the concentration of all constituents listed in the definition of contamination in WAC 173-306-100 including additional constituents identified in the permit and whether there is a statistically significant increase such that the ground water performance standard has been exceeded. The department shall be notified within fourteen days of receipt of the sampling data.

(j) The department may require modifications to the disposal facility, the plan of operation or the permit including facility closure if the performance standard of WAC 173-306-440 (2)(a) is exceeded and, in addition, may revoke any permit and require reapplication under WAC 173-306-310.

(3) Modifications. An owner or operator required to modify the facility or plan of operation under this section must first obtain approval from the department and must at a minimum:

(a) Implement modifications that reduce contamination and, if possible, prevents constituents from exceeding their respective concentration limits at the compliance point by removing the constituents, treating them in place or other remedial measures; and

(b) Begin modifications according to a written schedule after the ground water performance standard is exceeded.

(4) Ash and soil sampling, and analysis.

(a) Ash residue samples taken for the purpose of determining their designation status as a special incinerator ash waste shall follow guidance and/or guidelines established by the department. Ash samples taken for the purpose of determining carbon residue and for determining dioxins and dibenzofuran content, if different from samples taken for designation status under chapter 173-303 WAC, shall also follow guidance and/or guidelines established by the department. Representative sampling as developed by guidelines of the department shall be employed.

(b) Ash samples shall be analyzed as follows:

(i) For designation purposes, as a special incinerator ash waste, the samples shall be analyzed according to:

(A) "Chemical testing methods for complying with the state of Washington dangerous waste regulation," WDOE 83-13;

(B) "Biological testing methods," WDOE 80-12;

(C) "Test methods for evaluating solid waste, physical/chemical methods," SW 846.

(ii) For chlorinated-p-dioxins and dibenzofurans, 40 CFR Part 261 Appendix X is adopted by reference.

(iii) For cadmium in soil, method 7130 or 7131 cited in "Test methods for evaluating solid waste, physical/chemical methods," SW 846.

(5) Ambient air quality sampling for lead. Ambient lead concentrations shall be according to 40 CFR Part 50 Appendix G, which is adopted by reference, except that the sampling frequency will be determined by the department.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-500, filed 4/30/90, effective 5/31/90.]

WAC 173-306-900 Variances. (1) Any person applying for an ash disposal permit or who owns or operates an ash generation or disposal facility may apply to the department for a variance from any section of this chapter. The application shall be accompanied by such information as the department may require.

(2) The applicant shall provide usual and reasonable public notification within the area that will be impacted, including publication in the area's major general circulation newspaper and mailing notices to surrounding property owners. Proof of compliance shall be submitted with the variance application.

(3) The department shall give public notice of an application and allow a thirty-day public comment period. Notice shall be mailed to persons who have written to the department asking to be notified of all variance requests and indicate that a public hearing may be requested.

(4) In considering a variance request, the department shall consider:

(a) The relative interests of the applicant, other property owners likely to be affected by the applicant's activity and the general public;

(b) If the ash handling practices or facility location protect public health, worker health, safety or the environment to a degree equal to or greater than the standard from which a variance is requested;

(c) Whether compliance with the regulation from which the variance is sought would produce hardship without equal or greater benefits to the public;

(d) Whether compliance with the regulation will require spreading of costs over a considerable time period; and

(e) If the timetable is for a period that is needed to comply with this chapter.

(5) The department shall approve or disapprove a variance request within ninety days of receipt unless the applicant and the department agree to a continuance.

(6) Any variance granted pursuant to this section may be renewed. Application for a variance renewal shall be made at least sixty days prior to the expiration of the variance and follow the application process of subsections (1) through (5) of this section.

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-900, filed 4/30/90, effective 5/31/90.]

WAC 173-306-9901 Maximum contaminant levels for ground water. Maximum contaminant levels for ground water shall be those specified in chapter 248-54 WAC, as the primary drinking water standards. Analytical methods for these contaminants may be found in the Code of Federal Regulations, 40 CFR Part 141. (These contaminant levels are to be considered interim levels for the purpose of regulating disposal facilities and shall be used until such time as the department establishes ground water quality standards for all types of activities impacting ground water.)

[Statutory Authority: Chapter 70.138 RCW. 90-10-047, § 173-306-9901, filed 4/30/90, effective 5/31/90.]

**Chapter 173-307 WAC
PLANS**

WAC

173-307-010	Purpose.
173-307-015	Applicability.
173-307-020	Definitions.
173-307-030	Plan requirements.
173-307-040	Executive summary.
173-307-050	Due dates.
173-307-060	Plan availability.
173-307-070	Plan amendments and updates.
173-307-080	Progress reports.
173-307-090	Review process.
173-307-100	Penalties.
173-307-110	Appeals.
173-307-120	Exemptions.
173-307-130	Public disclosure.
173-307-140	Records.

WAC 173-307-010 Purpose. This chapter implements chapter 70.95C RCW, an act relating to hazardous waste reduction. The act encourages voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of hazardous waste by-products and to maximize the in-process reuse or reclamation of valuable spent material. The act establishes a legislative policy to encourage reduction in the use of hazardous substances and reduction in the generation of hazardous waste whenever economically and technically practicable. It also adopts as a policy goal for Washington state the reduction of hazardous waste generation, through hazardous substance use reduction and waste reduction techniques, by fifty percent by 1995. Some individual facilities may have the ability to reduce the use of hazardous materials and the generation of hazardous wastes by far greater than fifty percent while others may not be able to reduce by as much as fifty percent. Therefore, the fifty percent reduction goal is not applied as a regulatory requirement. The plans provided for in this chapter are intended to achieve, for each facility, the greatest reduction economically and technically practicable. The intent of the department of ecology is to provide technical assistance, to the greatest extent possible, to those required to prepare facility plans. The purpose of this chapter is to establish the specific elements required to be included in the documents required of hazardous waste generators and hazardous substance users under the act. The regulation also establishes completion dates and implements other requirements in the act. Copies of all rules, regulations, or statutes cited in this chapter are

available from the Department of Ecology, Mailstop PV-11, Olympia, Washington 98504-8711.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-010, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-010, filed 4/1/91, effective 5/2/91.]

WAC 173-307-015 Applicability. (1) The requirements of WAC 173-307-010 through 173-307-140 apply to all hazardous substance users as defined in this chapter and to hazardous waste generators who generate more than two thousand six hundred forty pounds of hazardous waste per year, except for those facilities that are primarily treatment, storage, and disposal facilities or recycling facilities. Used oil to be rerefined or burned for energy or heat recovery shall not be used in the calculation of hazardous wastes generated for purposes of this regulation, and is not required to be addressed by plans prepared under this regulation. For purposes of this section, hazardous waste reported on the annual dangerous waste generator report as having been either recycled on-site or recycled for beneficial use off-site and/or amounts of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculation of hazardous waste generated. A facility may petition the director to exclude hazardous wastes recycled for beneficial use even if they were not reported as such on the annual dangerous waste generator report. Documentation from the hazardous waste handling facility that the hazardous waste was recycled for beneficial use must be submitted along with the petition.

(2) Except as noted in subsection (3) of this section, each hazardous substance user and hazardous waste generator identified above must prepare one plan for each facility owned or operated.

(3) A person with multiple interrelated facilities where a significant majority of the processes are substantially similar, as defined in this chapter, may prepare a single plan covering one or more of those facilities.

(a) A person desiring to submit a single plan under this provision must first submit to the director documentation that a significant majority of the processes at the facilities are substantially similar processes in order to obtain approval prior to plan development. This documentation must be submitted by May 1 of the year prior to the plan due date.

(b) If a single plan is being prepared for two or more interrelated facilities with substantially similar processes, the sum total of the hazardous waste generated and the hazardous substances used by these facilities must be considered when applying any of the thresholds and/or percentages required by this chapter.

(c) In instances where a person has interrelated facilities without substantially similar processes, a single document may be prepared, but it must contain separate detailed plans for each facility.

(4) Facilities required by this chapter to prepare plans are also required to pay a hazardous waste fee, as described in chapter 173-305 WAC. The requirements of WAC 173-305-010 through 173-305-050 and 173-305-210 through 173-305-240 specifically apply.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-015, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-015, filed 4/1/91, effective 5/2/91.]

WAC 173-307-020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Closed-loop recycling" means that the entire process through completion of any reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance. Recycled materials are returned to the original process or processes.

"Dangerous waste" means any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

Dangerous wastes shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

"Department" means the department of ecology.

"Director" means the director of the department of ecology or the director's designee.

"EPA/state dangerous waste identification number" means the number assigned by the EPA (Environmental Protection Agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

"Extremely hazardous waste" means any dangerous waste which:

Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form:

Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife; and

Is highly toxic to man and wildlife;

If disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

Extremely hazardous waste shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

"Facility" means any geographical area that has been assigned an EPA/state dangerous waste identification number. In the case of a hazardous substance user not having an EPA/state dangerous waste identification number, facility means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person.

"Fee" means the annual hazardous waste fees imposed under RCW 70.95E.020 and 70.95E.030.

"Generate" means any act or process which produces hazardous waste or which first causes a hazardous waste to become subject to regulation.

"Hazardous substance" means any hazardous substance listed as a hazardous substance as of the effective date of this section pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act and any further updates, and all ozone depleting compounds as

defined by the Montreal Protocol of October 1987 and any further updates of the Montreal Protocol.

"Hazardous substance use reduction" means the reduction, avoidance, or elimination of the use, toxicity, or production of hazardous substances without creating substantial new risks to human health or the environment. "Hazardous substance use reduction" includes proportionate changes in the usage of hazardous substances as the usage of a hazardous substance or hazardous substances changes as a result of production changes or other business changes.

"Hazardous substance user" means any facility required to report under Section 313 of Title III of the Superfund Amendments and Reauthorization Act, except for those facilities which only distribute or use fertilizers or pesticides intended for commercial agricultural applications.

Note: This definition refers to those SARA Title III, Section 313 reporters who must prepare a plan, whereas the definition of hazardous substance refers to the substances that must be addressed in the plan.

"Hazardous waste" means and includes all dangerous and extremely hazardous wastes, but does not include radioactive wastes or a substance composed of both radioactive and hazardous components and does not include any hazardous waste generated as a result of a remedial action under state or federal law.

"Hazardous waste generator" or "generator" means any person generating hazardous waste(s) which are subject to regulation by the department.

"Hazardous waste reduction" means all in-facility practices that reduce, avoid, or eliminate the generation of hazardous wastes or the toxicity of hazardous wastes, prior to generation, without creating substantial new risks to human health or the environment.

"Interrelated facilities" means multiple facilities owned or operated by the same person.

"Office" means the office of waste reduction.

"Plan" means the plan provided for in RCW 70.95C.200.

"Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government, including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

"Process" means one or a number of steps which produces an end product or service, or a component which is to be incorporated into an end product or service.

"Product" means any hazardous substance or mixture containing hazardous substances which is used by a facility in a production or service process. Metals or metal alloys used by the facility are not considered "products" if they do not become incorporated into the hazardous waste streams and have no known pathway for the release of metals to the environment, either at the facility or subsequent to their use at the facility, such as from ultimate disposal by the consumer. Facilities will have to decide whether to group similar products (for example with different brand names) and list them as a single product. While some flexibility is left to the facility, products must be identified as a single product if they have similar chemical composition and may be used interchangeably by the facility.

Note: The term "product" as defined here and used throughout this chapter is not to be confused with the term "end product" which specifically refers to the "output" of a production process.

"Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include:

Use constituting disposal;
Incineration; or
Use as a fuel.

"Recycling" means reusing waste materials and extracting valuable materials from a waste stream. Recycling does not include burning for energy recovery.

Note: While burning for energy recovery may be preferable to disposal, burning for energy recovery does not count as recycling for the purpose of chapter 70.95C RCW.

"Remedial action wastes" means hazardous wastes which result from the cleanup of sites under state or federal hazardous waste laws.

"Shifting of risks" means changing the character, location, or receptor of a toxic material without achieving a substantial reduction in the overall risk to health and safety or the environment.

"Substantially similar processes" means processes that are essentially interchangeable, inasmuch as they use similar equipment and materials and produce similar products or services and generate similar wastes.

"Treatment" means the physical, chemical, or biological processing of waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal as described in the priorities established in RCW 70.105.150. Treatment does not include incineration.

"Used oil" means: Lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-020, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-020, filed 4/1/91, effective 5/2/91.]

WAC 173-307-030 Plan requirements. This section establishes the specific elements required to be included in a plan. The purpose of a plan is to require serious consideration of ways in which processes and procedures may be modified to reduce dependence upon hazardous substances and/or the generation of hazardous wastes. All plans must consider opportunities based on the following priorities: Hazardous substance use reduction and hazardous waste reduction, recycling, and treatment. The plans shall consist of the following parts:

(1) Part one. Part one shall include:

(a) A written policy articulating management and corporate support for the plan and a commitment to implement planned activities and achieve established goals.

(b) The plan scope and objectives.

(c) A description of the facility type, a description of product(s) made and/or services provided, and a statement or listing of the current level(s) of production or service activity in units of measure appropriate to the industry or activity;

(d) A general overview of the processes used in production or service activities (a schematic drawing may be included);

(e) A statement providing, for the last calendar year, the total pounds of extremely hazardous waste and total pounds of dangerous waste reported on Form 4, Generator Annual Dangerous Waste Report, and, if applicable, the total pounds of toxic releases reported on Form R under SARA Title III, Section 313; and

(f) A description of current reduction, recycling, and treatment activities and documentation of hazardous substance use reduction and hazardous waste reduction efforts completed prior to the first plan due date specified in WAC 173-307-050. Clearly separate the explanations of reduction activities from recycling and other management activities.

(2) Part two. Part two shall include an identification of hazardous substances used and hazardous wastes generated by the facility, a description of the facility processes, an identification of reduction, recycling, and treatment opportunities, an evaluation of those opportunities, a selection of proposed options, a policy to prevent shifting of risks, performance goals, and an implementation schedule. Specifically, Part two shall include:

(a) An identification of products containing hazardous substances used and hazardous wastes generated. This is to be based on actual usage and generation during the most recent calendar year for which records are available. This task can be accomplished by choosing one of two approaches. The approaches are identified as the "pounds approach" and the "percentage approach." Look at the following descriptions and requirements of each of these and determine which one you wish to use.

(i) "Pounds approach."

This approach requires you to identify the types and amounts, in either weight or volume, of hazardous waste generated and products containing hazardous substances used up to these threshold levels:

(A) All dangerous waste streams five hundred pounds or greater, any smaller dangerous waste streams which individually represents ten percent or more of the total annual hazardous wastes, and all extremely hazardous waste streams subject to regulation by the department. If this combination equals less than ninety percent of the total hazardous wastes generated, then additional dangerous wastes generated at the facility shall be included until ninety percent of the total is reached; and

(B) Each product used which contains a total of fifty percent or more of any combination of hazardous substances if one thousand pounds or more was used; each product used which contains a total of between twenty-five percent and forty-nine percent of hazardous substances if four thousand pounds or more was used; and each product used which contains a total of between ten and twenty-four percent of hazardous substances if ten thousand pounds or more was

used. Any product which contains less than ten percent of any hazardous substances need not be included in the list regardless of the amount of the product used.

(C) Office products and products which are used at the facility for nonprocess routine janitorial or grounds maintenance related activities may be excluded from this list.

(D) Hazardous substances used and hazardous wastes generated in laboratory research need not be listed. Note: See Part two, (k) of this subsection for discussion on this issue.

(ii) "Percentage approach."

This approach requires you to identify the types and amounts, in either weight or volume, of hazardous waste generated and products containing hazardous substances used up to these threshold levels;

(A) All extremely hazardous waste and enough additional dangerous waste to reach ninety percent of all the hazardous waste generated; and

(B) Ninety percent of all the products used which contain hazardous substances. This selection of products should attempt to include those that contain the highest concentrations of hazardous substances and the most toxic hazardous substances.

(C) Office products and products which are used at the facility for nonprocess routine janitorial or grounds maintenance related activities may be excluded from this list.

(D) Hazardous substances used and hazardous wastes generated in laboratory research need not be listed. Note: See Part two, (k) of this subsection for discussion on this issue.

(iii) Determinations of whether these quantities are met or exceeded for either approach shall be based on the best available information. This information may be included or referenced in the plan. Available information may include any or all of the following as necessary to determine quantities of hazardous substances contained in products; information available from material safety data sheets, information furnished upon request from manufacturers or suppliers of hazardous substances or products containing hazardous substances, information obtained from the department, and information otherwise known by the facility owner or operator.

An explanation of the procedures used to determine that the thresholds were met or exceeded must be included in this section of the plan.

(iv) The above thresholds shall only be used for plans required to be completed prior to September 2, 1996. Plans or plan updates completed from that date on must identify the types and amounts, in either weight or volume, of hazardous waste generated and hazardous substances used up to the following threshold levels;

(A) The "pounds approach" can only be used for identifying hazardous waste after September 2, 1996. This approach cannot be used for products containing hazardous substances. The thresholds for hazardous waste are:

All dangerous waste streams five hundred pounds or greater, any smaller dangerous waste streams which individually represents ten percent or more of the total annual hazardous wastes, and all extremely hazardous waste streams subject to regulation by the department. If this combination equals less than ninety-five percent of the total hazardous wastes generated, then additional dangerous wastes generated

at the facility shall be included until ninety-five percent of the total is reached.

(B) The "percentage approach" remains an optional approach for hazardous waste, but it is the only approach that can be used for products. The thresholds for this approach are:

All extremely hazardous waste and enough additional dangerous waste to reach ninety-five percent of all the hazardous waste generated; and

Ninety-five percent of all the products used which contain hazardous substances.

(C) The exemptions in subitems (C) and (D) of item (ii) of this subdivision remain in effect.

(b) A detailed description of each process in the facility that generates hazardous waste or uses products containing hazardous substances as identified in the chosen approach in (a) of this subsection. This description may include a schematic drawing.

(c) For the hazardous waste and products containing hazardous substances identified in (a) of this subsection within each of the processes identified in (b) of this subsection, an identification, based on thorough research, of all reasonable opportunities for further hazardous substance use reduction, hazardous waste reduction, recycling, and treatment. Thorough research shall include, at a minimum, a review of literature commonly available to that industry or trade. The full range of potentially feasible opportunities is to be identified without regard to possible impediments to implementing the opportunities. In identifying opportunities, consideration shall be given to alternative approaches which, in the judgment of the facility management, satisfy the same demand for end products or services but use substantially less hazardous substances or result in the generation of substantially less hazardous waste;

(d) An evaluation of the identified opportunities. Opportunities shall be grouped by priority and evaluated according to these priorities. The priorities are, in descending order: Hazardous substance use and hazardous waste reduction; recycling; and, treatment. Opportunities of a lower priority shall be given consideration only after a determination is made that the higher priority opportunities are inappropriate due to impediments to their implementation. Impediments that shall be considered acceptable include, but are not limited to: Adverse impacts on product quality, legal or contractual obligations, economic and technical practicality, safety considerations, and the creation of substantial new risks to human health or the environment.

Except with respect to the use and distribution of fertilizers or pesticides intended for commercial agricultural applications, the evaluation of hazardous waste reduction opportunities must include an evaluation of hazardous substance use reduction opportunities for those hazardous substances which subsequently result in hazardous waste streams as well as an evaluation of other opportunities for the reduction of hazardous waste.

The evaluation required under this subsection shall include an economic analysis, a technical evaluation, an identification of whether, and if so how, the identified opportunity would result in a shifting of risk(s) from one part of a process, environmental medium, or product to another and an identification of all impediments to implementing the opportunities. The economic analysis shall seek

to identify the total costs associated with the current hazardous substance use and hazardous waste generation, management and disposal, compared with comparable costs associated with implementing the alternatives.

Evaluation of each opportunity may be considered complete when enough information is available to select or reject the opportunity for implementation. For opportunities rejected, the reason(s) for rejecting them shall be stated.

(e) A selection of opportunities to be implemented in accordance with the evaluation conducted in (d) of this subsection. For each selected opportunity, the process(es) it affects shall be identified, and estimates of the amount, by weight, of the reduction of hazardous substances or products containing hazardous substances and hazardous waste reduction which would be achieved through implementation shall be stated, as well as the amount of hazardous wastes recycled or treated as a result of implementation shall be included;

(f) A written policy stating that in implementing the selected options whenever technically and economically practicable, risks will not be shifted from one part of a process, environmental medium, or product to another;

(g) Specific performance goals in each of the following categories, expressed in numeric terms:

(i) Hazardous substances or products containing hazardous substances to be reduced or eliminated from use;

(ii) Hazardous wastes to be reduced or eliminated through hazardous waste reduction techniques;

(iii) Materials or hazardous wastes to be recycled; and

(iv) Hazardous wastes to be treated.

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable. Goals shall be set for a five-year period from the first reporting date (see (h) of this subsection regarding implementation activities that will take longer than five years);

(h) A five-year implementation schedule, which shall display planned implementation activities for each of the five calendar years following completion of the plan. Information to be provided shall include, but is not limited to, the opportunities (or phases of opportunities) being implemented and related milestones. Where complete implementation of a selected opportunity will take longer than five years, the schedule shall contain relevant milestones within a five-year period and an estimated date of completion. The schedule may be in table form and organized by opportunities within processes, if desired.

(i) A description of how those hazardous wastes that are not recycled or treated and the residues from recycling and treatment processes are managed may be included in the plan.

(j) Documentation of any research conducted in fulfillment of any of the above subdivisions of this subsection shall be available to the department upon request.

(k) For research laboratories, the plan may include, in lieu of all the detailed requirements of this subsection, a description of policies and procedures to be followed by laboratory personnel regarding the use of hazardous substances and the generation of hazardous wastes through laboratory research. These policies and procedures must be

consistent with the waste reduction priorities as defined in this chapter.

(3) Part three. Part three shall provide a financial description of the plan, which shall identify costs and benefits realized from implementing selected opportunities to the extent reasonably possible. Part three shall also include a description of accounting systems which will be used to identify hazardous substance use and hazardous waste management costs. Liability, compliance, and oversight costs must be components of these accounting systems.

(4) Part four. Part four of the plan shall include a description of personnel training and employee involvement programs. Each facility required to write a plan is encouraged to advise its employees of the planning process and solicit comments or suggestions from its employees on hazardous substance use and waste reduction opportunities.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-030, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-030, filed 4/1/91, effective 5/2/91.]

WAC 173-307-040 Executive summary. Upon completion of a plan, the owner, chief executive officer, or other person with the authority to commit management to the plan, such as a facility manager, shall sign and submit an executive summary of the plan to the department. This summary shall be available from the department for public inspection upon request. The facility may elect to submit the complete plan to the department rather than prepare an executive summary. In that event, the complete plan shall also be available for public inspection.

Executive summaries shall include the following information from the plan:

(1) A written policy articulating management and corporate support for the plan and a commitment to implement planned activities and achieve established goals.

(2) The plan scope and objectives.

(3) A description of the facility type and a summary of product(s) made and/or services provided.

(4) A list of the type and amount of each hazardous waste and products containing hazardous substances as identified in WAC 173-307-030 (2)(a).

(5) A brief description of each process in the facility that generates hazardous waste or uses products containing hazardous substances as listed in subdivision (d).

(6) A description of current reduction, recycling, and treatment activities, and documentation of hazardous substance use reduction and hazardous waste reduction activities completed before the first reporting date specified in WAC 173-307-050.

(7) A summary of all further hazardous substance use reduction, hazardous waste reduction, recycling, and treatment opportunities identified. Opportunities shall be identified first for hazardous substance use reduction and hazardous waste reduction, secondly for recycling, and lastly for treatment. A statement of the reason(s) for rejecting any opportunity from further consideration and a summary of all identified impediments to implementing opportunities shall be included.

(8) A description of the opportunities selected to be implemented, process(es) affected, and estimated reductions to be achieved.

(9) Specific performance goals, expressed in numeric terms for each of the categories listed below (assumptions on changing production or service activity levels during the period covered by the plan must be described):

(a) Hazardous substances to be reduced or eliminated from use;

(b) Hazardous wastes to be reduced or eliminated through waste reduction techniques;

(c) Materials or hazardous wastes to be recycled; and

(d) Hazardous wastes to be treated.

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable. Goals shall be set for a five-year period from the first reporting date.

(10) The five-year implementation schedule identified in WAC 173-307-030 (2)(h) which shall display planned implementation activities for each of the five calendar years following completion of the plan.

(11) A summary of costs and benefits realized from implementing selected opportunities.

(12) For research labs, the executive summary may include, in lieu of all the detailed requirements of this section, a description of policies and procedures to be followed by laboratory personnel regarding the use of hazardous substances and the generation of hazardous waste through laboratory research. These policies and procedures must be consistent with the waste reduction priorities as defined in this chapter.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-040, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-040, filed 4/1/91, effective 5/2/91.]

WAC 173-307-050 Due dates. Plans shall be completed and executive summaries submitted in accordance with the following schedule:

(1) Hazardous waste generators who generated more than fifty thousand pounds of hazardous waste in calendar year 1991 and hazardous substance users who were required to report in 1991, by September 1, 1992;

(2) Hazardous waste generators who generated between seven thousand and fifty thousand pounds of hazardous waste in calendar year 1992 and hazardous substance users who were required to report for the first time in 1992, by September 1, 1993;

(3) Hazardous waste generators who generated between two thousand six hundred forty and seven thousand pounds of hazardous waste in 1993 and hazardous substance users who were required to report for the first time in 1993, by September 1, 1994;

(4) Hazardous waste generators who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste; and

(5) Hazardous substance users who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they are required to report under Section 313 of Title III of the Superfund Amendments and Reauthorization Act.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-050, filed 4/1/91, effective 5/2/91.]

WAC 173-307-060 Plan availability. Plans developed under chapter 173-307 WAC shall be kept at the facility and made available for review to authorized representatives of the department. The plan is not a public record under the public disclosure laws of the state of Washington contained in chapter 42.17 RCW, unless submitted in lieu of an executive summary as provided for in WAC 173-307-040.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-060, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-060, filed 4/1/91, effective 5/2/91.]

WAC 173-307-070 Plan amendments and updates.

(1) A plan must be kept reasonably current and may be amended in response to changes in facility operations, substances used, or wastes generated.

(a) Users or generators shall notify the department of an amended plan and submit amendments to their plan or executive summary, whichever was originally submitted, including an identification of which sections are being amended. The implementation schedule of the amended plan and/or new executive summary shall be within the original five-year timeline initiated by completion of the original plan.

(b) Even if a plan is amended, a five-year plan update will still be required five years from completion of the first plan, or from the last five-year update.

(2) Every five years, each plan shall be updated, and the plan or a new executive summary shall be submitted to the department. A plan update shall conform to the requirements for preparing reduction plans as specified in this chapter.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-070, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-070, filed 4/1/91, effective 5/2/91.]

WAC 173-307-080 Progress reports. Progress reports shall be submitted to the department annually on September 1 following the due date of the plan. The purpose of the progress report is to provide information on quantities of hazardous waste and hazardous substances or products containing hazardous substances reduced in the prior twelve-month period.

(1) Progress reports shall include a discussion of:

(a) Performance goals. If numeric performance goals were listed in the plan, progress toward these goals shall be discussed. If numeric performance goals were not listed in the plan, progress made toward establishing numeric goals shall be discussed, and also progress made towards achieving the goals as stated in the plan. This discussion shall include:

(i) A description of reduction, recycling, and treatment opportunities which were implemented.

(ii) A description of the process(es) impacted by each opportunity.

(iii) A description of the quantities, by weight, of hazardous substances or products containing hazardous substances reduced and hazardous waste reduced by each option. Estimation techniques, and any assumptions used shall be described. Quantities reduced must be displayed in relation to changing production levels. The description shall

(1995 Ed.)

also include a statement of the level of production or service activity in relation to the level of production or service activity stated in the plan at the time the plan was prepared.

Note: Factors not resulting in actual reductions, such as new estimating techniques, delistings of substances or hazardous wastes, and reclassifications of waste management techniques cannot be counted or claimed as reductions.

(iv) If measurement or estimation techniques are changed from the prior reports such that reductions are not additive for the five-year planning period, a methodology for converting prior reported reductions must be described and recalculations provided.

(b) Problems encountered in the implementation process. Problems shall be clearly identified and include a discussion of steps taken or proposed to resolve problems. An update on problems reported in previous progress reports shall be included.

(2) Upon the request of two or more users or generators belonging to similar industrial classifications, the department may aggregate data contained in their annual progress reports for the purpose of developing a public record.

[Statutory Authority: Chapter 70.95C RCW. 91-20-131 (Order 91-35), § 173-307-080, filed 10/1/91, effective 11/1/91; 91-08-041 (Order 90-57), § 173-307-080, filed 4/1/91, effective 5/2/91.]

WAC 173-307-090 Review process. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy.

(1) The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate and shall base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of this chapter and the requirements of chapter 70.95C RCW.

(2) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary, or failure to submit an annual progress report. The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(3) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to WAC 173-307-100.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-090, filed 4/1/91, effective 5/2/91.]

WAC 173-307-100 Penalties. (1) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of

a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan, executive summary, or annual progress report is completed.

(2) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in subsection (1) of this section, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in Washington state with a list of Environmental Protection Agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-100, filed 4/1/91, effective 5/2/91.]

WAC 173-307-110 Appeals. A user or generator may appeal from a department order or a surcharge under RCW 70.95C.220 to the pollution control hearings board pursuant to chapter 43.21B RCW.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-110, filed 4/1/91, effective 5/2/91.]

WAC 173-307-120 Exemptions. A person required to prepare a plan because of the quantity of hazardous waste generated may petition the director to be excused from this requirement. The person must demonstrate to the satisfaction of the director that the quantity of hazardous waste generated was due to unique circumstances not likely to be repeated and that the person is unlikely to generate sufficient hazardous waste to require a plan in the next five years.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-120, filed 4/1/91, effective 5/2/91.]

WAC 173-307-130 Public disclosure. (1) The department shall make available for public inspection any executive summary or annual progress report submitted to the department. Any hazardous substance user or hazardous waste generator required to prepare an executive summary or annual progress report who believes that disclosure of any information contained in the executive summary or annual

progress report may adversely affect the competitive position of the user or generator may request the department pursuant to RCW 43.21A.160 to delete from the public record those portions of the executive summary or annual progress report that may affect the user's or generator's competitive position. The department shall not disclose any information contained in an executive summary or annual progress report pending a determination of whether the department will delete any information contained in the report from the public record. This determination will be made within sixty days following a request for public inspection.

(2) Any ten persons residing within ten miles of a hazardous substance user or hazardous waste generator required to prepare a plan may file with the department a petition requesting the department to examine a plan to determine its adequacy. The department shall report its determination of adequacy to the petitioners and to the user or generator within a reasonable time. The department may deny a petition if the department has within the previous year determined the plan of the user or generator named in the petition to be adequate.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-130, filed 4/1/91, effective 5/2/91.]

WAC 173-307-140 Records. The department shall maintain a record of each plan, executive summary, or annual progress report it reviews, and a list of all plans, executive summaries, or annual progress reports the department has determined to be inadequate, including descriptions of corrective actions taken. This information shall be made available to the public.

[Statutory Authority: Chapter 70.95C RCW. 91-08-041 (Order 90-57), § 173-307-140, filed 4/1/91, effective 5/2/91.]

Chapter 173-309 WAC

HAZARDOUS WASTE CLEANUP ACT—LOCAL TOXICS CONTROL ACCOUNT—INTERIM FINANCIAL ASSISTANCE PROGRAM

WAC

173-309-010	Reserved.
173-309-020	Reserved.
173-309-030	Reserved.
173-309-040	Reserved.
173-309-050	Reserved.
173-309-060	Reserved.
173-309-070	Reserved.
173-309-080	Reserved.
173-309-090	Reserved.

WAC 173-309-010 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-010, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-010, filed 8/5/88.]

WAC 173-309-020 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-020, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-020, filed 8/5/88.]

WAC 173-309-030 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-030, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-030, filed 8/5/88.]

WAC 173-309-040 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-040, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-040, filed 8/5/88.]

WAC 173-309-050 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-050, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-050, filed 8/5/88.]

WAC 173-309-060 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-060, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-060, filed 8/5/88.]

WAC 173-309-070 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-070, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-070, filed 8/5/88.]

WAC 173-309-080 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-080, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-080, filed 8/5/88.]

WAC 173-309-090 Reserved.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-309-090, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220(4). 88-17-009 (Order 88-61), § 173-309-090, filed 8/5/88.]

Chapter 173-310 WAC LITTER RECEPTACLES

WAC

173-310-010	Purpose.
173-310-020	Definitions.
173-310-030	Responsibility to procure and place litter receptacle.
173-310-040	Litter receptacles, where required.
173-310-050	Number of litter receptacles required.
173-310-060	Minimum standards.
173-310-070	Anti-litter symbol.
173-310-080	Prohibited acts.
173-310-090	Penalties.
173-310-100	Effective date and compliance.
173-310-990	Appendix A—Anti-litter symbol.

WAC 173-310-010 Purpose. By the provisions of chapter 70.93 RCW, the department of ecology has been delegated authority to conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible. The purpose of this

chapter is to provide minimum standards for litter receptacles and to prescribe the use, placement and distribution of litter receptacles throughout the state, pursuant to the authority set forth in RCW 70.93.040 and 70.93.090.

[Order 72-10, § 173-310-010, filed 5/15/72, effective 9/1/72.]

WAC 173-310-020 Definitions. The following words and phrases as used herein shall have the following meanings, unless context clearly dictates otherwise:

(1) "Anti-litter symbol" means the standard symbol adopted herein by the department.

(2) "Department" means the Washington state department of ecology.

(3) "Litter" means all waste materials including, but not limited to, disposable packages or containers susceptible to being dropped, deposited, discarded or otherwise disposed of upon any property in the state, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(4) "Litter receptacle" means containers for the disposal of litter of not more than 60-gallon capacity: *Provided*, That special containers of larger capacity such as those referred to as "dumpsters," and garbage containers or other waste containers serving single or multifamily residences are not included within this definition and their use is in no way regulated or affected by this chapter.

(5) "Person" shall mean any industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.

(6) "Public place" means any area that is used or held out for the use of the public whether owned and operated by public or private interests, but not including indoor areas. An indoor area shall be construed to mean any enclosed area covered with a roof and protected from moisture and wind.

[Order 72-10, § 173-310-020, filed 5/15/72, effective 9/1/72.]

WAC 173-310-030 Responsibility to procure and place litter receptacle. It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by this chapter to procure, place and maintain such receptacles at their own expense on the premises in accordance with the provisions of this chapter.

[Order 72-10, § 173-310-030, filed 5/15/72, effective 9/1/72.]

WAC 173-310-040 Litter receptacles, where required. Litter receptacles meeting the standards established by this chapter shall be placed in the following public places in the state:

(1) Along public highways lying outside the limits of incorporated cities and towns;

(2) Parks;

(3) Campgrounds;

(4) Trailer park facilities for transient habitation;

(5) Drive-in restaurants;

(6) Gasoline service stations;

(7) Tavern parking lots;

(8) Shopping centers;

(9) Grocery store parking lots;

(10) Marinas;

- (11) Boat launching areas;
- (12) Boat moorage and fueling stations;
- (13) Public and private piers
- (14) Beaches and bathing areas;
- (15) Outdoor parking lots, other than those specifically designated above, having a capacity of more than 50 automobiles;
- (16) Fairgrounds;
- (17) Schoolgrounds;
- (18) Racetracks;
- (19) Sporting event sites with seating capacity for more than 200 spectators;
- (20) Sites for carnivals, festivals, circuses, shows or events of any kind to which the public is invited;
- (21) Business district sidewalks.

Litter receptacles need be placed in the above public places only during times such places or events held at them are open to the public.

Placement of litter receptacles shall be in conformance with laws, ordinances, resolutions and regulations pertaining to fire, safety, public health or welfare.

[Order 73-7, § 173-310-040, filed 4/23/73; Order 72-10, § 173-310-040, filed 5/15/72, effective 9/1/72.]

WAC 173-310-050 Number of litter receptacles required. The minimum number of receptacles meeting the standards established by this chapter required in public places listed in the preceding section is as follows:

- (1) Along public highways lying outside the limits of incorporated cities and towns - one receptacle at each rest area, view point or similar turnout, officially designated as such by the primary jurisdictional authority;
- (2) Parks, campgrounds and trailer park facilities for transient habitation - one receptacle at each public restroom facility, and one receptacle at each established trailhead giving access by foot, motorcycle, bicycle or similar trail for excursion or exploration out of or away from the central activity area;
- (3) Gasoline service stations - one litter receptacle placed in plain view of each gasoline service island, with a minimum of one receptacle for each side of the station on which gasoline pumps are located.
- (4) Drive-in restaurants, tavern parking lots, shopping centers, grocery store parking lots and outdoor parking lots having a capacity of more than 50 automobiles - one receptacle, plus one additional receptacle for each 200 parking spaces in excess of 50 spaces;
- (5) Marinas, boat launching areas, boat moorage and fueling stations and public and private piers - one receptacle at each such area;
- (6) Beaches and bathing areas - one receptacle at each public restroom facility, and one receptacle at each access point officially designated as such by the primary jurisdictional authority;
- (7) Schoolgrounds - one receptacle at each schoolground bus loading zone officially designated as such by the primary jurisdictional authority;
- (8) Racetracks and sporting event sites with seating capacity for more than 200 spectators - one receptacle, plus one additional receptacle for each 1000 seating capacity in excess of 200.

(9) Fairgrounds and sites for carnivals, festivals, circuses, shows or events of any kind to which the public is invited - one receptacle at the entrance to each ride, and one receptacle at each end of walk-through exhibit buildings;

(10) Along the sidewalks of business districts of incorporated cities and towns - one receptacle per 800 feet of sidewalk curbing.

No variance from the provisions of this section shall be allowed except upon the express permission of the department of ecology.

Notwithstanding the minimum requirements of this section, any public place in which litter receptacles meeting the standards of this chapter are required that is found to have an accumulation of uncontained litter under circumstances that the person responsible for placing receptacles could have reasonably anticipated the litter shall be deemed to have an insufficient number of receptacles to be in compliance with this regulation.

[Order DE 76-34, § 173-310-050, filed 9/13/76; Order 73-7, § 173-310-050, filed 4/23/73; Order 72-10, § 173-310-050, filed 5/15/72, effective 9/1/72.]

WAC 173-310-060 Minimum standards. Litter receptacles procured and placed in public places as required by this chapter shall meet the following minimum standards:

- (1) General specifications.
 - (a) The body of each litter receptacle shall be constructed of a minimum of 24-gauge galvanized metal or other material of equivalent strength, that will with normal wear and tear, reasonably resist corrosion and acts of vandalism.
 - (b) All outside edges of each litter receptacle shall be rounded.
 - (c) Openings in covered litter receptacles shall be readily identifiable and readily accessible for the deposit of litter.
 - (d) Construction and general configuration of litter receptacles shall be in conformance with all pertinent laws, ordinances, resolutions or regulations pertaining to fire, safety, public health or welfare.
- (2) Color and marking.
 - (a) The entire outer surface of each litter receptacle shall be colored medium green conforming with Federal Color Standard No. 595A, Color No. 24424, or Color No. 34424.
 - (b) Each litter receptacle shall bear the official anti-litter symbol, as adopted herein. The symbol shall be colored deep blue conforming with Federal Color Standard No. 595A, Color No. 15180. The symbol shall not be distorted as to proportion and shall not be incorporated into a commercial advertisement on the receptacle. For litter receptacles along the right-of-way of public highways, the symbol shall be of a size so as to be distinguishable from a minimum distance of 75 feet.
 - (c) The words "**Deposit Litter**" shall be placed on the litter receptacle. Lettering used for these two words shall be block-type capital letters to be readily legible at a distance of 30 feet.
 - (d) No commercial advertisement shall be placed on any litter receptacle. However, the person owning any receptacle may place a single line on the receptacle identifying his ownership, and a single credit line designating any donor of the litter receptacle other than the owner may also be placed on the receptacle: *Provided*, That the lettering does not

exceed the size specified for the words "Deposit Litter," and does not interfere with or distract from the prominence of the anti-litter symbol.

(3) Maintenance. Compliance with these minimum standards shall include proper upkeep, maintenance and repair of litter receptacles sufficient to permit such receptacles to serve the functions for which they were designed and to prevent the appearance of such receptacles from becoming unsightly. Inadequately maintained or unsightly litter receptacles shall be in violation of these minimum standards.

(4) Wherever litter receptacles are placed in any public place other than where required by this chapter, such receptacles shall conform to the provisions of this chapter.

[Order 72-10, § 173-310-060, filed 5/15/72, effective 9/1/72.]

WAC 173-310-070 Anti-litter symbol. The official state anti-litter symbol shall be the symbol depicted in Appendix A to this chapter conforming to the Federal Color Standard No. 595A, Color No. 15180, which appendix is hereby incorporated into this chapter and made part hereof. Permission to use this symbol in the manner required by this chapter has been obtained from the copyright holder and any other use without the express permission of the copyright holder is prohibited.

[Order 72-10, § 173-310-070, filed 5/15/72, effective 9/1/72.]

WAC 173-310-080 Prohibited acts. (1) No person shall damage, deface, abuse or misuse any litter receptacle not owned by him so as to interfere with its proper function or to detract from its proper appearance.

(2) No person shall deposit leaves, clippings, prunings or gardening refuse in any litter receptacle.

(3) No person shall deposit household garbage in any litter receptacle: *Provided*, That this subsection shall not be construed to mean that wastes of food consumed on the premises at any public place may not be deposited in litter receptacles.

[Order 72-10, § 173-310-080, filed 5/15/72, effective 9/1/72.]

WAC 173-310-090 Penalties. Penalties for violation of this chapter shall be in accordance with chapter 70.93 RCW.

[Order 72-10, § 173-310-090, filed 5/15/72, effective 9/1/72.]

WAC 173-310-100 Effective date and compliance.

(1) This chapter shall become effective on September 1, 1972.

(2) All litter receptacles in any public place designated in this chapter which are placed after the effective date hereof shall conform to the provisions of this chapter.

(3) Litter receptacles in any public place designated in this chapter which were in place prior to the effective date hereof shall be modified to conform with marking requirements of this chapter [WAC 173-310-060 (2)(b)(c)] no later than January 1, 1973.

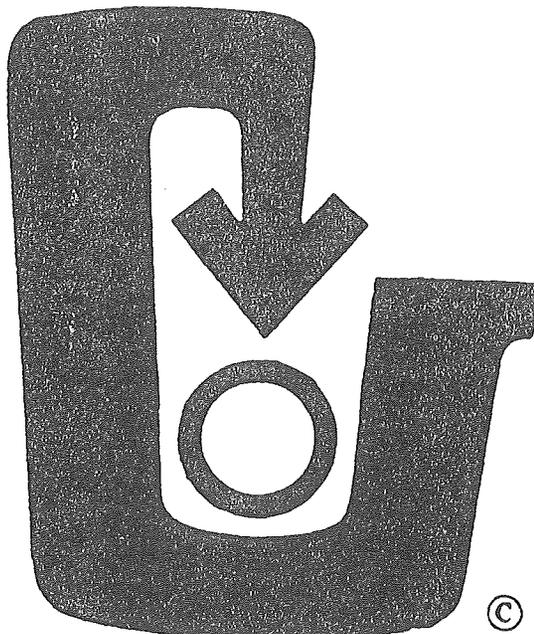
(4) All litter receptacles in any public place designated in this chapter shall be modified or replaced so as to fully conform with all requirements of this chapter no later than July 1, 1975.

[Order 72-10, § 173-310-100, filed 5/15/72, effective 9/1/72.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The bracketed material in the above section does not appear to conform to this rule.

WAC 173-310-990 Appendix A—Anti-litter symbol.

Appendix A



[Order 72-10, Appendix A (codified as WAC 173-310-990), filed 5/15/72, effective 9/1/72.]

**Chapter 173-311 WAC
MODERATE RISK WASTE GRANTS**

WAC

173-311-010	Purpose and authority.
173-311-020	Definitions.
173-311-030	Relation to other legislation and administrative rules.
173-311-040	General.
173-311-050	Moderate risk waste grants.

WAC 173-311-010 Purpose and authority. The purpose of this chapter is to set forth eligibility criteria and requirements for the conduct of a financial assistance program to provide grants to local governments pursuant to section 19, chapter 114, Laws of 1990 (Engrossed Substitute House Bill No. 2390). The department shall provide grants to local governments for small quantity generator technical assistance and compliance education components of their local hazardous waste plans as required by RCW 70.105.220.

Note: Copies of all cited RCWs, WACs and guidelines are available at the Department of Ecology, Mailstop: PV-11, Olympia, Washington, 98504.

[Statutory Authority: RCW 43.21A.080, chapter 70.105D RCW and 1990 c 114 § 19. 90-18-066 (Order 90-22), § 173-311-010, filed 9/4/90, effective 10/5/90.]

WAC 173-311-020 Definitions. (1) "Department" means the Washington state department of ecology.

(2) "Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

(3) "Moderate risk waste" means:

(a) Any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under chapter 70.105 RCW solely because the waste is generated in quantities below the threshold for regulation; and

(b) Any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

[Statutory Authority: RCW 43.21A.080, chapter 70.105D RCW and 1990 c 114 § 19. 90-18-066 (Order 90-22), § 173-311-020, filed 9/4/90, effective 10/5/90.]

WAC 173-311-030 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous and solid waste management and disposal.

(2) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

(3) The obligation of the department to make grant payments is contingent upon the availability of funds through allotment or appropriation, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums, the obligation of the department is contingent upon the allotment of funds during the next biennium.

[Statutory Authority: RCW 43.21A.080, chapter 70.105D RCW and 1990 c 114 § 19. 90-18-066 (Order 90-22), § 173-311-030, filed 9/4/90, effective 10/5/90.]

WAC 173-311-040 General. (1) The department shall consider the following factors in calculating grant allocations:

(a) Revenue collections;

(b) The number of businesses that are subject to the fee imposed in section 12 of ESHB 2390;

(c) The needs of local governments to carry out the small quantity generator technical assistance and compliance education components of their local hazardous waste plans as required by RCW 70.105.220.

(2) No costs incurred prior to the effective date of the grant are eligible unless specific provision is made in the grant agreement for such costs.

(3) The department shall develop guidelines to assist in interpreting the provisions of this chapter.

[Statutory Authority: RCW 43.21A.080, chapter 70.105D RCW and 1990 c 114 § 19. 90-18-066 (Order 90-22), § 173-311-040, filed 9/4/90, effective 10/5/90.]

WAC 173-311-050 Moderate risk waste grants. (1) An applicant must be a local government.

(2) Grant awards will be subject to the completeness of the application and the technical adequacy of the project.

(3) Eligible projects must be part of a department approved local hazardous waste plan as required by RCW 70.105.220.

(4) Eligible project costs include those necessary for a local government to provide a small quantity generator technical assistance and compliance education program as defined in a department-approved local hazardous waste plan.

(5) Grants will be made for up to seventy-five percent of the total eligible project costs.

[Statutory Authority: RCW 43.21A.080, chapter 70.105D RCW and 1990 c 114 § 19. 90-18-066 (Order 90-22), § 173-311-050, filed 9/4/90, effective 10/5/90.]

Chapter 173-312 WAC

COORDINATED PREVENTION GRANTS

WAC

173-312-010	Purpose and authority.
173-312-020	Definitions.
173-312-030	Relation to other legislation and administrative rules.
173-312-040	Applicant eligibility.
173-312-050	Project eligibility.
173-312-060	Application process.
173-312-070	Application evaluation.
173-312-080	Allocation of grant funding.
173-312-090	State assistance share and local cash match.
173-312-100	Grant administration.

WAC 173-312-010 Purpose and authority. (1) The purpose of this chapter is to set forth requirements for the conduct of a financial assistance program to provide grants to local governments for local hazardous waste plans and programs and solid waste plans and programs, pursuant to the Model Toxics Control Act, RCW 70.105D.070(3). The plans and programs referenced in RCW 70.105D.070(3) are designed to prevent or minimize environmental contamination. Therefore, the grants are designated "coordinated prevention grants" under this chapter.

(2) A further purpose of this chapter is to establish a structure for the administration of coordinated prevention grants funded from the local toxics control account authorized by RCW 82.21.030. The administrative structure may be extended to other waste management grant programs using other funding sources including the 1972 waste disposal facilities bonds authorized by chapter 43.83A RCW, the 1980 waste disposal facilities bonds authorized by chapter 43.99 RCW, the litter control account authorized by chapter 70.93 RCW, the vehicle tire recycling account authorized by chapter 70.95 RCW, the solid waste management account authorized by chapter 70.95 RCW, the hazardous waste assistance account authorized by chapter 70.95E RCW, and other waste management funding sources that may be established in the future by the legislature.

(3) The purposes of the coordinated prevention grants program are to:

(a) Consolidate all grant programs funded from the local toxics control account, and such other programs in subsection (2) of this section as may be selected, into a single program, except for remedial action, public participation, and citizen proponent negotiations grants.

(b) Promote regional solutions and intergovernmental cooperation.

(c) Prevent or minimize environmental contamination by providing financial assistance to local governments to help them comply with state solid and hazardous waste laws and regulations.

(d) Provide funding assistance for local solid and hazardous waste planning and for implementation of some programs and projects in those plans.

(e) Encourage local responsibility for solid and hazardous waste management.

(f) Improve efficiency, consistency, reliability, and accountability of grant administration.

Note: Copies of all cited statutes, rules, and guidelines are available at the Department of Ecology, Mailstop: PV-11, Olympia, Washington 98504.

[Statutory Authority: RCW 43.21A.080. 91-11-090 (Order 90-65), § 173-312-010, filed 5/21/91, effective 6/21/91. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-312-010, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220 and 70.95.220. 88-17-001 (Order 88-26), § 173-312-010, filed 8/4/88.]

WAC 173-312-020 Definitions. "Cash expenditure" means any cash outlay by the recipient, regardless of the source of funds, for direct costs of goods and/or services; salaries and benefits of recipient employees, including force account; overhead cash; and payments made to contractors.

"Class one areas" means the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

"Class two areas" means the counties located west of the crest of the Cascade Mountains and all the cities therein, except Snohomish, King, Pierce, and Kitsap counties.

"Class three areas" means the counties east of the crest of the Cascade Mountains and all the cities therein, except Spokane County.

"Department" means the department of ecology.

"Grant" means the portion of the project costs borne by the department.

"In-kind contributions" are property or services that benefit a project and that are contributed by a third party, without direct monetary compensation, to the recipient (or to any contractor under the agreement). In-kind contributions include donated or loaned real or personal property, volunteer services, and employee services donated by a third party.

"Incineration" means a process of reducing the volume of solid waste by use of an enclosed device using controlled flame combustion, operating under federal and state environmental laws and regulations.

"Interlocal costs" are in-kind contributions made to a project by another local government pursuant to a valid written agreement between the recipient and the other government which details the work to be accomplished, the goods and services to be provided, and the value thereof. If the recipient reimburses another governmental entity for any portion of its contributions, the amount paid to the other entity is not an interlocal cost. It is a cash expenditure on the part of the recipient. Only the nonreimbursed portion of the other governmental entity's contributions is an interlocal cost.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading disposal facility.

"Lead implementation agency" means the agency designated in the adopted local solid or hazardous waste plan as having the principal responsibility for the execution of all or most of the plan, and/or the coordinating agency which delegates responsibility to other agencies to execute portions of the plan.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

"Local hazardous waste plan" means the plan to manage moderate-risk waste that a local government is required to prepare pursuant to RCW 70.105.220.

"Match" means that portion of the cash expenditures borne by recipient funds and interlocal costs.

"Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under chapter 70.105 RCW solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances or substances that exhibit any of the properties of hazardous waste.

"Recipient" means the entity to which the funding is awarded and which is accountable for the use of the funds provided. The recipient is the entire legal entity even if only one component or department is designated in the agreement document.

"Recyclable materials" means those solid wastes separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

"Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

[Statutory Authority: RCW 43.21A.080. 91-11-090 (Order 90-65), § 173-312-020, filed 5/21/91, effective 6/21/91. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-312-020, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220 and 70.95.220. 88-17-001 (Order 88-26), § 173-312-020, filed 8/4/88.]

WAC 173-312-030 Relation to other legislation and administrative rules. (1) This rule shall, together with chapters 173-322 and 173-321 WAC, and WAC 173-303-902, fulfill the requirement for rule making set forth in RCW 70.105D.070(7).

(2) The local government receiving a grant shall comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

(3) Grants will be awarded within the limits of available funds. The obligation of the department to make grant payments is contingent upon the availability of funds through

legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department which may render performance impossible.

(4) Nothing in this chapter shall influence, affect, or modify existing department programs, regulations, or enforcement of applicable laws relating to solid and hazardous waste management and cleanup.

(5) All grants shall be subject to existing applicable accounting and auditing requirements of state laws and regulations.

[Statutory Authority: RCW 43.21A.080. 91-11-090 (Order 90-65), § 173-312-030, filed 5/21/91, effective 6/21/91. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-312-030, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220 and 70.95.220. 88-17-001 (Order 88-26), § 173-312-030, filed 8/4/88.]

WAC 173-312-040 Applicant eligibility. (1) Eligibility for solid waste planning grants. Counties that are required by chapter 70.95 RCW to adopt or update local solid waste plans, are eligible to apply for coordinated prevention grants to help pay for such plans. This eligibility extends to cities that have submitted an independent city plan, a joint city plan, or joint city-county plan to the department by the effective date of this rule. This eligibility also extends to any city subsequently requesting funding for the preparation of an independent plan, if such city provides for disposal sites wholly within its jurisdiction.

(2) Eligibility for solid waste enforcement grants. Jurisdictional health departments/districts are eligible to apply for coordinated prevention grants to pay for the enforcement of rules and regulations promulgated under chapter 70.95 RCW.

(3) Eligibility for solid waste implementation grants. Counties whose solid waste plans are adopted, approved, and updated by the department as required by chapter 70.95 RCW are eligible to apply for coordinated prevention grants to help pay for the implementation of projects in the most recently approved and adopted plan, provided that such projects are eligible as defined in WAC 173-312-050. This eligibility also extends to cities that are eligible for funding to do local solid waste plans or updates as provided by subsection (1) of this section.

If such adopted plans designate lead implementation agencies to implement the plans, such agencies are also eligible to apply for coordinated prevention grants.

Solid waste plan updates must be submitted to the department no later than July 1, 1991, for class one areas; July 1, 1992, for class two areas; and July 1, 1994, for class three areas; unless an extension is granted by the department. Local governments that do not comply will not be eligible for coordinated prevention grant funding for solid waste project implementation until the required plan updates are submitted to the department.

(4) Eligibility for hazardous waste planning grants. Local governments that are required by chapter 70.105 RCW to adopt or update local hazardous waste plans are eligible to apply for coordinated prevention grants to help pay for such plans.

(5) Eligibility for hazardous waste plan implementation grants. Local governments with department-approved local hazardous waste plans as required by chapter 70.105 RCW

are eligible to apply for coordinated prevention grants to help pay for the implementation of projects in the plan. If such plans designate lead implementation agencies to implement the plans, such agencies are also eligible to apply for coordinated prevention grants.

(6) Any grant-eligible entities as defined in this section may submit their requests in a unified application as described in WAC 173-312-060 (4)(a), or may submit separate applications in a package application as provided in WAC 173-312-060 (4)(b).

[Statutory Authority: RCW 43.21A.080. 91-11-090 (Order 90-65), § 173-312-040, filed 5/21/91, effective 6/21/91. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-312-040, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220 and 70.95.220. 88-17-001 (Order 88-26), § 173-312-040, filed 8/4/88.]

WAC 173-312-050 Project eligibility. (1) Eligible project costs are those costs that are necessary and reasonable to fund required local planning and the implementation of some projects and programs contained in those plans, including innovative approaches implementing policies of the plan. These are:

(a) Local hazardous waste planning as required by chapter 70.105 RCW.

(b) Local solid waste planning as required by chapter 70.95 RCW.

(c) Local hazardous waste plan implementation projects.

(d) Local solid waste enforcement by the jurisdictional health departments/districts.

(e) Local solid waste plan implementation projects, which are limited to:

(i) Projects that implement the requirements of chapter 173-304 WAC for closure of publicly-owned municipal solid waste landfills will be eligible for grant funding provided all of the following criteria are met:

(A) The jurisdictional health department/district has required the landfill to reach postclosure no later than September 30, 1995;

(B) Financial assurance accounts for closure and postclosure have been established and maintained as required by chapter 173-304 WAC for landfills closed after November 27, 1989;

(C) The landfill has an approved closure plan as required by chapter 173-304 WAC;

(D) Local governments that have disposed of significant quantities of waste at the landfill make reasonable financial contribution to the costs of closure and postclosure; and

(E) The landfill is not eligible for remedial action grants under chapter 173-322 WAC or identified by the department as potentially requiring remedial action.

The total amount expended from the local toxics control account for solid waste landfill closure shall not exceed fifteen million dollars and no funds shall be expended for this purpose after December 31, 1995. No single landfill closure project shall be eligible for more than five hundred thousand dollars from the local toxics control account.

(ii) Ground water monitoring well projects to meet the requirements of WAC 173-304-490.

(iii) Waste reduction and recycling projects and programs.

(2) Eligible project costs do not include:

(a) Solid waste incinerator feasibility studies, construction, maintenance, or operation.

(b) Landfill closure as required by chapter 173-304 WAC, except for ground water monitoring wells or projects which meet the requirements of subsection (1)(e)(i) of this section.

(c) New landfill construction or landfill expansion, or landfill upgrading at an operating facility to meet the requirements of chapter 173-304 WAC.

(d) Garbage collection and disposal, except start-up costs for waste reduction and recycling programs.

(e) Solid and hazardous waste expenses not directly related to compliance with state solid and hazardous waste laws and regulations.

[Statutory Authority: RCW 43.21A.080, 91-11-090 (Order 90-65), § 173-312-050, filed 5/21/91, effective 6/21/91. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-064 (Order 90-17), § 173-312-050, filed 9/4/90, effective 10/5/90. Statutory Authority: RCW 70.105B.220 and 70.95.220. 88-17-001 (Order 88-26), § 173-312-050, filed 8/4/88.]

WAC 173-312-060 Application process. (1) The department shall set forth in its grant guidelines the base funding levels estimated to be available for each county for coordinated prevention grants and the process by which applications will be submitted.

(2) The application shall be submitted by the county agency or department having responsibility for solid waste, unless the county executive department shall select another agency or department to submit the application.

(3) Coordinated prevention grant applications must:

(a) Include a commitment by the applicant(s) to use local funds to match grant funds according to the requirements of WAC 173-312-090.

(b) Be for eligible projects as defined in WAC 173-312-050.

(c) Include a scope of work that is sufficiently detailed for the department to monitor grant performance.

(d) Include documentation that all cities in the county and lead implementation agencies which have approved the adopted local hazardous waste plan or solid waste plan have had the opportunity to request that projects that meet the requirements of WAC 173-312-050 be included in the application.

(4) To obtain coordinated prevention grant funding, a county shall submit either a unified application or a package application, as defined herein:

(a) A unified grant application means that the county, the health department/district and any other grant eligible entities as defined in WAC 173-312-040 have reached agreement regarding the requested projects and funding allocations for both local solid and local hazardous waste plans and projects. The submittal will consist of a single county application with specific projects identified to be executed by the county and other local governments. Unified applications will receive financial incentives for administrative coordination set forth in WAC 173-312-090.

The unified application shall include a maximum grant request for no more than the base funding level for the county, plus the selected financial incentive.

The application shall be signed, indicating approval by responsible officials from the county, local health depart-

ment/district and any other grant-eligible entities as defined in WAC 173-312-040.

(b) A package application means that the county, the local health department/district and any other grant-eligible entities as defined in WAC 173-312-040 have not reached agreement regarding the requested projects and funding allocations, or choose to submit individual applications. The maximum grant request may exceed the base funding level. A package application is not eligible for the financial incentives for administrative coordination set forth in WAC 173-312-090. A package application must be submitted by the county. A package application may consist of individual signed applications from the county, the health department/district and other grant-eligible entities as defined in WAC 173-312-040; requests from other cities will be submitted as part of the county application.

[Statutory Authority: RCW 43.21A.080, 91-11-090 (Order 90-65), § 173-312-060, filed 5/21/91, effective 6/21/91.]

WAC 173-312-070 Application evaluation. (1) In evaluating coordinated prevention grant applications, the department may require that funding of certain projects take precedence over other projects. The department will refer to the following priority order in evaluating projects:

(a) Required hazardous waste planning under chapter 70.105 RCW and required solid waste planning under chapter 70.95 RCW.

(b) Programs and projects to implement adopted local hazardous waste plans, including waste reduction and recycling.

(c) Solid waste enforcement programs.

(d) Programs and projects to implement adopted local solid waste plans, including waste reduction and recycling, ground water monitoring wells meeting the requirements of WAC 173-304-490, and publicly owned municipal solid waste landfill closure meeting the requirements of WAC 173-312-050 (1)(e)(i).

(2) The department will evaluate each application according to the extent to which it:

(a) Conforms to the adopted local hazardous waste and solid waste plans.

(b) Advances regional solutions and intergovernmental cooperation.

(c) Supports the state's goal to achieve a fifty percent recycling rate by 1995.

(d) Confers broad benefit on residents of the county, whether they reside in incorporated areas or unincorporated areas.

(e) Meets the needs of local government for projects that prevent environmental contamination from solid and hazardous waste.

(f) Uses the state's resources efficiently.

(g) For solid waste enforcement funding, takes into account the number of disposal sites and the geographic area requiring enforcement activity.

(3) The department may fund all or portions of a coordinated prevention grant application.

(4) The department may award grants to any local government in order to execute all or portions of a coordinated prevention grant program.

[Statutory Authority: RCW 43.21A.080, 91-11-090 (Order 90-65), § 173-312-070, filed 5/21/91, effective 6/21/91.]

WAC 173-312-080 Allocation of grant funding. (1)

The department shall consider the following factors in calculating base funding levels, supplemental grant levels, and maximum grant amounts for recipients:

(a) Projected and actual revenue to the local toxics control account, and other funding sources cited in WAC 173-312-010(2), as determined by the department.

(b) The number of people served by a local government.

(2) Grants that may be awarded to eligible cities pursuant to WAC 173-312-040 may not exceed a city's proportionate share, based on population, of a county's base funding level as defined in subsection (3)(a) of this section, unless the department, the county, the health department/district and the grant-eligible entities as defined in WAC 173-312-040 agree otherwise.

(3) Projected revenues to the local toxics control account that are available each biennium for coordinated prevention grant purposes shall be divided into two portions. After administrative costs have been deducted, allocations will be calculated as follows:

(a) The base funding level shall be calculated for each county by means of a formula which shall consist of two elements:

(i) A fixed amount for each county, regardless of size; and

(ii) A per capita amount based on county population size as determined by the United States census data or by the official estimates of the state office of financial management.

(b) The smaller portion, as well as unused funds in (a) of this subsection, shall become supplemental funds and shall be used for the following purposes:

(i) Financial incentives to local governments for administrative centralization and efficiency;

(ii) Remedial action grants issued pursuant to chapter 173-322 WAC, if the need exceeds administrative allocations;

(iii) Landfill closure projects meeting the requirements of WAC 173-312-050 (1)(e)(i);

(iv) Reserve funds for grants to deal with unanticipated or immediate threats to human health and the environment; and

(v) Supplemental grants, to be awarded based on the criteria set forth in WAC 173-312-070(2).

(4) Applicants must meet the requirements of this chapter to the satisfaction of the department in order to secure grant awards.

[Statutory Authority: RCW 43.21A.080, 91-11-090 (Order 90-65), § 173-312-080, filed 5/21/91, effective 6/21/91.]

WAC 173-312-090 State assistance share and local cash match. (1) Costs eligible under WAC 173-312-050

will be considered for grant funding of up to sixty percent. At least forty percent of eligible costs must be provided as local cash match. Counties which submit unified applications as defined in WAC 173-312-060 (4)(a) either will be considered for grant funding of up to sixty-five percent, provided that at least thirty-five percent of eligible costs is

provided as local cash match, or will be eligible for a grant amount level ten percent greater than the base funding level.

(2) Counties, and grant-eligible jurisdictions within such counties, that are determined to be economically disadvantaged will be eligible for an increased state share and a reduced local cash match. For projects proposed by such jurisdictions, costs eligible under WAC 173-312-050 will be considered for grant funding of up to seventy-five percent. At least twenty-five percent of eligible costs must be provided as local cash match.

Economically disadvantaged counties that submit unified grant applications as defined in WAC 173-312-060 (4)(a) will be eligible for a grant amount ten percent greater than the base funding level.

(3) A county is considered economically disadvantaged if it meets both of the following criteria:

(a) Per capita income, as measured by the latest official estimate of the state office of financial management, is in the lower twenty counties in the state; and

(b) Economic distress exists as defined by chapter 43.165 RCW.

(4) The department will include a list of economically disadvantaged counties as defined in this section in the guidelines for coordinated prevention grants.

(5) Local cash match may be met by cash expenditures and interlocal costs. Interlocal costs are the only type of in-kind contributions that may be used for local cash match.

[Statutory Authority: RCW 43.21A.080, 91-11-090 (Order 90-65), § 173-312-090, filed 5/21/91, effective 6/21/91.]

WAC 173-312-100 Grant administration. (1) The department shall prepare guidelines to facilitate compliance with and interpretation of this rule.

(2) The coordinated prevention grants shall operate on a biennial funding cycle. Such cycle will consist of:

(a) A base grant phase, during which eligible applicant governments apply for grant funds up to the base funding level set forth in WAC 173-312-080 (3)(a) plus the selected administrative incentives; and

(b) A supplemental grant phase, during which grant recipients request grant amendments including supplemental funding requests for additional funds to assist ongoing or new projects. The supplemental grant phase will be contingent on the availability of funds to the local toxics control account.

(3) The department will obligate coordinated prevention grant funds to a recipient for a maximum period of two years. If the recipient has not accomplished the scope of work in the time period set forth in the agreement, the recipient must use a portion of its next biennial base funding level to complete the project(s).

(4) No costs incurred prior to the effective date of a grant agreement are eligible unless specific provision is made in the grant agreement for such costs.

[Statutory Authority: RCW 43.21A.080, 91-11-090 (Order 90-65), § 173-312-100, filed 5/21/91, effective 6/21/91.]

Chapter 173-313 WAC
LOCAL SOLID WASTE ENFORCEMENT GRANT
REGULATION

WAC

173-313-010	Introduction.
173-313-020	Purpose and authority.
173-313-030	Applicant eligibility.
173-313-040	Application.
173-313-050	Criteria for allocation of funds.

WAC 173-313-010 Introduction. RCW 70.95.220 provides that any jurisdictional health department may apply to the department of ecology for financial aid for the enforcement of rules and regulations promulgated under chapter 70.95 RCW. RCW 70.95.220 further provides that after receipt of such applications, the department may allocate available funds according to criteria established by regulation. Such criteria shall consider or be based upon population, urban development, the number of disposal sites, and geographical area.

[Statutory Authority: RCW 70.95.220 and 1989 c 2. 89-17-073 (Order 89-12), § 173-313-010, filed 8/17/89, effective 9/17/89.]

WAC 173-313-020 Purpose and authority. The purpose of this regulation is to establish criteria by which the department of ecology shall allocate financial aid, pursuant to the Model Toxics Control Act, to jurisdictional health departments for enforcement of rules and regulations promulgated under chapter 70.95 RCW.

[Statutory Authority: RCW 70.95.220 and 1989 c 2. 89-17-073 (Order 89-12), § 173-313-020, filed 8/17/89, effective 9/17/89.]

WAC 173-313-030 Applicant eligibility. In order to be eligible for grant funding, the local health department must:

- (1) Be a "jurisdictional health department" as defined by RCW 70.95.030;
- (2) Have a program to achieve the goals of chapter 70.95 RCW;
- (3) Have a solid waste ordinance per chapter 70.95 RCW, or be in the process of adoption.

[Statutory Authority: RCW 70.95.220 and 1989 c 2. 89-17-073 (Order 89-12), § 173-313-030, filed 8/17/89, effective 9/17/89.]

WAC 173-313-040 Application. Application for funds shall be made on forms provided by the department and shall include detailed information specified in a guidance document also provided by the department. This detailed information shall include a confirmation of the applicant's eligibility, and a description of the program and budget.

[Statutory Authority: RCW 70.95.220 and 1989 c 2. 89-17-073 (Order 89-12), § 173-313-040, filed 8/17/89, effective 9/17/89.]

WAC 173-313-050 Criteria for allocation of funds. As specified in RCW 70.95.220, first priority will be to provide funds exclusively for solid waste inspection activities, including staff for administration of the local inspection program. The following criteria will be used to assist in the allocation of those funds:

- (1) Protection of public health and environment.

(2) Cost to residential ratepayers without state assistance.

(3) Actions required under federal, state and local regulations, and consent decrees.

(4) Commitment/readiness to proceed.

(5) Degree of local solid waste problems, as measured by these factors:

(a) Number of existing disposal sites, open and closed;

(b) Environmental sensitivity of the geographical area;

(c) Disposal sites and other waste management facilities, open and closed;

(d) Current enforcement actions;

(e) Extent of urban development and its relationship to industrial, commercial, and residential development; and

(f) Population.

[Statutory Authority: RCW 70.95.220 and 1989 c 2. 89-17-073 (Order 89-12), § 173-313-050, filed 8/17/89, effective 9/17/89.]

Chapter 173-314 WAC

WASTE TIRE CARRIER AND STORAGE SITE
LICENSES

WAC

173-314-010	Authority and purpose.
173-314-100	Definitions.
173-314-200	Waste tire carrier license.
173-314-210	Enforcement for waste tire carriers.
173-314-220	Storage, disposal, and utilization.
173-314-300	Waste tire storage site license.
173-314-310	Variances.
173-314-320	Enforcement for waste tire storage sites.
173-314-330	Records.
173-314-340	Reports.

WAC 173-314-010 Authority and purpose. By the provision of RCW 70.95.555 and 70.95.263, the department of ecology has been delegated authority to conduct a licensing program for waste tire carriers and storage site owners. The purpose of this chapter is to provide minimum standards for waste tire carriers and site owners that will result in the safe and proper storage, control, recovery, and recycling of tires throughout the state.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-010, filed 1/13/89.]

WAC 173-314-100 Definitions. The following words, terms, and phrases shall, for the purposes of this chapter, have the meanings given below:

(1) "Cab cards" means a license carried in a vehicle that authorizes that vehicle to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

(2) "Commission" means the Washington utilities and transportation commission.

(3) "County permit" means a permit issued by a local health district that allows for storage of waste tires at a place of business that does not constitute final disposal of the waste tires.

(4) "Department of licensing" means the Washington state department of licensing.

(5) "Director" means the director of the department of ecology.

(6) "Disposal site" means the location where any final treatment, utilization, processing, or depository of solid waste occurs.

(7) "Dispose" means to deposit, dump, spill, or place any waste tire onto or under the surface of the ground or into the waters of this state.

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

(9) "Financial assurance" means a performance bond, a letter of credit, cash deposit, or insurance policy in favor of the state of Washington.

(10) "Landfill" means a disposal facility or part of a facility at which waste is placed in or on land and which is not a land treatment facility.

(11) "License" means the license issued by the department of licensing and approved by ecology as authorized by RCW 70.95.555 for any person engaged in the business of transporting or storing waste tires.

(12) "Person" means any individual, firm, association, copartnership, political subdivision, government agency, municipality, industry or private corporation, or any other entity whatever.

(13) "Retreader" means a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(14) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

(15) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes, or the conversion of the energy in such wastes to more useful forms or combinations thereof.

(16) "State" means the state of Washington.

(17) "Storage" or "storing" means the placing of waste tires at a county permitted facility under conditions established in WAC 173-304-420 and chapter 70.95 RCW.

(18) The terms "motor vehicle," "public highway," "common carrier," "contract carrier," "private carrier," and "garbage and refuse collection companies" shall have the meaning when used herein given to them by section 2, chapter 295, Laws of 1961, and by chapter 105, Laws of 1965 ex. sess.

(19) "Tire" means a continuous solid, semipneumatic, or pneumatic rubber covering encircling the wheel of a vehicle.

(20) "Tire derived products" means any usable materials with a market value produced from the physical processing of tires.

(21) "Tire retailer" means a person in the business of selling new replacement tires.

(22) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(23) "Unified business identifier service locations" means:

(a) The field offices of the departments of revenue and labor and industries.

(b) The tax offices of employment security.

(c) The Olympia office of the secretary of state.

(d) The business license service office of the department of licensing.

(24) "Vehicle" means every device capable of being moved under its own power upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(25) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect.

(26) "Waste tire carrier" means a person who picks up or transports waste tires for the purpose of storage or disposal. This does not include the following:

(a) Any person transporting five tires or less.

(b) Any person transporting tire-derived products.

(c) Any person transporting used tires back to a retail tire outlet for repair or exchange.

(d) Any person regulated by the utilities and transportation commission.

(e) Solid waste collectors operating under a license or franchise from any local government unit and transporting tires as part of solid waste handling activities.

(f) The United States, the state of Washington, any county, city, town, or municipality in this state, when involved in the clean up of illegal waste tire piles.

(g) Tire retailers associated with retreading facilities who use company-owned vehicles to transport waste tires for the purpose of retreading.

(27) "Waste tire storage site owner" means any person that owns a waste tire facility with a county solid waste permit.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-100, filed 1/13/89.]

WAC 173-314-200 Waste tire carrier license. (1) Applicability. All waste tire carriers are required to obtain a waste tire carrier license from the department of licensing.

(2) After April 1, 1989, all waste tire carriers must obtain a waste tire carrier license from the department of licensing. The department of licensing will process and issue licenses as quickly as possible after receiving a completed application.

(3) Application forms for a waste tire carrier license will be available at unified business identifier service locations located throughout the state.

(4) An application for a waste tire carrier license and a cab card for one vehicle shall include a two hundred fifty dollar application fee, fifty dollars of which shall be nonrefundable. Each additional vehicle cab card to be used by the licensee requires an additional fifty dollar fee. The application fee may be refunded following submittal of an application under the following conditions.

(a) Ecology determination that a license is not required.

(b) The applicant withdraws the application before ecology has approved or denied the application.

(5) The application shall include a bond in the sum of ten thousand dollars in favor of the state of Washington, or other financial assurance.

(6) A waste tire carrier license shall be valid for one year from the time of application. Licensees who want to renew their licenses will be notified forty-five days prior to their expiration date in order to maintain a current license.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-200, filed 1/13/89.]

WAC 173-314-210 Enforcement for waste tire carriers. (1) All waste tire carriers shall be subject to penalties as described in RCW 70.95.560 and 9A.20.010(2). Furthermore, any person who transports waste tires without a license is in violation of WAC 173-314-200(2) and RCW 9A.20.020(2).

(2) Any violation of the prescribed waste tire carrier license rules may result in revocation of the license under rules defined by RCW 70.95.560 and 9A.20.020(2) or any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-210, filed 1/13/89.]

WAC 173-314-220 Storage, disposal, and utilization. After April 1, 1989, all waste tires that are being transported by a waste tire carrier must be deposited in one of the following locations:

(1) A business that is actively retreading or recycling tires and if required under conditions set forth in WAC 173-304-420 has a county tire storage permit.

(2) Any business that has an outside storage of less than the maximum number of tires allowed in accordance with WAC 173-304-420.

(3) A county permitted waste tire storage facility that has an ecology-approved waste tire storage site owner's license.

(4) A site that has been declared exempt by local health departments and ecology under WAC 173-314-310.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-220, filed 1/13/89.]

WAC 173-314-300 Waste tire storage site license.

(1) Applicability. After April 1, 1989, any person in the business of storing waste tires in accordance with WAC 173-304-420 is required to have an ecology-approved waste tire storage site owner's license for that site issued by the department of licensing.

(2) All owners of county permitted waste tire storage sites shall apply to the department of licensing for a waste tire storage site owner's license. Licenses will be issued within ninety days of acceptance of a complete application following review and approval by ecology.

(3) Application forms for a waste tire storage site license will be available from unified business identifier service locations located throughout the state.

(4) Submit an application fee of two hundred fifty dollars. Fifty dollars of the application fee shall be nonrefundable. The remainder of the application fee may be refunded if either of the following conditions exists:

(a) Ecology determines that no license will be required.

(b) The applicant withdraws the application before ecology has approved or denied the application.

(1995 Ed.)

(5) The application shall include a performance bond in the sum of ten thousand dollars in favor of the state of Washington, or other financial assurance.

(6) A waste tire storage site license shall be valid for one year from the date of approval. The license holder shall have the option to renew annually. Licensees who want to renew their licenses will be sent a renewal notice forty-five days prior to the expiration date.

(7) In order to obtain a waste tire storage license, the site operator or owner must first satisfy the following requirements:

(a) Obtain a solid waste disposal site permit for the storage of waste tires from the jurisdictional health department of the county in which the site is located.

(b) Satisfy all of the requirements of the minimum functional standards for tire pile storage sites (WAC 173-304-420).

(c) Satisfy other requirements deemed appropriate by ecology.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-300, filed 1/13/89.]

WAC 173-314-310 Variances. (1) Any person who owns or operates a waste tire storage facility may apply to the jurisdictional health officer for a variance from WAC 173-304-420. The application shall be accompanied by such information as the jurisdictional health department may require. The jurisdictional health department may grant such variance, but only after due notice or a public hearing if requested, if it finds that:

(a) The waste tire handling practices or location do not endanger public health, safety, or the environment; and

(b) Compliance with the regulation from which variance is sought would produce hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the jurisdictional health department has considered the relative interests of the applicant, other owners of property likely to be affected by the handling practices and the general public.

(3) Any variance or renewal shall be granted within the requirements of subsection (1) of this section and for time periods and conditions consistent with the reasons therefore, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternative measures that the jurisdictional health department may prescribe;

(b) The jurisdictional health department may grant a variance conditioned by a time table if:

(i) Compliance with the regulation will require spreading of costs over a considerable time period; and

(ii) The time table is for a period that is needed to comply with WAC 173-304-420.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. No renewal thereof shall be granted, unless following a public

hearing on the complaint or due notice, the jurisdictional health department finds the renewal is justified. No renewal shall be granted except on application. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the jurisdictional health department shall give public notice of such application in accordance with rules and regulations of the jurisdictional health department.

(5) An application for a variance, or for the renewal thereof, submitted to the jurisdictional health department shall be approved or disapproved by the jurisdictional health department within ninety days of receipt unless the applicant and the jurisdictional health department agree to a continuance.

(6) No variance shall be granted by a jurisdictional health department except with the approval and written concurrence of ecology prior to action on the variance by the jurisdictional health department.

(7) Variances granted by a jurisdictional health department will be accepted as variances under this section.

(8) Public notice shall be given by mailing a notice of the variance application to persons who have written to the jurisdictional health department asking to be notified of all variance requests.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-310, filed 1/13/89.]

WAC 173-314-320 Enforcement for waste tire storage sites. Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a county issued permit or this chapter, or failure to obtain a waste tire storage site owner's license is a violation of this chapter and shall be subject to civil penalties as provided in chapter 70.95 RCW and RCW 9A.20.020(2) or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-320, filed 1/13/89.]

WAC 173-314-330 Records. Each owner of a waste tire storage site whose site accepts waste tires after April 1, 1989, shall as a condition of the license:

(1) Maintain records of numbers of waste tires received and shipped.

(2) The licensee shall issue written receipts upon receiving loads of waste tires. Quantities may be measured by aggregate loads or cubic yards, if the licensee documents the approximate number of tires included in each. These records shall be maintained for a period of three years, and shall be available for inspection by ecology after reasonable notice.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-330, filed 1/13/89.]

WAC 173-314-340 Reports. Starting on first anniversary of license issuance, and thereafter, as a requirement for license renewal, license reapplication by the owner, or license application by a new owner, the waste tire storage site owner shall submit a report through licensing for ecology review stating the following:

(1) The names and business addresses, and business licenses (if available) of all waste tire carriers that have delivered waste tires to the site, and shipped waste tires from the site, together with the quantity of waste tires shipped with those carriers.

(2) An accounting of the approximate total number of tires deposited at the site during the previous year.

(3) An accounting of the approximate total number of tires removed from the site.

(4) The number of waste tires located at the site at the time of the report.

The report form will be mailed to you by the department of licensing along with the license renewal notification forty-five days prior to the date of license renewal. The report shall be returned along with the license renewal application to the department of licensing.

[Statutory Authority: RCW 70.95.555. 89-03-047 (Order 88-33), § 173-314-340, filed 1/13/89.]

Chapter 173-315 WAC

MODEL TOXICS CONTROL ACT—LOCAL TOXICS CONTROL ACCOUNT—INTERIM FINANCIAL ASSISTANCE PROGRAM

WAC

173-315-010	Purpose and authority.
173-315-020	Definitions.
173-315-030	Relation to other legislation and administrative rules.
173-315-040	General.
173-315-050	Reserved.
173-315-060	Hazardous waste planning and program grants.
173-315-070	Solid waste planning and program grants.

WAC 173-315-010 Purpose and authority. The purpose of this chapter is to set forth eligibility criteria and requirements for the conduct of an interim financial assistance program to provide grants to local government pursuant to the Model Toxics Control Act. The department may provide grants to local government for:

(1) Remedial actions, as specified in chapter 173-322 WAC;

(2) Hazardous waste plans and programs under chapter 70.105 RCW;

(3) Solid waste plans and programs under chapter 70.95 RCW.

This chapter recognizes the burden placed upon ratepayers due to the high costs of cleanups, and solid and hazardous waste management, and consistent with the Model Toxics Control Act, provides financial assistance to mitigate such hardships.

This chapter recognizes the importance of a strong preventive program to alleviate future contamination through proper solid and hazardous waste planning and management. It is designed to provide assistance to local governments in carrying out these vital functions pursuant to the requirements of chapters 70.95 and 70.105 RCW, and the Model Toxics Control Act.

The interim financial assistance program will provide financial assistance to local governments in the form of grants.

The authority to provide financial assistance to local government is granted under the Model Toxics Control Act.

[Statutory Authority: Chapter 70.105D RCW. 90-10-058 (Order 89-42), § 173-315-010, filed 5/1/90, effective 6/1/90. Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-010, filed 8/17/89, effective 9/17/89.]

WAC 173-315-020 Definitions. (1) "Collection events" means events such as, but not limited to, projects in which household hazardous wastes are collected at centralized location(s) for subsequent packaging and transport to a permitted treatment storage or disposal facility.

(2) "Department" means the Washington state department of ecology.

(3) "Existing facility" means an owned or leased landfill in operation, or for which construction has begun, on or before the effective date of chapter 173-304 WAC for which the owner or operator has obtained permits or approvals necessary under federal, state and local statutes, regulations and ordinances. A facility has commenced construction if either:

(a) A continuous on-site physical construction program has begun; or

(b) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial financial loss. Physical construction of the facility is to be completed within a reasonable time.

Lateral extensions of a landfill's active area on land purchased and permitted by the jurisdictional health department for the purpose of landfilling before the effective date of chapter 173-304 WAC shall be considered existing facilities.

(4) "Hazard ranking system" means the system for ranking and prioritizing hazardous waste sites to be adopted by the department pursuant to the Model Toxics Control Act.

(5) "Household hazardous wastes" means any liquid, solid, contained gas or sludge, including any material, substance, product, commodity or waste used or generated in the household, regardless of quantity, that exhibits any of the characteristics of dangerous waste as set forth in chapter 173-303 WAC

(6) "Local governments" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

(7) "Minimum functional standards" means the requirements of chapter 173-304 WAC, Minimum functional standards for solid waste handling.

(8) "Moderate-risk waste" means:

(a) Any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation; and

(b) Any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(9) "Remedial action" means any action or expenditure, to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance as well as any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(10) "Settlement agreement" means any consent decree entered into pursuant to RCW 70.105B.080, the Model Toxics Control Act, or any consent order or decree with the department in effect October 16, 1987.

[Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-020, filed 8/17/89, effective 9/17/89.]

WAC 173-315-030 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous and solid waste management and disposal.

(2) The remedial action grants shall be used to supplement local government funding to carry out required remedial actions.

(3) Hazardous waste planning and program grants shall be awarded to local government to implement chapter 70.105 RCW, and the Model Toxics Control Act.

(4) Solid waste planning and program grants shall be awarded to implement chapter 70.95 RCW, and the Model Toxics Control Act.

(5) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

[Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-030, filed 8/17/89, effective 9/17/89.]

WAC 173-315-040 General. (1) Apportionment of funds.

For purposes of implementing the interim financial assistance program, the local toxics account shall be apportioned between the following categories as follows:

(a) Remedial actions, as specified in chapter 173-322 WAC.

(b) Hazardous waste plans and programs.

(c) Solid waste plans and programs.

(2) Adjustment of funds. Based on a periodic internal review of grant applications received, grant obligations, grant fund balances, and revenue projections, the department may allocate funds by grant category or readjust the amount of funds that may be allocated under any and all grant categories.

(3) Grant application process. Grant application deadlines and schedules will be announced based upon funding allocations for each of the funding priority grant programs.

Grant application packages which include grant application deadlines, guidelines, application forms, and detailed information will be provided to all interested parties.

When applications are received by the department, they will be reviewed and scored if it is a competitive grant program by a committee consisting of department personnel. Applications need to include all required elements, as outlined in the guidelines, in order to be competitive.

After an application is reviewed and/or scored and an award notice letter is sent out, the department will contact the applicant to negotiate the final details of the scope of work, budget, and any other items of concern.

A grant offer is made by the department to the applicant in the form of a grant contract when all applicant and project eligibility requirements have been met, funds are available,

and the formal application has been completed to the mutual satisfaction of the applicant and the department.

A grant award is made when a grant agreement has been signed by both the applicant and the department. The grant agreement becomes effective on the date the program manager of the solid and hazardous waste program of the department signs the contract. This also establishes the beginning date of the project. No costs incurred prior to that date are grant eligible unless specific provision is made in the grant agreement for such costs.

(4) Appropriation and allotment of funds. The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums, the obligation of the department is contingent upon the allotment of funds during the next biennium.

(5) Administrative practices. All grants under this chapter shall be consistent with the provisions of *Financial Guidelines for Grants Management*, WDOE 80-6, May 1980, reprinted March 1982, or subsequent guidelines adopted thereafter.

(6) The department encourages cooperation and coordination among units of local government and any funds granted under this chapter may be used by any unit of local government through interagency agreements.

(7) The department may issue grants to local governments that applied for funding assistance authorized by chapter 70.105B RCW and chapter 173-309 WAC.

(8) A maximum of fifty percent of the grantee cost share may be from in-kind contributions.

(9) A maximum indirect cost rate of ten percent of direct labor will be allowed unless the grantee has an indirect rate approved by a federal or state audit agency. The department reserves the right to determine the amount of indirect allowance in each grant agreement.

[Statutory Authority: Chapter 70.105D RCW. 90-10-058 (Order 89-42), § 173-315-040, filed 5/1/90, effective 6/1/90. Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-040, filed 8/17/89, effective 9/17/89.]

WAC 173-315-050 Reserved.

[Statutory Authority: Chapter 70.105D RCW. 90-10-058 (Order 89-42), § 173-315-050, filed 5/1/90, effective 6/1/90. Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-050, filed 8/17/89, effective 9/17/89.]

WAC 173-315-060 Hazardous waste planning and program grants. (1) Applicant eligibility.

(a) Hazardous waste planning. Eligible local governments under this section are cities, towns, or counties pursuant to RCW 70.105.010(16).

(b) Implementation projects. The applicant must be a local government.

(c) Collection events. The applicant must be a local government.

(2) Eligible project costs.

(a)(i) Hazardous waste planning.

Eligible project costs include activities and tasks to develop or update local hazardous waste management plans, if they are consistent with the department's *Planning*

Guidelines for Local Hazardous Waste Plans, July 1987, WDOE 87-18.

In-depth planning studies to provide detailed analysis of specific plan elements may be undertaken as a part of an overall planning grant, or separately if it can be demonstrated that the planning requirements are otherwise being met.

(ii) Retroactive funding. Funding retroactive to October 16, 1987, will be allowed for costs incurred which are directly related to the preparation of local hazardous waste plans and are in conformance with *Planning Guidelines for Local Hazardous Waste Plans*, July 1987, WDOE 87-18 and subsequent addenda.

(b) Collection events. Eligible project costs include activities and tasks required to plan and carry out hazardous waste collection events for household and/or small quantity generator hazardous waste.

(c) Implementation projects. Eligible moderate risk waste implementation project costs include activities, tasks, or facilities for information and education, technical assistance, collection and disposal, compliance and enforcement, and plan evaluation.

(3) Matching requirements.

(a) Hazardous waste planning. Grants will be made for up to seventy-five percent of the total eligible project cost, however, based on prior department approval, direct local costs of hazardous household substance pilot or collection projects conducted between June 30, 1985, and June 30, 1988, may be subtracted from the twenty-five percent local share of total project costs, therefore the department may make grants up to one hundred percent of the total project cost in these cases.

(b) Collection events. Grants will be made for up to fifty percent of the total eligible project cost, or fifteen thousand dollars per grant or local government, whichever is the lesser amount.

(c) Implementation projects. Grants will be made for up to seventy-five percent of the total eligible project cost.

(4) Priority for allocation of grant funds.

(a) Hazardous waste planning. It is the department's intent that grants be awarded for all local hazardous waste plan development state-wide. The grants will be awarded on a first-come first-served basis, subject to availability of funds, technical adequacy, and application completeness.

(b) Collection events. The grants will be awarded on a first-come first-served basis, subject to availability of funds, technical adequacy, and application completeness.

(c) Implementation projects.

(i) Grant applications will be evaluated according to the following criteria:

(A) All eligible projects must be part of a department-approved local hazardous risk waste plan as required by RCW 70.105.220.

(B) Grant awards will be subject to the completeness of the application and the technical adequacy of the project.

(ii) The department shall consider the following factors in setting funding priorities and calculating grant allocations:

(A) Population in the county;

(B) Amount of funding available; and

(C) Local government needs to carry out the recommended programs of their local hazardous waste plans as required by RCW 70.105.220.

The department will develop guidelines to assist in interpreting the provisions of this section relating to implementation projects.

[Statutory Authority: RCW 43.21A.080, chapter 70.105D RCW and 1990 c 114 § 19. 90-18-066 (Order 90-22), § 173-315-060, filed 9/4/90, effective 10/5/90. Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-060, filed 8/17/89, effective 9/17/89.]

WAC 173-315-070 Solid waste planning and program grants. (1) Applicant eligibility.

(a) Solid waste planning. Eligible local governments under this section are counties and cities pursuant to RCW 70.95.130.

(b) Waste reduction and recycling. The applicant must be a local government.

(c) Groundwater monitoring. The applicant must be a local government.

(2) Eligible project costs.

(a) Solid waste planning.

(i) General. Costs for developing or updating local solid waste management plans are grant eligible if:

(A) They are necessary to conduct the project;

(B) They are consistent with department's solid waste-planning guidelines and subsequent addenda.

(ii) Retroactive. Funding retroactive to October 16, 1987, will be allowed for costs incurred which are directly related to the preparation of local solid waste plans and are in conformance with the state Solid Waste Planning Guidelines, May 1986, WDOE 86-4 and subsequent addenda.

(b) Waste reduction and recycling.

(i) Waste reduction and recycling activities and facilities are eligible provided that:

(A) It is demonstrated that the proposed waste reduction and recycling activity, facility, or service is not reasonably available to persons within the locale from private enterprise; and

(B) It is demonstrated that the project is economically feasible and suitable for successful implementation.

(ii) General. Costs are grant eligible if:

(A) They are necessary to conduct the project;

(B) They are consistent with the department's grant guidelines for waste reduction and recycling.

(iii) Waste reduction and recycling facilities. Eligible project activities include:

(A) Planning and feasibility studies, environmental impact statements, and permitting costs;

(B) Preparation of design documents;

(C) Facility construction;

(D) Purchase of specialized equipment.

(iv) Waste reduction and recycling activities. Eligible project activities include:

(A) Public education;

(B) Public involvement;

(C) Program development.

(c) Groundwater monitoring.

(i) A groundwater monitoring project is eligible provided that it is addressed within a facility maintenance and operation plan, as required by chapter 173-304 WAC.

(ii) General. Costs are grant eligible if:

(A) They are necessary to conduct the project;

(B) They are consistent with the department's grant guidelines for groundwater monitoring.

(iii) Groundwater monitoring. Eligible costs include costs incurred by grantees that are owners and operators of landfills, piles, landspreading disposal facilities, and surface impoundments that are required to perform groundwater monitoring pursuant to WAC 173-304-400. Direct costs involved in design and installation of groundwater monitoring wells at existing facilities as defined by WAC 173-304-100 (27)(a) and (b), will be eligible for funding.

(iv) Retroactive funding may be allowed for all eligible costs incurred since October 16, 1987.

(3) Matching requirements.

(a) Solid waste planning. Grants will be made up to fifty percent of the total eligible project cost.

(b) Waste reduction and recycling. Grants will be made up to seventy-five percent of the total eligible project cost.

(c) Groundwater monitoring. Grants will be made up to fifty percent of the total eligible project costs, not to exceed a maximum of fifty thousand dollars per project.

(4) Priority for allocation of grant funds.

(a) Solid waste planning. It is the department's intent that grants be awarded for developing or updating local solid waste management plans state-wide. Subject to the limits of available funds, those applications that meet eligibility requirements will be approved for funding on a first-come first-served basis.

(b) Waste reduction and recycling. Grant applications will be ranked according to how each application meets the criteria set forth below. Grants will be awarded, within the limits of available funds, to the highest ranking applications that otherwise meet provisions for completeness and technical adequacy. The project ranking criteria are as follows:

(i) How the project or activity integrates with the current and planned solid waste management system and local comprehensive plans.

(ii) How the project or activity will contribute to increased waste reduction and recycling.

(iii) The probable success of the project or activity.

(iv) Demonstration that the project or activity scope is compatible with the cost and needs of the project or activity.

(v) How the project or activity will be operated, maintained, or continued beyond the grant funding period.

(vi) Other criteria as may be defined in the waste reduction and recycling grant guidelines.

(c) Groundwater monitoring. Grant applications will be ranked according to how each project application meets the criteria set forth below. Grants will be awarded within the limits of available funds to the highest ranking project applications that otherwise meet provisions for completeness and technical adequacy. The ranking criteria are as follows:

(i) Ability to pay. Priority will be given to local governments in economically distressed areas.

(ii) How, or if, the project will contribute directly to the identification or solution of an existing environmental or public health problem.

(iii) Other criteria as may be defined in the groundwater monitoring grant guidelines.

[Statutory Authority: 1989 c 2. 89-17-072 (Order 89-11), § 173-315-070, filed 8/17/89, effective 9/17/89.]

Chapter 173-318 WAC

PHASE ONE—WASTE REDUCTION AND RECYCLING GRANTS

WAC

173-318-010	Purpose and authority.
173-318-020	Relation to other legislation and administrative rules.
173-318-030	Definitions.
173-318-040	Funding.
173-318-050	Procedures.
173-318-060	Eligibility and grantee match requirements.
173-318-070	Waste reduction/recycling best management practices study demonstration project grants.
173-318-080	Preimplementation program design grants for waste reduction/recycling projects.

WAC 173-318-010 Purpose and authority. The purpose of this chapter is to set forth eligibility criteria and requirements for the first phase of a financial assistance program that provides grants to further the state's waste management priorities. The department shall provide grants for:

- (1) Waste reduction/recycling demonstration projects in urban and rural areas.
- (2) Preimplementation program designs for waste reduction and recycling projects.

The authority to provide financial assistance is granted under chapters 43.83A and 43.99F RCW.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-010, filed 9/5/89, effective 10/6/89.]

WAC 173-318-020 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous and solid waste management and disposal.

(2) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-020, filed 9/5/89, effective 10/6/89.]

WAC 173-318-030 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings described herein.

(1) "Best management practices study" means the analysis and evaluation of solid waste management in the state of Washington conducted by the Washington state department of ecology, as required by RCW 70.95.280.

(2) "Buy-back center" means a facility where source separated recyclable materials are delivered for compensation.

(3) "Collection box" means a container or device used to temporarily hold recyclable material before collection.

(4) "Collection system" means the complete system employed to collect recyclable materials, which may include curbside collection, drop-box recycling facilities, buy-back centers, or other methods or combinations thereof, and includes operations and maintenance, and methods to encourage participation.

(5) "Commercial waste substream" means garbage and recyclable materials generated at places of business except manufacturing.

(6) "Composting" means biological stabilization of organic matter through aerobic digestion.

(7) "Curbside collection" means the collection of source-separated recyclable materials from residences and places of business.

(8) "Department" means the Washington state department of ecology.

(9) "Drop-box recycling facility" means a facility accessible to the public to leave recyclable material, without remuneration, consisting of separate receptacles for each recyclable material collected.

(10) "Energy recovery or incineration" means reducing the volume of wastes by use of an enclosed device using controlled flame combustion.

(11) "Equipment" means those items with a life expectancy of one year or more and a cost of over one thousand dollars that are necessary to implement the waste reduction and recycling system, excluding office equipment such as desks, chairs, and bookcases.

(12) "Indirect costs" means costs that are incurred for (a) common or joint purpose benefiting more than one cost objective and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

(13) "In-kind costs" means contributions and services used as a portion of the grantee's matching share of the project costs.

(14) "Intermediate processing center" means a facility where source-separated recyclable materials are prepared for marketing to end users.

(15) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(16) "Manufacturing waste substream" means garbage and recyclable materials generated by persons engaged in creating products.

(17) "Market" means an end user for recyclable materials.

(18) "Material recovery facility" means a facility where recyclable materials are extracted from mixed wastes and prepared for marketing to end users.

(19) "Operations costs" means costs associated with implementing a project or program, including but not limited to, staff and associated costs, goods and services, and contracted services.

(20) "Operations plan" means a design for system functions, including but not limited to, staffing and maintenance needs and a funding mechanism.

(21) "Organic matter" means material originating from plants or animals, limited to food wastes, food processing wastes, wastes from farming or gardening, sewage sludges, logging and milling residues, pulp and paper products, and yard debris that are found in the solid waste stream.

(22) "Organics processing" means the processing of yard debris or other organic matter to produce usable soil conditioners or amendments through composting, fermentation, anaerobic digestion, or other processes.

(23) "Preimplementation program design" means a document detailing a waste reduction and/or recycling system unique to the needs of a geographical area that includes, but is not limited to, all information about the system plans and specifications, staffing plans, implementa-

tion schedules, operations and maintenance plans and costs, SEPA compliance, and permitting costs.

(24) "Recyclable materials" means those solid wastes that can be diverted for recycling or reuse, which otherwise would be disposed of through landfill, energy recovery, or incineration.

(25) "Recycling" means the collection of recyclable material, followed by the transformation of the material into potentially usable materials for use other than landfill disposal, energy recovery or incineration, followed by consumption by an end-user that transforms the material into a product for consumer use.

(26) "Residential waste substream" means garbage and recyclable materials generated by households.

(27) "Solid waste substream" means garbage, refuse and recyclable materials, and is made up of four substreams including residential, commercial, manufacturing, and self-haul.

(28) "Source separation" means separation of recyclable materials and garbage at the point of generation.

(29) "Waste reduction" means all practices that reduce, avoid, or eliminate the amount of toxicity of waste generated, including reuse of materials.

(30) "Yard debris" means vegetation from homes and businesses that can be converted through biological processes into usable soil amendments or other usable products.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-030, filed 9/5/89, effective 10/6/89.]

WAC 173-318-040 Funding. For purposes of implementing the financial assistance program under this chapter, four million one hundred fifty thousand dollars shall be available and shall be apportioned as follows:

- (1) Grants for waste reduction/recycling demonstration projects. (chapter 43.99F RCW) \$3,112,500
- (2) Grants for preimplementation program design for waste reduction and recycling projects. (chapter 43.83A RCW) \$1,037,500

Based on an internal review of grant applications received, grant obligations and grant fund balances, the department may reallocate funds by grant category or readjust the amount of funds that may be allocated under any and all grant fund categories.

The obligation of the department to make grant payments is contingent upon the availability of funds through allotment or appropriation, and such other conditions not reasonably foreseeable by the department rendering performance impossible.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-040, filed 9/5/89, effective 10/6/89.]

WAC 173-318-050 Procedures. (1) Grant application packages, which include administrative guidelines, application forms, and detailed information, will be provided to all interested parties.

(2) Applicants may seek technical assistance from the department.

(3) Applications submitted to the department will be reviewed and scored by the department. Applications must

(1995 Ed.)

include all required elements as outlined in the guidelines to be considered for funding. Applications will be ranked competitively.

(4) Award letters will be sent to applicants selected for funding after which final details regarding the scope of work, budget, and other items of concern will be negotiated.

(5) A grant offer is made by the department to the applicant in the form of a grant agreement when all applicant and project eligibility requirements have been met, funds are available, and the formal application has been completed to the mutual satisfaction of the applicant and the department.

(6) A grant award is made when a grant offer has been signed by both the applicant and the department. No costs incurred prior to the effective date of the grant are eligible unless specific provision is made in the grant agreement for such costs.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-050, filed 9/5/89, effective 10/6/89.]

WAC 173-318-060 Eligibility and grantee match requirements. (1) Eligible grantees include the state of Washington or any agency, political subdivision, taxing district or municipal corporation thereof, an agency of the federal government, and those Indian tribes now or hereafter recognized as such by the federal government for participation in the federal land and water conservation program and which may constitutionally receive grants or loans from the state of Washington.

(2) The department will provide up to seventy-five percent of the total eligible project costs for demonstration projects, pursuant to chapter 43.99F RCW.

(3) The department will provide up to eighty-five percent of the total eligible project costs for preimplementation program designs, pursuant to chapter 43.83A RCW, but will not provide more than one hundred thousand dollars.

(4) A maximum of fifty percent of the grantee cost share may be from in-kind contributions.

(5) A maximum indirect cost rate of ten percent of direct labor will be allowed unless the grantee has an indirect rate approved by a federal or state audit agency. The department reserves the right to determine the amount of indirect allowance in each grant agreement.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-060, filed 9/5/89, effective 10/6/89.]

WAC 173-318-070 Waste reduction/recycling best management practices study demonstration project grants. (1) Eligible projects include comprehensive waste reduction and recycling systems that test the findings of the best management practices study related to methods and systems for achieving maximum levels of waste reduction and recycling.

(2) This may include the complete system employed to collect, process and market recyclable materials, including yard debris and organic matter. Eligible project costs include equipment and facilities for curbside collection programs, drop-box recycling programs, buy-back centers, composting, organics processing, material recovery, intermediate processing and marketing, or other methods or combinations thereof. Eligible costs also include operation and

maintenance costs as well as methods to encourage participation.

(3) The system will include the participation of private enterprise where it has a demonstrated ability and current capacity to provide needed services. Eligible project costs shall not include the support of solid waste recycling activity or service in a locale if the department determines that the activity or service is reasonably available to persons within that locale from private enterprise.

(4) Priority for allocation of grants: Grant applications will be ranked according to how each application meets the criteria set forth below. Grants will be awarded, within the limits of available funds, to the highest ranking applications that otherwise meet provisions for completeness and technical adequacy. The demonstration project ranking criteria are as follows:

(a) Extent to which the waste stream will be reduced. Priority will be given to those projects emphasizing reduction and recycling through curbside collection or its equivalent.

(b) The extent to which the project will test the findings of the best management practices study.

(c) Applicant's degree of compliance with solid waste management planning requirements.

(d) Integration of the project with the existing solid waste system and recycling operations in the geographical area to be served.

(e) Comprehensiveness of the operations, maintenance, and implementation plans.

(f) Inclusion of evaluation criteria that, if met, would result in continuation of the project with local funding beyond the demonstration period.

(g) Proposed evaluation methodology.

(h) Transferability of methods and systems to other jurisdictions.

(i) Appropriateness of project size to meet the needs of the area to be served.

(j) Extent to which the project serves more than one geographical area.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-070, filed 9/5/89, effective 10/6/89.]

WAC 173-318-080 Preimplementation program design grants for waste reduction/recycling projects. (1) Eligible projects include the design of a waste reduction and/or recycling program or project unique to the needs of a geographical area. It should include the participation of private enterprise where there is a demonstrated ability and current capacity to provide needed services.

(2) Program designs include detailed information about, but are not limited to, the program or project plans and specifications, staffing plans, implementation schedules, operations and maintenance plans and costs, compliance with SEPA, and permitting costs. The program design may also include development of RFPs and RFQs, analysis of specific program elements to determine those that can best meet the needs of the community as identified in the local comprehensive solid waste management plan, and preparation of funding proposals.

(3) Eligible costs shall not include the design of programs that support a solid waste recycling activity or

service in a locale if the department determines that the activity or service is reasonably available from private enterprise to persons within that locale.

(4) Priority for allocation of grants: Grant applications will be ranked according to how each application meets the criteria set forth below. Grants will be awarded, within the limits of available funds, to the highest ranking applications that otherwise meet provisions for completeness and technical adequacy. The program design project evaluation criteria are as follows:

(a) Priority will be given to those projects that have a demonstrated financial commitment and ability to support the designed system.

(b) Integration of program or project with local comprehensive solid waste management plan.

(c) Ability to carry out the proposed work.

(d) Approach to project management including management of consultants, if applicable.

(e) Approach to community involvement.

(f) Extent to which the program or project will serve the needs of more than one jurisdictional area.

[Statutory Authority: Chapters 43.83A and 43.99F RCW. 89-18-070 (Order 89-29), § 173-318-080, filed 9/5/89, effective 10/6/89.]

Chapter 173-319 WAC

COMPREHENSIVE WASTE REDUCTION/ RECYCLING GRANTS PROGRAM

WAC

173-319-010	Purpose and authority.
173-319-020	Relation to other legislation and administrative rules.
173-319-030	Definitions.
173-319-040	General.
173-319-050	Compost study grants.
173-319-060	Waste reduction and recycling public information and education grants.

WAC 173-319-010 Purpose and authority. The purpose of this chapter is to set forth eligibility criteria and requirements for a financial assistance program that provides grants to local governments for: (1) Food and yard waste compost studies as authorized by RCW 70.95.810, and (2) waste reduction and recycling public information and education as authorized by RCW 70.95.100.

[Statutory Authority: RCW 43.21A.080. 90-22-084 (Order 90-39), § 173-319-010, filed 11/6/90, effective 12/7/90.]

WAC 173-319-020 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous and solid waste management and disposal.

(2) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

(3) The obligation of the department to make grant payments is contingent upon the availability of funds through allotment or appropriation, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums,

the obligation of the department is contingent upon the allotment of funds during the next biennium.

(4) The organization receiving a grant shall comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

[Statutory Authority: RCW 43.21A.080. 90-22-084 (Order 90-39), § 173-319-020, filed 11/6/90, effective 12/7/90.]

WAC 173-319-030 Definitions. For the purpose of this chapter, the following words and phrases shall have the meanings described herein.

"Composting" means controlled aerobic degradation of organic solid waste, other than sewage sludge, for primary uses other than energy recovery. The presence of anaerobic zones within the composting material will not cause the process to be classified as other than composting. Natural decay of organic solid waste under uncontrolled conditions is not composting.

"Department" means the department of ecology.

"Food waste" means residual food from residences, institutions, or commercial facilities, or unusable portions of fruit or vegetable material resulting from food production.

"Land clearing debris" means grass clippings, leaves, weeds, prunings, stumps, or any combination thereof, resulting from land clearing operations.

"Local government" means a city, town, or county.

"Market assessment" means an examination and evaluation of conditions affecting the ability to market a product or service.

"Marketing" means the commercial functions involved in transferring goods from producer to consumer.

"Mixed waste paper" means low-grade, potentially compostable paper, including, but not limited to, noncorrugated paperboard, paperback books, telephone books, paper towels, and paper food containers.

"Quality assurance project plan" means a document of detailed and specific procedures that explains how data of known and acceptable quality are produced for a specific project.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

"Source separated organic solid waste" means yard waste, food waste, land clearing debris, and mixed waste paper. Wood waste and animal manure may be used as supplements in the composting process.

"Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

"Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

"Yard waste" means grass clippings, leaves, weeds, and prunings six inches or less in diameter.

[Statutory Authority: RCW 43.21A.080. 90-22-084 (Order 90-39), § 173-319-030, filed 11/6/90, effective 12/7/90.]

WAC 173-319-040 General. (1) No costs incurred prior to the effective date of a grant agreement are eligible for reimbursement unless specific provision is made in the grant agreement for such work.

(2) The department shall develop guidelines to assist in interpreting the provisions of this chapter.

[Statutory Authority: RCW 43.21A.080. 90-22-084 (Order 90-39), § 173-319-040, filed 11/6/90, effective 12/7/90.]

WAC 173-319-050 Compost study grants. (1) Eligibility and grantee match requirements.

(a) The grantee must be a local government.

(b) The grantee match requirements:

(i) Compost study market development grants. The department will provide up to eighty percent of the total eligible project costs for compost study market development projects.

(ii) Compost study product quality testing grants. The department will provide up to eighty percent of the total eligible project costs for compost study product quality testing projects.

(iii) Compost study testing and marketing grants. The department will provide up to eighty percent of the total eligible project costs for compost study testing and marketing projects.

(iv) Compost study collection, processing, and testing grants.

(A) The department will provide up to seventy-five percent of the total eligible project costs for compost study collection, processing, and testing projects where food waste is composted.

(B) The department will provide up to sixty percent of the total eligible project costs for compost study collection, processing, and testing projects where yard waste is composted.

(2) General requirements. As used in this section:

(a) Projects should result in new information for local governments about market development, product quality testing, and collection and processing of source separated organic solid waste.

(b) Local governments should have the ability to perform or sponsor these projects.

(c) Information collected by these projects should be transferable and useful to other local governments.

(d) Projects must involve source separated organic solid waste.

(e) Projects must result in a final written report.

(f) All compost facilities that produce compost products under this grant program shall comply with the requirements of chapter 173-304 WAC, Minimum functional standards for solid waste handling.

(3) Compost study market development grants.

(a) Eligible projects are those that obtain information about how to enhance current markets and uses and develop new markets and uses for compost products from source separated organic solid waste. These projects include, but are not limited to, projects that demonstrate proven uses of compost products, develop and demonstrate new uses for compost products, or develop and implement marketing strategies for compost products.

(b) Eligible costs include, but are not limited to, salaries and benefits, demonstrations, advertisements, mailings, brochures, contractor services, and project management.

(c) Requirements for market development projects are:

(i) A local market assessment must be conducted prior to or during the project.

(ii) Information about compost product quality must be obtained prior to or during the project. This information

about compost product quality includes, but is not limited to, results of chemical tests, biological tests, physical tests, and field tests.

(d) Priority for allocation of grants. Grants will be awarded, within the limits of available funds, to the highest ranking application(s) that meet provisions for completeness and technical adequacy. Compost study market development grant applications will be ranked according to how well each application meets the following criteria:

(i) Priority will be given to projects that involve yard waste.

(ii) How soon the compost product will be available for marketing and use.

(iii) Extent to which the project will increase awareness of potential consumers about the uses of compost products, especially potential consumers of large quantities of compost products. Potential consumers of large quantities of compost include, but are not limited to, landscapers, local governments, the general public, horticulturists, and agricultural interests.

(iv) Extent to which the project will increase overall public awareness about the use of compost products.

(v) Extent to which new markets and uses for compost products will be created or investigated.

(4) Compost study product quality testing grants.

(a) Eligible projects are those that obtain technical information about product quality and test appropriate applications for compost products of source separated organic solid waste.

(b) Eligible costs include, but are not limited to, salaries and benefits, contractor services, laboratory and field testing, and project management.

(c) Requirements for product quality testing projects are:

(i) Each project must describe the collection and processing methods used to produce the compost products tested.

(ii) Each project shall test for those parameters of composting which are essential to protect public health and to increase the marketability of compost products. These parameters include, but are not limited to, tests for heavy metal content, pesticides, organic matter, size distribution, nitrogen, and seed germination.

(iii) A quality assurance project plan must be submitted as part of each project.

(iv) Each project must sample and test compost products using sampling and testing methods approved by the department.

(v) Each project must conduct laboratory and field tests of compost products. Data from previous laboratory tests may be substituted if the testing methods used are approved by the department.

(vi) Each project must develop a market and use plan describing planned distribution of compost products tested.

(d) Priority for allocation of grants. Grants will be awarded, within the limits of available funds, to the highest ranking application(s) that meet provisions for completeness and technical adequacy. Product quality testing grant applications will be ranked according to how well each application meets the following criteria:

(i) Priority will be given to projects that involve yard waste.

(ii) How soon the compost product will be available for testing.

(iii) How many of those parameters of composting which are essential to protect public health and to increase the marketability of compost products will be tested.

(iv) Preference will be given to projects that test compost products from locations across Washington state with various climates, collection methods, or waste streams.

(5) Compost study testing and marketing grants. A local government may submit an application that includes both a compost study market development project and a compost study product quality testing project. The eligible projects, eligible costs, requirements, and evaluation criteria for compost study testing and marketing grants will be the same as those for compost study market development grants and compost study product quality testing grants.

(6) Compost study collection, processing, and testing grants.

(a) Eligible projects are those that result in new information by addressing unanswered questions about collection and processing for local governments, and by testing for those parameters essential to protect public health and to increase the marketability of compost products. These parameters include, but are not limited to, tests for heavy metal content, pesticides, organic matter, size distribution, nitrogen, and seed germination. Unanswered questions about collection and processing include, but are not limited to:

(i) How can food waste from residential and commercial sources be collected and processed?

(ii) How can mixed waste paper be composted?

(iii) What are the environmental impacts of a compost facility?

(iv) Are decentralized composting facilities for yard waste efficient and economically feasible?

(v) What are appropriate low-technology, low-impact collection and processing methods?

(vi) What are appropriate methods for collection of yard waste in areas with low population density?

(b) Eligible project costs include, but are not limited to, salaries and benefits, contractor services, collection equipment, facility plans and specifications, facility construction, limited operating costs, laboratory and field testing, and project management.

(c) Requirements for collection, processing, and testing projects are as follows:

(i) Each application must address the economic viability of the project.

(ii) Each project must develop a market and use plan describing the planned distribution of the compost product produced.

(iii) Each project must address the environmental impacts of collection and processing, including, but not limited to, odor, leachate, and surface water runoff.

(iv) Each project must test for those parameters essential to protect public health and to increase the marketability of compost products. These parameters include, but are not limited to, tests for heavy metal content, pesticides, organic matter, size distribution, nitrogen, and seed germination.

(v) Each project must conduct laboratory and field tests of compost products.

(vi) A quality assurance project plan must be submitted as part of each project.

(vii) Each project must sample and test compost products using sampling and testing methods approved by the department.

(d) Priority for allocation of grants. Grants will be awarded, within the limits of available funds, to the highest ranking application(s) that meet provisions for completeness and technical adequacy. Collection, processing, and testing grant applications will be ranked according to how well each application meets the following criteria:

(i) The department's intent is to fund at least one collection, processing, and testing project where food waste is composted.

(ii) Extent to which the project will result in new information by addressing unanswered questions about collection and processing for local governments, and by testing for those parameters essential to protect public health and to increase the marketability of compost products.

(iii) Transferability of collection and processing methods used and product quality information obtained in the project to other local governments.

(iv) Extent to which the waste stream will be reduced.

(v) Completeness of the analysis of the proposed economic viability of the project.

(vi) Economic viability of the proposed project.

[Statutory Authority: RCW 43.21A.080. 90-22-084 (Order 90-39), § 173-319-050, filed 11/6/90, effective 12/7/90.]

WAC 173-319-060 Waste reduction and recycling public information and education grants. (1) Grantee eligibility and match requirements.

(a) The grantee must be a local government.

(b) The grantee match requirements are:

(i) Coordinated state and local public information and education program grants. The department will provide up to seventy-five percent of the total eligible project costs for coordinated state and local public information and education grants.

(ii) Local public information and education program grants. The department will provide up to fifty percent of the total eligible project costs for local public information and education program grants.

(2) General.

(a) The department will only provide funds for the duplication and distribution of public information and educational materials that educate and encourage the public to reduce waste, perform source separation, and recycle.

(b) The department shall consider the following factors in calculating grant allocations and maximum grant amounts for grantees:

(i) The amount of funds available.

(ii) The needs of local governments to carry out public information and education programs.

(iii) The media service area of the grantee.

(iv) The population and/or geographical size of the grantee.

(c) The department will award grants on a first-come, first-served basis.

(d) The department shall give priority funding consideration to grantees that:

(i) Use department-developed materials that are a part of a coordinated statewide campaign on waste reduction and recycling; and

(ii) Have a comprehensive waste reduction and recycling information and education program incorporated in a department-approved local comprehensive solid waste management plan.

(3) Coordinated state and local public information and education program grants.

(a) Eligible projects are those that are part of a coordinated state and local government program developed by the department to educate and inform the public about waste reduction, source separation, and recycling.

(b) Eligible project costs include the duplication, distribution, or use of department-developed materials, including but not limited to:

(i) Video programs;

(ii) Public service announcements;

(iii) Business cards;

(iv) Billboards;

(v) Clip art;

(vi) Point-of-purchase displays;

(vii) "How to" brochures;

(viii) Posters;

(ix) Newspaper display advertisements; and

(x) Portable displays.

(4) Local public information and education program grants.

(a) Eligible projects are those that implement a waste reduction, source separation, and recycling information and education program.

(b) Eligible project costs include the duplication, distribution, or use of existing materials or programs, including but not limited to:

(i) Video programs;

(ii) Public service announcements;

(iii) Business cards;

(iv) Billboards;

(v) Clip art;

(vi) Point-of-purchase displays;

(vii) "How to" brochures;

(viii) Posters;

(ix) Newspaper display advertisements; and

(x) Portable displays.

[Statutory Authority: RCW 43.21A.080. 90-22-084 (Order 90-39), § 173-319-060, filed 11/6/90, effective 12/7/90.]

Chapter 173-321 WAC

PUBLIC PARTICIPATION GRANTS

WAC

173-321-010	Purpose and authority.
173-321-020	Definitions.
173-321-030	Relationship to other legislation and administrative rules.
173-321-040	Applicant eligibility.
173-321-050	Application evaluation criteria.
173-321-060	Eligible project costs.
173-321-070	Grant funding.
173-321-080	Grant administration.

WAC 173-321-010 Purpose and authority. (1) The department is directed by the Model Toxics Control Act to provide grants up to fifty thousand dollars to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest groups. These grants shall be used to facilitate public participation in the investigation and remediation of a release or threatened release of a hazardous substance and to facilitate public participation in the implementation of the state's solid and hazardous waste management priorities.

(2) The purpose of this chapter is to set forth eligibility criteria and funding requirements for grant projects.

[Statutory Authority: 1989 c 2, 89-21-072 (Order 89-26), § 173-321-010, filed 10/17/89, effective 11/17/89.]

WAC 173-321-020 Definitions. As used in this chapter:

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or such person authorized to act for the director.

(3) "Expendable personal property" means all tangible personal property other than nonexpendable personal property.

(4) "Facility" means:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, waste pile, pond, lagoon, impoundment, ditch, landfill, tank, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(b) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Grant applicant" means any person requesting a public participation grant.

(6) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6) or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under 101 (14) of the Federal Cleanup Law, 42 U.S.C. Sec. 960(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment. Except that:

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.

(7) "Hazardous waste management priorities" as defined in RCW 70.105.150 are the priorities in the management of hazardous waste which should be followed in descending order as applicable:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

(8) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars or more per unit.

(9) "Not-for-profit public interest organization" means any corporation, trust, association, cooperative, or other organization which:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses its net proceeds to maintain, improve, and/or expand its operations.

(10) "Owner/operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title, unless that agency of the state or unit of local government has caused or contributed to the release or threatened release of hazardous substances from the facility; or

(ii) A person who, without participation in the management of a facility, holds identification of ownership primarily to protect the person's security interest in the facility.

(11) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(12) "Personal property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence), such as patents, inventions, and copyrights.

(13) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under section 4 of the Model Toxics Control Act. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(14) "Real property" means land, land improvements, structures, and appurtenances thereto, excluding moveable machinery and equipment.

(15) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(16) "Remedy, remediation, or remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health

assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(17) "Solid waste management priorities" as defined in chapter 70.95 RCW are the priorities in the management of solid waste which should be followed in order of descending priority as applicable:

- (a) Waste reduction;
- (b) Recycling with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed waste.

[Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-020, filed 10/17/89, effective 11/17/89.]

WAC 173-321-030 Relationship to other legislation and administrative rules. (1) The organization receiving a grant shall comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

(2) Nothing in this chapter shall influence, affect, or modify existing department programs, regulations, or enforcement of applicable laws relating to solid and hazardous waste management and cleanup.

(3) All grants shall be subject to the existing, applicable accounting and auditing requirements of state laws and regulations.

(4) The department will prepare a guidance manual to facilitate compliance with these regulations.

[Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-030, filed 10/17/89, effective 11/17/89.]

WAC 173-321-040 Applicant eligibility. (1) Public participation grants may only be awarded to groups of three or more unrelated persons or to not-for-profit public interest organizations.

(2) All applicants must demonstrate their ability to appropriately administer grant funds.

(3) Applications for a hazardous substance release grant must include information on:

- (a) The nature of the release or threatened release of the hazardous substance;
- (b) The location of the release or threatened release of the hazardous substance;
- (c) How the applicant group may be adversely affected by the release or threatened release of the hazardous substance;
- (d) How the applicant group will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance;

(e) A complete project description;

(f) How the applicant group represents the environmental, health, and economic interests of individuals affected by the release or threatened release of the hazardous substance;

(g) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;

(h) Any other information specified by the department as needed to award a grant.

(4) Applications for a waste management priorities grant must include information on:

(a) How the applicant group will promote or implement the state solid or hazardous waste management priorities;

(b) How the applicant group will promote public participation in the grant project described in the application;

(c) A complete project description;

(d) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;

(e) Any other information specified by the department as needed to award a grant.

(5) The following persons or groups of persons shall be ineligible for grant funding:

(a) Any person potentially liable, as defined under RCW 70.105D.040;

(b) Local governments including any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county;

(c) Federal and state governments, or agencies thereof;

(d) Federally recognized Indian tribes, as a governing body. Individual tribe members of three or more persons are eligible to apply for a public participation grant;

(e) Organizations sustained by public funding;

(f) Public and private universities.

(6) Grant applications failing to qualify may be resubmitted.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-065 (Order 90-20), § 173-321-040, filed 9/4/90, effective 10/5/90. Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-040, filed 10/17/89, effective 11/17/89.]

WAC 173-321-050 Application evaluation criteria.

(1) All grant applications received will be reviewed and evaluated by the department. Incomplete applications will not be evaluated. Applications will be ranked according to how each application meets the criteria set forth below. Grants will be awarded, within the limits of available funds, to the highest ranking applications. The department may fund all or portions of eligible grant applications.

(2) Priority consideration for public participation grant funding will be given to applicants requesting a hazardous substance release grant.

(3) General criteria. All public participation grants will be evaluated against the following criteria:

(a) The type and extent of the applicant group's past history and experience conducting activities similar to those described in the grant application;

(b) The group's basic funding, with consideration given to groups with limited resources;

(c) The group's ability to appropriately manage grant funds;

(d) If more than one group is interested in the same project, priority consideration will be given to groups who consolidate.

(4) Special criteria.

(a) Hazardous substance release grants. Hazardous substance release grants will be evaluated against the following criteria:

(i) The degree to which the applicant group may be adversely or potentially adversely impacted by the release or threatened release of the hazardous substance, including but

not limited to adverse or potential adverse impacts to surface and drinking waters, soils, flora or fauna, species diversity, air quality, property values, marketability of agricultural crops, and recreational areas;

(ii) The degree to which the applicant group represents the environmental, health, and economic interests of individual group members;

(iii) The degree to which the proposed project will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance.

(b) Waste management priorities grants. Waste management priorities grants will be evaluated against the following criteria:

(i) The degree to which the proposed public participation activity will promote or implement the state solid or hazardous waste management priorities;

(ii) The degree to which the proposed project will facilitate public understanding of the state solid and hazardous waste management priorities;

(iii) The degree to which the proposed public participation activities are consistent with or improve upon existing solid or hazardous waste management plans.

[Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. 90-18-065 (Order 90-20), § 173-321-050, filed 9/4/90, effective 10/5/90. Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-050, filed 10/17/89, effective 11/17/89.]

WAC 173-321-060 Eligible project costs. (1) Eligible project costs for substance release grants shall include but not be limited to:

(a) Hiring technical assistants to review and interpret documents;

(b) Public involvement and public education activities;

(c) Reviewing specific plans for environmental testing and analysis, reviewing reports summarizing the results of such plans and making recommendations for modifications to such plans.

(d) Expendable personal property;

(e) Other public participation activities as determined by the department on a case-by-case basis.

(2) Eligible project costs for waste management priority grants shall include but not be limited to:

(a) Assisting in developing and implementing programs that promote or improve state or local solid or hazardous waste management plans;

(b) Assisting in developing programs or activities that promote and are consistent with the state solid or hazardous waste management priorities;

(c) Expendable personal property;

(d) Other public participation activities as determined by the department on a case-by-case basis.

(3) Ineligible projects and grant costs shall include but not be limited to:

(a) Independently collecting or analyzing samples at facility sites;

(b) Hiring attorneys for legal actions against potentially liable persons, facility owners, or the department;

(c) Legislative lobbying activities;

(d) Real property;

(e) Nonexpendable personal property.

[Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-060, filed 10/17/89, effective 11/17/89.]

WAC 173-321-070 Grant funding. (1) The department may fund up to one hundred percent of eligible project costs.

(2) The maximum grant allowance shall be fifty thousand dollars.

(3) Public participation grants may be renewed annually. A new grant application must be submitted each year to be evaluated and ranked for additional funding.

(4) The department reserves the right to refuse funding to any and all applications failing to meet the grant eligibility criteria and may reopen the application period for additional applications.

[Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-070, filed 10/17/89, effective 11/17/89.]

WAC 173-321-080 Grant administration. (1) The department shall establish grant application funding cycles each year.

(2) Public notice of application funding cycles shall be published state-wide.

(3) A grant application package will be sent to all persons interested in applying for public participation grants. Grant application packages will include notice of grant application deadlines, grant guidelines, and application forms.

(4) Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.

(5) The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation, and such other conditions not reasonably foreseeable which may preclude awarding such grants.

(6) The department, on at least a biennial basis, will determine the amount of funding available for public participation grants and establish an application and funding cycle. The minimum amount of money available for public participation grants established by the Model Toxics Control Act shall be one percent of the moneys deposited into the state and the local toxics control accounts.

(7) The department shall not be held responsible for payment of salaries, consultant fees, or other costs related to a contract of the grantee.

(8) To the extent that the Constitution and laws of the state of Washington permit, the grantee shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee arising out of a grant contract.

(9) All grants under this chapter shall be consistent with the provisions of "Financial Guidelines for Grant Management" WDOE 80-6, May 1980, Reprinted March 1982, or such subsequent guidelines.

[Statutory Authority: 1989 c 2. 89-21-072 (Order 89-26), § 173-321-080, filed 10/17/89, effective 11/17/89.]

Chapter 173-322 WAC
REMEDIAL ACTION GRANTS

WAC

173-322-010	Purpose and authority.
173-322-020	Definitions.
173-322-030	Relation to other legislation and administrative rules.
173-322-040	Applicant eligibility.
173-322-050	Project and cost eligibility.
173-322-060	Application process.
173-322-070	Application evaluation and prioritization.
173-322-080	Allocation of grant funding.
173-322-090	State assistance share, local cash match, economic disadvantage, and role of potentially liable persons.
173-322-100	Fiscal controls.
173-322-110	Grant administration.
173-322-120	Grant administration.

WAC 173-322-010 Purpose and authority. This chapter recognizes that the state contains hundreds of hazardous waste sites which threaten the state's water resources, including those used for public drinking water; that many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and the environment; and that the costs of eliminating these threats in many cases are beyond the financial means of local governments and ratepayers.

This chapter establishes requirements for a program of grants to local governments for remedial action pursuant to RCW 70.105D.070 (3)(a) and (7). The department may provide grants to local governments for remedial actions including site hazard assessments, site studies and remediations, and safe drinking water actions.

[Statutory Authority: RCW 43.21A.080, 93-24-047, § 173-322-010, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-010, filed 5/1/90, effective 6/1/90.]

WAC 173-322-020 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200.

"Act" means the "Model Toxics Control Act," chapter 70.105D RCW.

"Agreed order" means an order issued under WAC 173-340-530.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup standards, utilizes permanent solutions to the maximum extent practicable, and includes adequate monitoring to ensure the effectiveness of the cleanup action.

"Consent order" means an order issued under chapter 90.48 or 70.105B RCW.

"Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

"Decree" means a consent decree under WAC 173-340-520. "Consent decree" is synonymous with decree.

"Department" means the department of ecology.

"Enforcement order" means an order issued under WAC 173-340-540.

"Grant agreement" means a binding agreement between the local government and the department that authorizes the transfer of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

"Hazard ranking" means the ranking for hazardous waste sites used by the department pursuant to chapter 70.105D RCW.

"Hazardous substances" means any substances as defined in WAC 173-340-200.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or decree.

"Interim action" means a remedial action conducted under WAC 173-340-430 that partially addresses the cleanup of a site.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

"Minimum functional standards" means the requirements of chapter 173-304 WAC, the minimum functional standards for solid waste handling.

"National Priorities List (NPL)" means a list of hazardous waste sites at which the United States Environmental Protection Agency intends to proceed with enforcement or cleanup action.

"Oversight costs" are remedial action costs of the department or the United States Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at a hazardous waste site.

"Pilot study" means an experiment in remedial action method, with the purpose of testing the suitability of a particular cleanup technology or process for remedial action at a particular site.

"Potentially liable person (PLP)" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor or used primarily in connection with the system and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with such system.

"Purveyor" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

"Remedial action" means any action or expenditure to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the

environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Remedial design (RD)" means an engineering study during which technical plans and specifications are developed to guide subsequent cleanup action at a hazardous waste site.

"Remedial investigation/feasibility study (RI/FS)" means a study intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action.

"Safe drinking water" means water meeting drinking water quality standards set by chapter 246-290 WAC.

"Safe drinking water action" means an action by a local government purveyor or other purveyor to provide safe drinking water through public water systems to areas contaminated by or threatened by contamination from hazardous waste sites.

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

"Site study and remediation" means remedial investigation, feasibility study, pilot study, remedial design, interim action or cleanup action at hazardous waste sites at which a local government is a potentially liable person (PLP) identified by the department.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-020, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-020, filed 5/1/90, effective 6/1/90.]

WAC 173-322-030 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous waste investigation and cleanup.

(2) Nothing in this chapter shall modify the legal settlements and enforcement orders the department has secured with potentially liable persons for remedial action. The execution of remedies pursuant to court order or decree shall in no way be contingent upon the availability of grant funding.

(3) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-030, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-030, filed 5/1/90, effective 6/1/90.]

WAC 173-322-040 Applicant eligibility. (1) All applicants must be local governments as defined in this chapter.

(2) Site study and remediation grants. Eligibility for site study and remediation grants is limited to applicants that meet the following standards:

(a) The applicant must be a local government which is a potentially liable person (PLP) at a hazardous waste site. The local government may be the sole PLP, or there may be other PLPs at the site.

(b) The local government must meet one of the following standards:

(i) The department must have required the local government to perform some phase of remedial action. That requirement may take any of the following forms, hereinafter referred to as "order or decree":

(A) A consent decree under chapter 70.105D or 70.105B RCW requiring remedial action at the site; or

(B) An enforcement order or an agreed order under chapter 70.105D or 70.105B RCW prior to March 1, 1989, requiring remedial action at the site; or

(C) An enforcement order or a consent order under chapter 90.48 RCW requiring remedial action at the site or an amendment to such an order subsequent to March 1, 1989.

(ii) The local government which is also a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) must have entered into a decree requiring remedial action at a hazardous waste site with the United States Environmental Protection Agency, provided that such agreement has been signed or acknowledged by the department in writing as a sufficient basis for remedial action grant funding.

(iii) The local government must have signed an agreement with the department requiring another PLP to perform remedial action at a landfill site and that agreement must take one of the forms specified in (b)(i) of this subsection. The local government must also have entered into an agreement with that PLP to reimburse the PLP for a portion of incurred remedial action costs with the sole purpose of providing relief to ratepayers and/or taxpayers from some remedial action costs.

(3) Safe drinking water action grants. Eligibility for safe drinking water action grants is limited to applicants who meet the following standards:

(a) The applicant must be a local government purveyor as defined in WAC 173-322-020 or be a local government applying on behalf of a purveyor.

(b) The subject water system must be in an area determined by the department of ecology to be a hazardous waste site or threatened by contamination from a hazardous waste site.

(c) The subject water system must exhibit levels of contamination which exceed the primary maximum contaminant levels (MCLs) set by WAC 246-290-310 or EPA standards as determined by the department of health, or exhibit levels of contamination which exceed the standards set by WAC 173-340-700 as determined by the department of ecology, or be certified by the state department of health that a contaminant threatens the safety and reliability of a public water system which cannot be remedied solely by operational solutions. Contaminants must include at least one hazardous substance. If the contaminant is a nitrate or a trihalomethane, it must be determined to have originated from a hazardous waste site.

(d) An order or decree must be issued to the identified potentially liable persons requiring that safe drinking water be provided to the contaminated area as part of a remedial action. The department may waive this requirement if it has determined that no viable potentially liable persons exist, or

if public health would be threatened from unreasonable delays associated with the search for potentially liable persons, or the order or decree process.

(e) If water line extensions are included in the proposed projects, such extensions must be consistent with the coordinated water system plan and growth management plan for the geographic area containing the affected water supplies.

(f) The applicant must be in substantial compliance, as determined by the department of health, with applicable rules of the Washington state board of health or the department of health, as contained in chapter 246-290 WAC (Public water supplies), chapter 246-292 WAC (Water works operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits).

(4) Site hazard assessment grants. The purpose of site hazard assessment grants is to involve local health districts and departments in assessing the degree of contamination at suspected hazardous waste sites according to WAC 173-340-320. While enabling local health districts or departments to participate in the scoring and ranking process, the department retains the authority to review and verify the results of a site hazard assessment and to establish the hazard ranking of the site. Eligibility for site hazard assessment grants is limited to applications that meet the following standards:

(a) The applicant must be a local health district or department.

(b) The scope of work for a site hazard assessment must conform to WAC 173-340-320 and prescribed guidelines issued by the department.

(c) The assessment must be for sites agreed to by the department.

[Statutory Authority: RCW 43.21A.080, 93-24-047, § 173-322-040, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW, 90-10-057 (Order 89-45), § 173-322-040, filed 5/1/90, effective 6/1/90.]

WAC 173-322-050 Project and cost eligibility. (1)

Costs for site study and remediation.

(a) Eligible costs include reasonable costs, including sales tax, incurred in performing:

(i) Remedial investigations.

(ii) Feasibility studies.

(iii) Remedial designs.

(iv) Pilot studies.

(v) Interim actions.

(vi) Landfill closures as required by chapter 173-304 WAC if included in the order or decree for remedial action, and as limited by WAC 173-322-090.

(vii) Other remedial action included in the order or decree for remedial action.

(viii) Capital costs of long-term monitoring systems.

(ix) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.

(b) Ineligible costs:

(i) Retroactive costs except as limited by WAC 173-322-100.

(ii) Legal fees and penalties.

(iii) Oversight costs.

(iv) Operating and maintenance costs after the first year of accomplishing the remedial action.

(v) Operating and maintenance costs of long-term monitoring.

(vi) Costs incurred in conducting independent remedial actions.

(vii) At sites other than landfills, additional ineligible costs will include costs incurred to meet departmental requirements for source control and prevention.

(2) Costs for safe drinking water actions.

(a) Eligible costs include reasonable costs, including sales tax, incurred for:

(i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances.

(ii) Transmission lines between major system components, including inter-ties with other water systems.

(iii) Treatment equipment and facilities.

(iv) Distribution lines from major system components to system customers or service connections.

(v) Fire hydrants.

(vi) Service meters.

(vii) Project inspection, engineering, and administration.

(viii) Other costs identified by the state department of health as necessary to provide a system that operates in compliance with federal and state standards, or by the coordinated water system plan as necessary to meet required standards.

(ix) Other costs identified by the department of ecology as necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination.

(x) Individual service connections, including any fees and charges, provided that property owners substantially participate in financing the cost of such connections.

(xi) Drinking water well abandonment for wells identified by the department as an environmental safety or health hazard according to WAC 173-160-415.

(xii) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds.

(b) Ineligible costs include:

(i) Legal fees and penalties.

(ii) Ecology oversight costs.

(iii) Operating and maintenance costs.

(iv) Retroactive costs except as limited by WAC 173-322-100.

(3) Costs for site hazard assessments. Eligible costs include costs for activities performed pursuant to WAC 173-340-320 and enabling local health districts or departments to participate in the department's site ranking and priority-setting process.

(4) Costs must be eligible under this section and must be approved by the department in order to be eligible for reimbursement.

[Statutory Authority: RCW 43.21A.080, 93-24-047, § 173-322-050, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW, 90-10-057 (Order 89-45), § 173-322-050, filed 5/1/90, effective 6/1/90.]

WAC 173-322-060 Application process. (1) Application period. The department shall determine appropriate application periods.

(2) Grant applications must:

(a) Include a commitment by the applicant for local funds to match grant funds according to the requirements of WAC 173-322-090.

(b) For site study and remediation projects include a scope of work which accomplishes the requirements of an order or decree.

(c) For safe drinking water action projects, include a scope of work necessary to provide safe drinking water to the area threatened or contaminated.

(d) For site hazard assessment projects, include a scope of work which conforms to the requirements of WAC 173-340-320(4).

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-060, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-060, filed 5/1/90, effective 6/1/90.]

WAC 173-322-070 Application evaluation and prioritization. (1) When pending grant applications or anticipated demand for site study and remediation grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on criteria identified in grant guidelines, including the following:

(a) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the United States Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority.

(b) Evidence that the grant will expedite cleanup.

(c) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(2) When pending grant applications or anticipated demand for safe drinking water action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on criteria identified in grant guidelines, including the following:

(a) Relative risk to human health as jointly determined by the department of ecology, in accordance with WAC 173-340-330, and the department of health, in accordance with WAC 246-290-310. Sites with greater risk will receive higher funding priority.

(b) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(c) Ownership of the water system to be extended or improved. Local government-owned systems will receive higher funding priority than other systems.

(d) Number of people served by the water system and per capita cost of remediation.

(3) When pending grant applications or anticipated demand for site hazard assessment grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on criteria identified in grant guidelines, including the following:

(a) Potential public health or environmental threat from the sites.

(b) Ownership of the sites. Publicly-owned sites will receive priority over privately-owned sites.

(c) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-070, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-070, filed 5/1/90, effective 6/1/90.]

WAC 173-322-080 Allocation of grant funding. In conjunction with the biennial program report and program plan required by WAC 173-340-340, the department will prepare an administrative allocation from the legislative appropriation of the local toxics control account for funding remedial action grants. Within that administrative allocation, the department will allocate subamounts for site study and remediation grants, safe drinking water action grants, and site hazard assessment grants. The allocations shall be based on estimated costs for work on eligible sites which are identified in the program plan for the biennium.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-080, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-080, filed 5/1/90, effective 6/1/90.]

WAC 173-322-090 State assistance share, local cash match, economic disadvantage, and role of potentially liable persons. (1) Costs eligible for site study and remediation and safe drinking water action grants will be considered for grant funding at up to fifty percent, except that local governments that do not qualify as economically disadvantaged shall receive no more than five hundred thousand dollars for the minimum landfill closure requirements of chapter 173-304 WAC.

(2) Costs for site hazard assessments which are eligible under WAC 173-322-050(3) will be considered for grant funding of up to one hundred percent. No grant for site hazard assessment shall exceed two hundred thousand dollars per health district or department per biennium.

(3) Grant funding for economically disadvantaged local governments.

(a) In addition to grant funding under subsection (1) of this section, economically disadvantaged local governments may apply for up to twenty-five percent supplemental funding, not to exceed seventy-five percent of eligible costs. This additional funding will be contingent on satisfactory demonstration of extraordinary financial need.

(b) A local government is considered economically disadvantaged if it is a county, or a local government within a county, which meets both of the following criteria:

(i) Per capita income, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and

(ii) It is economically distressed as defined by chapter 43.165 RCW.

(c) The department will include a list of counties which are economically disadvantaged as defined herein in the guidelines for remedial action to be published on a biennial basis.

(4) For applicants eligible for site study and remediation grants, if a decree or order requires a potentially liable person (PLP) other than a local government to conduct remedial action, the financial contribution of that PLP will be deducted from the amount eligible for grant funding to the local government.

(5) For applicants eligible for safe drinking water action grants, funding from either the local government or the PLP may be used to match remedial action grant funds.

(6) As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, the potentially liable persons bear financial responsibility for

remedial action costs. The remedial action grant program may not be used to circumvent the PLP responsibility.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-090, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-090, filed 5/1/90, effective 6/1/90.]

WAC 173-322-100 Fiscal controls. (1) The department will establish reasonable costs for all grants, require applicants to manage projects in a cost effective manner, and ensure that all potentially liable persons (PLPs) assume responsibility for remedial action.

(2) The department retains the authority to issue grants which reimburse the recipient for less than the maximum percentage allowable under WAC 173-322-090.

(3) Cap on site funding. After the remedial investigation and feasibility study have been completed and a final remedial action plan has been developed by an eligible applicant, the department and the applicant will establish a final cleanup budget and negotiate a grant agreement. The grant amount in this agreement will be the final department remedial action grant fund commitment for cleanup at that hazardous waste site. Grant agreements may be amended, but requests to increase the remedial action grant budget at that site will receive a lower priority than other applications.

(4) Retroactive funding. Grant funding of costs already incurred prior to the date of the grant agreement may be allowed to local government PLPs where the order or decree with the department postdates March 1, 1989, under one or more of the following circumstances:

(a) If the grant application period is closed when the order or decree becomes effective;

(b) If the department unreasonably delays the processing of a remedial action grant application;

(c) If there are inadequate funds in the local toxics control account to cover the entire scope of work required by decree or order; and/or

(d) If remedial actions not required by decree or order have proceeded, grants for this work may be made if the department later formally includes such work items in a decree or order.

(5) Reimbursement of grant funds. If the department awards remedial action funds to a local government that pursues a successful settlement action against a PLP who has not settled with the department, then the department shall be reimbursed for a proportional share of the settlement, after the local government's legal fees in pursuing such contribution have been deducted.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-100, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-100, filed 5/1/90, effective 6/1/90.]

WAC 173-322-110 Grant administration. (1) Local governments will be periodically informed of the availability of remedial action grant funding.

(2) A grant application package will be sent to all parties expressing interest in remedial action grants and to all local governments that have been required by decree or order to perform remedial actions. Grant application packages will include grant guidelines and application forms.

(3) Application must be made within sixty days after the date that a decree or order becomes effective.

(4) The department will prepare a guidance manual on a biennial basis to assist grant applicants and to facilitate compliance with this regulation.

(5) Appropriation and allocation of funds. Grants will be awarded within the limits of available funds. The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums, the obligation of the department is contingent upon the legislative appropriation of funds for the next biennium.

(6) Remedial action grants shall be used to supplement local government funding and funding from other sources to carry out required remedial action.

(7) The department may fund all or portions of eligible grant applications.

[Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-110, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-110, filed 5/1/90, effective 6/1/90.]

WAC 173-322-120 Grant administration. (1) Local governments will be periodically informed of the availability of remedial action grant funding.

(2) A grant application package will be sent to all parties expressing interest in remedial action grants and to all local governments that have been required by decree or order to perform remedial actions. Grant application packages will include grant guidelines and application forms.

(3) Application must be made within sixty days after the date that a decree or order becomes effective, or within sixty days of the effective date of this rule for local governments which meet the requirements of WAC 173-322-050, but which have not submitted an application for remedial action grant funding.

(4) The department will prepare a guidance manual on a biennial basis to assist grant applicants and to facilitate compliance with this regulation.

[Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-120, filed 5/1/90, effective 6/1/90.]

Chapter 173-325 WAC

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

WAC

173-325-010	Purpose.
173-325-020	Definitions.
173-325-030	Requirements for generators and brokers.
173-325-040	Requirements for site operator.
173-325-050	Effective dates.

WAC 173-325-010 Purpose. The purpose of this chapter is to implement section 4, chapter 2, Laws of 1986, which implements the Federal Low-Level Radioactive Waste Policy Amendments Act of 1985.

[Statutory Authority: 1986 c 2 § 5. 86-15-008 (Order 86-14), § 173-325-010, filed 7/7/86.]

WAC 173-325-020 Definitions. (1) "Site" means the commercial low-level radioactive waste disposal site located near Richland, Washington.

(2) "Low-level radioactive waste" is defined in Public Law 99-240.

(3) "Northwest compact region" means the states of Washington, Oregon, Idaho, Utah, Montana, Alaska, and Hawaii.

(4) "Southeast compact region" means the states of South Carolina, North Carolina, Virginia, Tennessee, Florida, Mississippi, Alabama, and Georgia.

(5) "Rocky Mountain compact region" means the states of Nevada, Colorado, Wyoming, and New Mexico.

(6) "Department" means the department of ecology.

(7) "P.L. 99-240" means the Federal Low-Level Radioactive Waste Policy Amendments Act of 1985, 99 Stat. 1842.

[Statutory Authority: 1986 c 2 § 5. 86-15-008 (Order 86-14), § 173-325-020, filed 7/7/86.]

WAC 173-325-030 Requirements for generators and brokers. (1) Any generator or broker shipping waste which originated outside the northwest compact region for disposal at the site shall pay to the state of Washington a surcharge as follows:

(a) From March 1, 1986 through December 31, 1987, \$10 per cubic foot of waste.

(b) From January 1, 1988 through December 31, 1989, \$20 per cubic foot of waste.

(c) From January 1, 1990, through December 31, 1992, \$40 per cubic foot of waste.

(2) In addition, the department may impose penalty surcharges up to the maximum extent allowed by P.L. 99-240.

(3) Surcharge payments must be mailed or electronically transferred no later than the day the respective waste shipment leaves the state of origin. In the lower left hand corner of the check, the valid site use permit number and shipment manifest number must be recorded. For electronic transfers, the valid site use permit number, and shipment manifest number, followed by the name of the facility (limited to 35 characters) must be transmitted at the time of the transfer. A copy of the face of the check, or of the receipt for wire transfer must be attached to the shipping manifest when the shipment arrives at the disposal site.

(4) Surcharge payment may be made by a check payable to the state of Washington or by electronic transfer. Checks should be mailed to:

"LLW SURCHARGE"
Cashier
Fiscal Office
Department of Ecology
St. Martin's Campus
Mail Stop PV-11
Olympia, WA 98504

Electronic transfers (telegraphic abbreviation RAINIER SEA if needed) should be directed to:

Robert S. O'Brien, State Treasurer
Concentration Account
Rainier National Bank
Olympia Branch
Account #0041399260

(5) Prenotification forms (#A-1 and #B-1) are no longer required.

(6) Brokers are required to attach to the shipping manifest a tabulated list of those generators whose waste is being shipped. The tabulated list must include the following information in the format specified:

Date of Shipment:

Valid Site Use Permit #	Generator	State	Compact Region	Volume	Surcharge
-------------------------	-----------	-------	----------------	--------	-----------

(7) Any generator or broker shipping waste which was originally generated in the southeast compact region for disposal at the site must attach to the shipping manifest a copy of the letter granting certification to export waste from the southeast compact region.

(8) Any generator or broker shipping waste which was originally generated in the Rocky Mountain compact region for disposal at the site must attach to the shipping manifest a copy of the letter granting approval to export waste from the Rocky Mountain compact region.

(9) Violation of any of these requirements may result in revocation of a generator's or broker's Washington State site use permit. Upon revocation of a site use permit, subsequent reissuance may be conditioned upon agreement to comply with appropriate conditions, such as a condition that surcharge payments be made by certified or cashiers check, and be received in advance, and a condition that the state of Washington be provided specific information at least three days prior to shipment.

[Statutory Authority: 1986 c 2 § 5. 86-15-008 (Order 86-14), § 173-325-030, filed 7/7/86.]

WAC 173-325-040 Requirements for site operator.

(1) For each waste shipment for which a surcharge is due (as required by WAC 173-325-030 (1)-(2)), arriving at the facility, obtain a copy of the surcharge payment check or receipt of electronic wire transfer before receiving the waste shipment for disposal.

(2) For each waste shipment of a broker arriving at the facility, obtain the written information required by WAC 173-325-030(5) before receiving the waste shipment for disposal.

(3) For each waste shipment that contains waste which was originally generated in the southeast compact region arriving at the facility, obtain a copy of the letter granting certification to export waste from the southeast compact region.

(4) For each waste shipment that contains waste which was originally generated in the Rocky Mountain compact region arriving at the facility, obtain a copy of the letter granting approval to export waste from the Rocky Mountain compact region.

(5) Provide to the Washington state department of ecology information on each waste shipment received for disposal at the facility, as requested by the department.

[Statutory Authority: 1986 c 2 § 5. 86-15-008 (Order 86-14), § 173-325-040, filed 7/7/86.]

WAC 173-325-050 Effective dates. This chapter shall take effect April 21, 1986, (1) except the requirements in WAC 173-325-030 (1)-(2) which took effect March 1, 1986, and (2) WAC 173-325-040(3) which takes effect immediately.

[Statutory Authority: 1986 c 2 § 5. 86-15-008 (Order 86-14), § 173-325-050, filed 7/7/86.]

Chapter 173-326 WAC

COMMERCIAL LOW-LEVEL RADIOACTIVE WASTE DISPOSAL—SITE USE PERMITS

WAC

173-326-010	Purpose.
173-326-020	Definitions.
173-326-030	Requirements for generators and brokers using the Hanford low-level radioactive waste disposal facility.
173-326-040	Payment procedures.
173-326-050	Permit fees.
173-326-060	Requirements for site operator.

WAC 173-326-010 Purpose. The purpose of this chapter is to institute a user permit system and issue site use permits, consistent with regulatory practices, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility (RCW 43.200.080(4)). These rules are in addition to applicable requirements of the United States Nuclear Regulatory Commission (NRC), the United States Department of Transportation (DOT), the requirements of the department of health, Title 246 WAC, other requirements of Title 173 WAC, and conditions of the license issued to the disposal site operator(s).

[Statutory Authority: Chapter 43.200 RCW. 92-24-101 (Order 91-52), § 173-326-010, filed 12/2/92, effective 3/1/93. Statutory Authority: RCW 43.200.080. 88-18-098 (Order 88-27), § 173-326-010, filed 9/7/88; 87-14-078 (Order 87-11), § 173-326-010, filed 7/1/87.]

WAC 173-326-020 Definitions. (1) For the purposes of chapter 173-326 WAC, "low-level radioactive waste" means any radioactive waste which is acceptable for disposal at the Hanford commercial radioactive waste disposal facility.

(2) "Broker" means a person who performs one or more of the following functions for a low-level radioactive waste generator, provided it shall not mean a carrier whose sole function is to transport such low-level radioactive waste:

- (a) Arranges for transportation of the low-level radioactive waste;
- (b) Collects and/or consolidates shipments of such low-level radioactive waste;
- (c) Processes such low-level radioactive waste in some manner.

(3) "Department" means the department of ecology.

(4) "Generator" means the last person who puts radioactive material to practical use, and who then declares it to be no longer of use or value.

(5) "Shipment" means the total low-level radioactive waste material transported in one vehicle.

(6) "Packager" means broker for the purposes of chapter 173-326 WAC.

(7) "Nuclear utility" means any operating or inactive nuclear utility.

[Statutory Authority: Chapter 43.200 RCW. 92-24-101 (Order 91-52), § 173-326-020, filed 12/2/92, effective 3/1/93. Statutory Authority: RCW 43.200.080. 87-14-078 (Order 87-11), § 173-326-020, filed 7/1/87.]

WAC 173-326-030 Requirements for generators and brokers using the Hanford low-level radioactive waste disposal facility. (1) Each generator and broker of low-level radioactive waste shall obtain a new site use permit for disposal of waste at the Hanford commercial radioactive waste disposal facility by March 1, 1993. Permits shall be renewed annually to maintain the permit in active status. Failure to obtain a new permit by March 1, 1993, or to renew a permit in subsequent years, will result in the generator or broker being placed in inactive status. Reinstatement to active status will require the generator or broker to submit additional payment as specified in WAC 173-326-050 (1)(e).

(2) Generator and broker permit application requirements.

(a) Each generator and broker shall pay the site use permit fees as required in chapter 173-326 WAC.

(b) An application for a site use permit shall be filed on the department form provided.

(c) Each application must be signed by an individual authorized to sign on behalf of the organization.

(d) To ensure timely renewal, generators and brokers need to submit their applications for site use permit renewal a minimum of four weeks prior to the expiration date of their permit. Renewal notices will be sent to generators approximately three months prior to the permit expiration date.

(3) Number of permits required by each generator.

(a) Generators who own multiple facilities within the same state may apply for one permit, provided the same contact person within the generator's company will be responsible for responding to the department of ecology for matters pertaining to the waste shipments. Otherwise separate permits will be required.

(b) Facilities which are owned by the same generator and located in different states will require separate permits.

(c) Facilities who both generate and broker wastes must obtain separate generator and broker permits.

(4) Additional generator and broker requirements.

(a) Permittees must provide additional information as requested by the department of ecology for the safe management of low-level radioactive waste in the state of Washington.

(b) A broker must ensure that a generator has a current, unencumbered site use permit prior to shipment of that generator's waste to the Hanford commercial radioactive waste disposal facility located in the state of Washington, and that the waste will arrive at the disposal facility prior to the expiration date of the generator's permit.

(c) A broker shall ensure all low-level radioactive waste contained within a shipment accepted for disposal at the Hanford commercial radioactive waste disposal facility in the state of Washington is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility,

or shipped through a licensed service facility such as a facility for recycling, processing, compacting, incinerating, collecting, or brokering waste.

[Statutory Authority: Chapter 43.200 RCW. 92-24-101 (Order 91-52), § 173-326-030, filed 12/2/92, effective 3/1/93. Statutory Authority: RCW 43.200.080. 88-21-072 (Order 88-41), § 173-326-030, filed 10/18/88; 87-14-078 (Order 87-11), § 173-326-030, filed 7/1/87.]

WAC 173-326-040 Payment procedures. (1) Generator payment procedures.

Each application shall be accompanied by full payment of the generator fee as required in WAC 173-326-050 (1)(c). Generators who fail to apply for a permit by March 1, 1993, or fail to maintain a permit in active status, must also include payment of the reinstatement fee as required in WAC 173-326-050 (1)(e).

(2) Broker fee payment procedures.

Each application shall be accompanied by full payment of the broker fee as required in WAC 173-326-050(2). Brokers who fail to apply for a permit by March 1, 1993, or fail to maintain a permit in active status, must also include payment of the reinstatement fee as required in WAC 173-326-050 (1)(e).

[Statutory Authority: Chapter 43.200 RCW. 92-24-101 (Order 91-52), § 173-326-040, filed 12/2/92, effective 3/1/93. Statutory Authority: RCW 43.200.080. 88-18-098 (Order 88-27), § 173-326-040, filed 9/7/88; 87-14-078 (Order 87-11), § 173-326-040, filed 7/1/87.]

WAC 173-326-050 Permit fees. (1) Generator site use permit fee.

(a) For the purpose of assessing generators permit fees (other than nuclear utilities, new generators, and applicants requiring reinstatement), the total annual volume (cubic feet) deposited by each generator during the previous calendar year will be used. Nuclear utilities fees will be based on the ratio found in (b) of this subsection.

(b) The annual site use permit fee for generators shall be determined by the following ratio:

Classification	Ratio
< 50 cubic feet	1x
≥ 50 < 500 cubic feet	2x
≥ 500 < 1000 cubic feet	5x
≥ 1000 < 2500 cubic feet	10x
≥ 2500 cubic feet	35x
Nuclear Utilities	100x

The value of x, which represents the annual base fee, will be published in the *Washington State Register* pursuant to (c) of this subsection.

(c) Fees will be adjusted annually, as required, utilizing the 1x:2x:5x:10x:35x:100x ratio. Fee rates will be published in the *Washington State Register* and distributed to generators by the first day of each calendar year.

(d) A new generator's permit fees will be based on the generator's estimate of the volume (cubic feet) of waste requiring disposal during the first year. If a generator's waste deposits exceed the generator's volume projection, the permit will be suspended until additional fees are paid. Overpayment will be credited toward the site use permit fee for the subsequent year.

(e) A generator or broker who has not obtained a new permit by March 1, 1993, or fails to maintain annual renewal of the permit shall include an additional payment of one thousand dollars. The permit fee for these generators will be based on the volume of waste disposed during the most recent calendar year in which waste was disposed.

(2) Broker site use permit fee. The annual cost of a permit for a broker shall be one thousand dollars.

[Statutory Authority: Chapter 43.200 RCW. 92-24-101 (Order 91-52), § 173-326-050, filed 12/2/92, effective 3/1/93.]

WAC 173-326-060 Requirements for site operator.

The site operator shall provide the department of ecology with information on each waste shipment accepted for disposal at the site as requested by the department.

[Statutory Authority: Chapter 43.200 RCW. 92-24-101 (Order 91-52), § 173-326-060, filed 12/2/92, effective 3/1/93.]

Chapter 173-328 WAC

MIXED WASTE MANAGEMENT FEES

WAC

173-328-010	Purpose and authority.
173-328-020	Applicability.
173-328-030	Definitions.
173-328-040	Fee establishment.
173-328-050	Fee review and comment.
173-328-060	Fee assessment.
173-328-070	Appeals and enforcement.

WAC 173-328-010 Purpose and authority. (1) The purpose of this chapter is to implement the provisions of RCW 70.105.280, by establishing a means for the department of ecology to assess reasonable mixed waste management fees against facilities that treat, store, or dispose of mixed waste and against mixed waste facilities undergoing closure under chapter 70.105 RCW. The fee collected shall be sufficient to fund all costs of carrying out the department's duties under chapter 70.105 RCW at mixed waste facilities.

(2) This chapter establishes the method by which the department shall assess fees, describes entities subject to such fees, establishes provisions for appealing and enforcing fee assessments, and delineates associated responsibilities of the department and facility owners and operators.

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-010, filed 4/20/93, effective 5/21/93.]

WAC 173-328-020 Applicability. This chapter applies to any person who owns or operates a facility that treats, stores, or disposes of mixed waste. This also applies to mixed waste facilities undergoing closure under chapter 70.105 RCW. This chapter does not apply to facilities managing only low-level radioactive waste.

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-020, filed 4/20/93, effective 5/21/93.]

WAC 173-328-030 Definitions. (1) The following terms are used and shall have meanings as defined in chapter 70.105 RCW or WAC 173-303-040 as amended:

(a) Closure;

- (b) Dangerous waste;
- (c) Department;
- (d) Disposal;
- (e) Facility;
- (f) Operator;
- (g) Permit;
- (h) Storage; and
- (i) Treatment.

(2) When used in this chapter, the following terms have the meanings given below.

(a) "Manage" or "management" means to treat, store, or dispose of mixed waste, or close a mixed waste facility, or perform other activities required under chapter 70.105 RCW.

(b) "Mixed waste" means a dangerous waste that contains both a nonradioactive hazardous component and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954.

(c) "Mixed waste management fee" or "fee" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, or dispose of mixed waste. The fee shall also apply to facilities undergoing closure under chapter 70.105 RCW.

(d) For facilities sited by the energy facility site evaluation council under chapter 80.50 RCW, the terms "owner" and "operator" in WAC 173-328-060 and 173-328-070 mean the energy facility site evaluation council.

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-030, filed 4/20/93, effective 5/21/93.]

WAC 173-328-040 Fee establishment. The department shall, on a biennial basis, determine all reasonable program costs necessary to carry out the department's duties under chapter 173-303 WAC for each mixed waste facility. The fee may be assessed at a mixed waste facility for the department's regulation of both mixed waste and nonradioactive dangerous waste. The department shall include, but not be limited to, the following items to determine fee amounts:

(1) Direct and indirect cost of:

(a) Office space and supplies, administrative staff, support staff, and staff training;

(b) The development of associated regulations and guidelines;

(c) Determination, assessment, and collection of fees;

(d) Tracking and accounting services;

(e) Public involvement, education, and outreach; and

(f) Data management.

(2) Direct and indirect permitting costs of:

(a) Staff, staff support, and staff training for reviewing, approving, and issuing dangerous waste permits and closure plans;

(b) Reviewing and issuing permit modifications and renewals;

(c) Travel; and

(d) Contract services.

(3) Direct and indirect compliance activity cost of:

(a) Staff, staff support, and staff training to prepare and conduct compliance inspections;

(b) Sampling and lab analysis;

(c) Contract services;

(d) Travel; and

(e) Preparation of compliance report(s).

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-040, filed 4/20/93, effective 5/21/93.]

WAC 173-328-050 Fee review and comment. Fee review process.

(1) On or before July 1st of even-numbered calendar years, the department shall notify, by registered mail, each facility owner/operator of its biennial estimated fee assessment and provide the opportunity to review and comment prior to submittal of the department's budget to the legislature.

(2) The facility owner/operator shall have forty-five days to submit written comments to the department for consideration in the fee assessment.

(3) Prior to submittal of the department's budget to the legislature, the department shall notify the facility owner/operator of any changes to their estimated fee assessment.

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-050, filed 4/20/93, effective 5/21/93.]

WAC 173-328-060 Fee assessment. (1) After legislative approval of a budget for the department, the department may bill the facility owner/operator the required fees necessary to fund all mixed waste management costs.

(2) Anticipated fees. Anticipated fees include, but are not limited to, costs for permit issuance, permit maintenance, closure plan approval, and compliance audits.

(a) The department shall annually bill the owners/operators of all mixed waste facilities on or before October 1st for anticipated department activities to be performed that fiscal year.

(b) The department shall notify a facility owner/operator of any changes to the biennial estimate prior to sending each annual bill.

(c) The fee shall be submitted by the facility owner/operator to the department within thirty days after receipt of the bill.

(d) Any fees collected in excess of the department's actual costs will be adjusted in the subsequent billing to reflect the department's actual activities.

(3) Unanticipated fees. Unanticipated fees include, but are not limited to, the direct and indirect costs, as outlined in WAC 173-328-040, for unplanned enforcement activities, compliance activities, and facility modifications.

(a) The department may bill the owner/operator of a mixed waste facility upon completion of the unanticipated activity.

(b) The facility owner/operator shall be billed the amount of all direct and indirect costs incurred by the department to complete the unplanned regulatory activity.

(c) The unanticipated fee shall be submitted by the facility owner/operator to the department within thirty days after the receipt of the bill.

(4) Fees collected by the department shall be deposited into the state toxics control account.

(5) The fee shall not exceed the amount necessary for the department to carry out its duties under chapter 173-303 WAC.

(6) The department shall maintain a system of accountability to track annual costs incurred by the department.

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-060, filed 4/20/93, effective 5/21/93.]

WAC 173-328-070 Appeals and enforcement. (1) The owner/operator of a facility who is assessed a fee under this chapter may appeal the fee to the department. The appeal must be received by the department within thirty days after the facility owner/operator's receipt of the bill. Any appeal shall state the name and address of the facility to which the fee was assessed, and shall state reasons for challenging the fee.

(2) After receipt of an appeal, the department shall consider the reasons stated in the appeal and either issue a revised bill or a statement upholding the original bill. The issuance of either document shall constitute the final decision of the department.

(3) The department shall not take any enforcement action for failure to pay the assessed fee until resolution of the appeal.

(4) The fee stated in the department's final decision shall be submitted by the facility owner/operator to the department within thirty days after receipt of the final decision.

(5) Any person who fails to pay fees as required by this chapter shall be subject to enforcement actions consistent with chapter 70.105 RCW. Such enforcement may include penalties in accordance with RCW 70.105.080, 70.105.090, and 70.105.095.

(6) Payment of enforcement penalties shall not be deemed as payment of fees. Payment of fees after the assessment of an enforcement penalty shall not be deemed as a cause for reducing or eliminating the penalty.

[Statutory Authority: RCW 70.105.280. 93-09-065 (Order 91-24), § 173-328-070, filed 4/20/93, effective 5/21/93.]

Chapter 173-330 WAC

USED AUTOMOTIVE OIL RECYCLING SIGN REQUIREMENTS FOR AUTOMOTIVE OIL SELLERS

WAC

173-330-010	Purpose.
173-330-020	Applicability.
173-330-030	Definitions.
173-330-040	Responsibility to procure and post sign.
173-330-050	Sign criteria.
173-330-060	Posting and maintenance of signs.
173-330-070	Effective date and compliance.
173-330-900	Logo and sign.

WAC 173-330-010 Purpose. Pursuant to chapter 19.114 RCW it is recognized by the legislature that used automotive oil is a limited resource that can be collected and recycled. Further, improper disposal results in undesirable effects upon the economy and the environment.

These rules provide minimum requirements for the posting and maintaining of durable and legible signs informing the public of proper collection and disposal of used oil.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-010, filed 7/19/84.]

WAC 173-330-020 Applicability. All sellers as defined in WAC 173-330-030 shall conform to the provisions of this chapter.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-020, filed 7/19/84.]

WAC 173-330-030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Used oil" means automotive oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or the loss of original properties.

(2) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing, or other means or to use used oil as a substitute for a petroleum product made from new oil, provided that the preparation or use is operationally safe, environmentally sound, and complies with all laws and rules.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Person" means an individual, private or public corporation, partnership, cooperative, association, estate, municipality, political subdivision or governmental agency or instrumentality.

(6) "Seller" means any person selling oil within the state of Washington who sells 100 gallons or more of automotive oil per year for use off their premises.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-030, filed 7/19/84.]

WAC 173-330-040 Responsibility to procure and post sign. It shall be the responsibility of all sellers to procure, post and maintain a sign in accordance with the provisions within this chapter. Signs will be provided by the department.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-040, filed 7/19/84.]

WAC 173-330-050 Sign criteria. (1) A sign shall be constructed of white card stock - 80# or of equal or better weight and quality material and:

- a. Be commercially printed;
- b. Be size 11" x 14" or 3" x 5" shelf hangers;
- c. Have type style - Helvetica;
- d. Have type color - Green #345; and
- e. Carry the recycling logo.

(2) ALL SIGNS WILL CARRY THIS MESSAGE:

RECYCLE USED OIL

- * Prevent water pollution
- * Protect public health
- * Reuse limited resources

FOR MORE INFORMATION CALL 1-800-RECYCLE

(3) The sign shall indicate how and where used oil may be properly disposed of including the location and hours of operation of conveniently located used oil collection faci-

ties. This information may be clearly handwritten in an information block on the sign.

(4) The sign shall be substantially in the form shown in WAC 173-330-900 contained herein.

(5) Oil sellers may provide their own signs. Limited variances from the sign criteria will be allowed, subject to the department's approval. Proofs of the seller-provided signs must be submitted to the department for written approval prior to posting.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-050, filed 7/19/84.]

WAC 173-330-060 Posting and maintenance of signs.

(1) Signs shall be posted in a location visible to the public at or near the point of sale. This location shall either be at the automotive oil display location within the store, at the cash register or on the exterior window facing.

(2) Signs shall be maintained at the required location and shall remain fully visible and legible at all times.

(3) Requests for replacement of damaged, lost or misplaced signs will be made in a timely manner not to exceed two business days. Seller-provided signs should be replaced as soon as practical but not to exceed 14 days.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-060, filed 7/19/84.]

WAC 173-330-070 Effective date and compliance.

(1) This chapter shall become effective October 1, 1984. Sellers shall post signs in accordance with the provisions of this chapter as of that date.

(2) Sellers shall notify the department in writing by January 1, 1985 of compliance.

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-070, filed 7/19/84.]

WAC 173-330-900 Logo and sign.



"IMPROPER DISPOSAL OF USED OIL IS A SIGNIFICANT SOURCE OF WATER POLLUTION, CONTRIBUTES TO THE OVERALL SHORTAGE OF ENERGY RESOURCES AND HAS A DETRIMENTAL IMPACT ON GENERAL PUBLIC HEALTH"

-CHAPTER 173-330 WAC

RECYCLE USED OIL AT:
 LOCATION _____
 TIMES _____

FOR MORE INFORMATION CALL
 THE WASHINGTON STATE DEPT. OF ECOLOGY
 LITTER CONTROL AND RECYCLING PROGRAM

1-800-RECYCLE

[Statutory Authority: Chapter 19.114 RCW. 84-16-005 (Order DE 84-24), § 173-330-900, filed 7/19/84.]

**Chapter 173-331 WAC
 VEHICLE BATTERY RECYCLING**

WAC	
173-331-010	Authority and purpose.
173-331-100	Definitions.
173-331-200	Posting of retail notices.
173-331-210	Optional exemption to the core charge.
173-331-220	Condition of used batteries.
173-331-300	Conditions for suspending the acceptance requirements.
173-331-400	Authorization of used battery collectors.
173-331-410	Reporting requirements.
173-331-500	Handling of used vehicle batteries.
173-331-600	Severability.

WAC 173-331-010 Authority and purpose. The department of ecology has been authorized under RCW 70.95.670 to implement and enforce a vehicle battery recycling program. The purpose of this chapter is to establish procedures for implementation and enforcement of RCW 70.95.610 through 70.95.660, which is designed to accomplish the recycling of used vehicle batteries through a system of exchanging batteries at the point of sale.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-010, filed 2/11/91, effective 3/14/91.]

WAC 173-331-100 Definitions. The following words, terms, and phrases shall, for the purposes of this chapter, have the meanings given below:

(1) The terms wholesale and retail shall have the same meanings provided in Title 82 RCW, Excise taxes. For example, wholesale refers to the sale of vehicle batteries to retail establishments, and retail refers to sale of vehicle batteries that require payment of the retail sales tax.

(2) Authorization means the license issued by the department of licensing and approved by the department of ecology as authorized by RCW 70.95.610.

(3) Business location means the premises where business is conducted.

(4) Core charge means an added charge applied during a retail sale to be refunded to the purchaser when a used battery of equivalent size is offered in exchange.

(5) Department means the department of ecology.

(6) Disposal means to deposit, dump, abandon, or spill any vehicle battery into or on any land, water, solid waste landfill, or solid waste incinerator.

(7) Equivalent size means weighing fifty to one hundred fifty percent of the vehicle battery purchased.

(8) New vehicle battery means any vehicle battery intended for use as an electrical energy storage device.

(9) Original battery installation means any new vehicle or device that requires a vehicle battery to be connected or installed before use is possible.

(10) Replacement vehicle battery means any vehicle battery sold at retail (a) that is not sale of an original battery installation, or (b) without verifiable proof that the buyer needs the battery for an original battery installation.

(11) Secondary lead smelter means any facility licensed by a state or federal government to reclaim lead from vehicle batteries.

(12) Unified business identifier service location means:

(a) The field offices of the departments of revenue and labor and industries.

(b) The tax offices of employment security.

(c) The Olympia office of the secretary of state.

(d) The business license service office of the department of licensing.

(13) Used vehicle battery means any vehicle battery intended for reclamation, separate from a vehicle or other installation.

(14) Vehicle battery means any battery used or capable of use, without modification, in any vehicle, truck, mobile home, recreational vehicle, boat, airplane, or utility vehicle, having a core of elemental lead, with the capability to produce six or more volts. For purposes of application of the core charge only, a vehicle battery shall be a replacement

battery and the core charge shall not apply to original battery installations.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-100, filed 2/11/91, effective 3/14/91.]

WAC 173-331-200 Posting of retail notices. (1) This section refers to the notices required by RCW 70.95.630(2).

(2) All required notices must be posted in the main vehicle battery display area or other area clearly visible to battery purchasers. Notices must be posted no lower than four feet and no higher than seven feet, level to the floor. Notices must be maintained free of any viewing obstructions.

Note: Notices are available by calling 1-800-RECYCLE.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-200, filed 2/11/91, effective 3/14/91.]

WAC 173-331-210 Optional exemption to the core charge. A retailer is not required to apply a core charge to a battery sale when the buyer submits verifiable proof that the battery is needed for an original battery installation. Verifiable proof shall consist of a voucher issued by the seller of the vehicle or device containing the following:

(1) Title, address, and phone of the retail establishment;

(2) Brief description of the vehicle or device sold with indication that a battery(s) was not included;

(3) Date of issuance;

(4) Name of the purchaser; and

(5) Signature of the sales agent.

Vouchers shall be valid for ninety days following the date of issuance and must be surrendered to the retailer during the battery sale.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-210, filed 2/11/91, effective 3/14/91.]

WAC 173-331-220 Condition of used batteries. (1) A purchaser must provide a used battery in a fully-capped, unbroken condition to qualify for waiver of the core charge. A retailer may refuse to accept a broken or uncapped battery, or may condition acceptance upon provision of a leak proof, acid resistant container, such as a plastic pail, holding the broken or uncapped battery.

(2) The department shall provide on its 1-800-RECYCLE Hotline a list of recycling outlets available for broken and uncapped batteries.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-220, filed 2/11/91, effective 3/14/91.]

WAC 173-331-300 Conditions for suspending the acceptance requirements. (1) This section refers to the suspension order required by RCW 70.95.650(3).

(2) When the department deems it necessary, the department shall determine the market price paid for used lead batteries by contacting agents of the secondary smelters historically used to process used vehicle batteries originating in Washington. The department shall determine transportation costs by contacting at least three trucking firms and at least three shipping firms for estimated unit costs to transport batteries to each secondary smelter. If the lowest estimated transportation costs are higher than market price paid for all

of the secondary smelters, the department will order a suspension.

(3) The department will notify retailers of any suspension by sending notice to trade organization representatives and other businesses on our vehicle battery program mailing list. (To get on the vehicle battery mailing list call (360) 438-7541.)

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-300, filed 2/11/91, effective 3/14/91.]

WAC 173-331-400 Authorization of used battery collectors. (1) This section refers to RCW 70.95.610(1).

(2) Beginning May 1, 1991, any person who collects used vehicle batteries nonincidental to accepting exchanges during sale of new batteries, excluding local governments with approved local hazardous waste plans pursuant to RCW 70.105.220, must have a department approved authorization issued by the department of licensing.

(3) License fees for each business location shall be fifteen dollars annually.

(4) Application forms for a used vehicle battery collector authorization will be available at unified business identifier service locations located throughout the state.

Note: Assistance finding the nearest unified business identifier service is available by calling 1-800-562-8203.

(5) Ecology review of application for authorization as a used vehicle battery collector:

(a) Any application for authorization or reauthorization as a used vehicle battery collector is subject to review and final approval or disapproval by the department of ecology.

(b) The applicant will be notified if the department has evidence that the applicant has failed to comply with environmental regulations affecting the handling, storage, transport, reclamation, or disposal of vehicle batteries. Such failure is sufficient reason for the department to disapprove or rescind authorization as a vehicle battery collector.

(c) Notification shall be in writing and shall include a statement of the basis for the department's belief that failure to comply has occurred and an indication of the department's intentions regarding authorization.

(d) The applicant may submit to the department comments on the department's intended action and basis for that action. Any comments shall be submitted in writing to the department within fifteen days from date of receipt of the department's notice letter unless the department provides an extension.

(e) After reviewing any comments, the department shall issue a letter notifying the applicant of its decision whether to authorize the applicant as a vehicle battery collector. Such decision may be appealed to the department by written application for review within fifteen days of receipt by the applicant of the department's decision. The department shall issue a notice of its decision on the application for review within fifteen days of the receipt of such application. This notice shall be the department's final decision.

(f) Pursuant to RCW 43.21B.110 (1)(c), the department's final decision is appealable to the pollution control hearings board.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-400, filed 2/11/91, effective 3/14/91.]

WAC 173-331-410 Reporting requirements. (1) Consistent with RCW 70.95.280, persons who collect used vehicle batteries in Washington state and recondition them, reclaim them, or arrange transport of the used batteries to out-of-state locations shall report annually to the department quantities of batteries collected and their destination(s).

Note: Reporting instructions and forms are available by calling 1-800-RECYCLE.

(2) Requests for confidentiality will be honored if the reporting business shows that publication of the information may affect adversely its competitive position and if the department determines that confidentiality is not detrimental to public interest.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-410, filed 2/11/91, effective 3/14/91.]

WAC 173-331-500 Handling of used vehicle batteries. Nothing in this chapter shall exempt wholesalers, retailers, or used battery collectors from the sections pertaining to lead-acid battery handling in the state's dangerous waste regulations, chapter 173-303 WAC, including WAC 173-303-050 (Department of ecology cleanup authority), WAC 173-303-145 (Spills and discharges into the environment), and WAC 173-303-960 (Special powers and authorities of the department). All shall use prudent procedures of handling and storing used vehicle batteries.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-500, filed 2/11/91, effective 3/14/91.]

WAC 173-331-600 Severability. If any provision of this chapter or its application to any person is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Note: Copies of RCW 70.95.280 and 70.95.610 through 70.95.670, WAC 173-303-050, 173-303-145 and 173-303-960, and additional copies of this chapter, chapter 173-331 WAC, are available from the Department of Ecology, Office of Waste Reduction, Recycling, and Litter Control, Mailstop PV-11, Olympia, WA 98504-8711, (360) 438-7541, 1-800-RECYCLE, 1-800-732-9253.

[Statutory Authority: RCW 70.95.670. 91-05-020 (Order 90-36), § 173-331-600, filed 2/11/91, effective 3/14/91.]

**Chapter 173-340 WAC
MODEL TOXICS CONTROL ACT—CLEANUP**

WAC

PART I—OVERALL CLEANUP PROCESS

- 173-340-100 Purpose.
- 173-340-110 Applicability.
- 173-340-120 Overview.
- 173-340-130 Administrative principles.
- 173-340-140 Deadlines.

PART II—DEFINITIONS AND USAGE

- 173-340-200 Definitions.
- 173-340-210 Usage.

PART III—SITE REPORTS AND CLEANUP DECISIONS

173-340-300	Site discovery and reporting.
173-340-310	Initial investigation.
173-340-320	Site hazard assessment.
173-340-330	Hazardous sites list.
173-340-340	Biennial program report.
173-340-350	State remedial investigation and feasibility study.
173-340-360	Selection of cleanup actions.

PART IV—SITE CLEANUP AND MONITORING

173-340-400	Cleanup actions.
173-340-410	Compliance monitoring requirements.
173-340-420	Periodic review.
173-340-430	Interim actions.
173-340-440	Institutional controls.
173-340-450	Releases from underground storage tanks.

PART V—ADMINISTRATIVE PROCEDURES FOR REMEDIAL ACTIONS

173-340-500	Determination of status as a potentially liable person.
173-340-510	Administrative options for remedial actions.
173-340-520	Consent decrees.
173-340-530	Agreed orders.
173-340-540	Enforcement orders.
173-340-550	Payment of remedial action costs.
173-340-560	Mixed funding.

PART VI—PUBLIC PARTICIPATION

173-340-600	Public notice and participation.
173-340-610	Regional citizens' advisory committees.

PART VII—CLEANUP STANDARDS

173-340-700	Overview of cleanup standards.
173-340-702	General policies.
173-340-704	Use of method A.
173-340-705	Use of method B.
173-340-706	Use of method C.
173-340-707	Analytical considerations.
173-340-708	Human health risk assessment procedures.
173-340-710	Applicable state and federal laws.
173-340-720	Ground water cleanup standards.
173-340-730	Surface water cleanup standards.
173-340-740	Soil cleanup standards.
173-340-745	Soil cleanup standards for industrial sites.
173-340-750	Cleanup standards to protect air quality.
173-340-760	Sediment cleanup standards.

PART VIII—GENERAL PROVISIONS

173-340-800	Property access.
173-340-810	Worker safety and health.
173-340-820	Sampling and analysis plans.
173-340-830	Analytical procedures.
173-340-840	General submittal requirements.
173-340-850	Recordkeeping requirements.
173-340-860	Endangerment.
173-340-870	Project coordinator.
173-340-880	Emergency actions.
173-340-890	Severability.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-340-010	Purpose. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-010, filed 6/8/88.] Repealed by 90-08-086, filed 4/3/90, effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.
173-340-020	Definitions. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-020, filed 6/8/88.] Repealed by 90-08-086, filed 4/3/90, effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.
173-340-030	Emergency actions. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-030, filed 6/8/88.] Repealed by 90-08-086, filed 4/3/90,

effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.

173-340-040 Settlement procedures. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-040, filed 6/8/88.] Repealed by 90-08-086, filed 4/3/90, effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.

173-340-050 State conducted remedial action—Notice. [Statutory Authority: Chapter 70.105B RCW. 88-13-036 (Order 88-40), § 173-340-050, filed 6/8/88.] Repealed by 90-08-086, filed 4/3/90, effective 5/4/90. Statutory Authority: Chapter 70.105D RCW.

PART I—OVERALL CLEANUP PROCESS

WAC 173-340-100 Purpose. This chapter is promulgated under the Model Toxics Control Act. It establishes administrative processes and standards to identify, investigate, and cleanup facilities where hazardous substances have come to be located. It defines the role of the department and encourages public involvement in decision making at these facilities.

The goal of this chapter is to implement the policy declared by chapter 70.105D RCW. This chapter provides a workable process to accomplish effective and expeditious cleanups in a manner that protects human health and the environment. This chapter is primarily intended to address releases of hazardous substances caused by past activities although its provisions may be applied to potential and ongoing releases of hazardous substances from current activities.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-100, filed 4/3/90, effective 5/4/90.]

WAC 173-340-110 Applicability. (1) This chapter shall apply to all facilities where there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment. Under this chapter, the department may require or take those actions necessary to investigate and remedy these releases.

(2) Nothing herein shall be construed to diminish the department's authority to address a release or threatened release under other applicable laws or regulations. The cleanup process and procedures under this chapter and under other laws may be combined. The department may initiate a remedial action under this chapter and may upon further analysis determine that another law is more appropriate, or vice versa.

(3) If a hazardous substance remains at a facility after actions have been completed under other applicable laws or regulations, the department may apply this chapter to protect human health or the environment.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-110, filed 4/3/90, effective 5/4/90.]

WAC 173-340-120 Overview. (1) Purpose. This section provides an overview of the cleanup process that typically will occur at a site where a release of a hazardous substance has been discovered. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

(2) Site discovery. Site discovery includes:

(a) Release reporting. A reporting program is established to help identify potential hazardous waste sites. Owners and operators who know of or discover a release of a hazardous substance due to past activities must report the release to the department within ninety days of discovery, under WAC 173-340-300. Most current releases of hazardous substances must be reported to the department under the state's hazardous waste, underground storage tank, or water quality laws. The term "hazardous substance" includes a broad range of substances as defined by chapter 70.105D RCW.

(b) Initial investigation. Within ninety days of learning of a hazardous substance release, the department will conduct an initial investigation of the site under WAC 173-340-310. For sites that may need further remedial action, an early notice letter will be sent to the owner and operator informing them of the department's decision.

(3) Site priorities. Priorities for further remedial action are set by the following process:

(a) Site hazard assessment. Based on the results of the initial investigation, a site hazard assessment will be performed if necessary, under WAC 173-340-320. The purpose of the site hazard assessment is to gather information to confirm whether a release has occurred and to enable the department to evaluate the relative potential hazard posed by the release. If the department decides that no further action is required, it will notify the public of that decision through the site register.

(b) Hazardous sites list. The department will maintain a list of sites that require further remedial action. Sites will be listed after the completion of a site hazard assessment. Sites placed on the list will be ranked using the department's hazard ranking method. The department may remove a site from the hazardous sites list if the cleanup action at the site has achieved the cleanup standards and all remedial actions except confirmational monitoring have been completed. See WAC 173-340-330.

(c) Biennial program report. Every even-numbered year, the department will prepare a biennial program report for the legislature. The hazard ranking, along with other factors, will be used in this report to identify the projects and expenditures recommended for appropriation. See WAC 173-340-340.

(4) Detailed site investigations and cleanup decisions. The following steps will be taken to ensure that the proper method of cleanup is chosen for the site.

(a) Remedial investigation and feasibility study. A state remedial investigation/feasibility study will be performed at ranked sites under WAC 173-340-350. The state remedial investigation/feasibility study defines the extent of the problems at the site and evaluates alternative cleanup actions.

(b) Selection of cleanup action. The department will evaluate the remedial investigation/feasibility study, establish cleanup levels and the point or points at which they must be complied with in accordance with the procedures provided for in WAC 173-340-700 through 173-340-760 and select a cleanup action that will protect human health and the environment and meet the other requirements of WAC 173-340-360. At some sites, restrictions on the use of the land and resources (institutional controls) will be required to insure continued protection of human health and the environment. See WAC 173-340-440. The cleanup action will be

set forth in a draft cleanup action plan that addresses cleanup requirements for hazardous substances at the site. After public comment on the draft plan, a final cleanup action plan will be issued by the department. (See WAC 173-340-700 for additional overview discussion of these requirements.)

(5) Site cleanup. Once the appropriate cleanup action has been selected for the site, the actual cleanup will be performed.

(a) Cleanup actions. WAC 173-340-400 describes the design and construction requirements for implementing the cleanup action plan.

(b) Compliance monitoring and review. The cleanup action must include compliance monitoring under WAC 173-340-410 and in some cases periodic review under WAC 173-340-420 to ensure the long-term effectiveness of the cleanup action.

(6) Interim actions. Under certain conditions it may be appropriate to take early actions at a site prior to completing the process described in subsections (2) through (5) of this section. WAC 173-340-430 describes when it is appropriate to take these early or interim actions and the requirements for such actions.

(7) Leaking underground storage tanks. Underground storage tank (UST) owners and underground storage tank operators regulated under chapter 90.76 RCW are required to perform specific actions in addition to what other site owners and operators would do under this chapter. Such additional actions include reporting of a confirmed release within twenty-four hours, follow-up investigation, free product removal and immediate assessment of the threat to human health and the environment at the site. A written report describing the site and the actions taken must be submitted within ninety days of release confirmation. Depending on the results of these actions, additional remedial actions may be required. WAC 173-340-450 describes these and other requirements for leaking underground storage tanks.

(8) Procedures for conducting remedial actions.

(a) Remedial action agreements. The department has authority to take remedial actions or to order persons to conduct remedial actions under WAC 173-340-510 and 173-340-540. However, the department encourages agreements for investigations and cleanups in appropriate cases. These agreements can be agreed orders or consent degrees reached under the procedures of WAC 173-340-520 and 173-340-530.

(b) Independent remedial actions. Persons may decide to perform investigations and cleanups without department approval under this chapter. The department will use the appropriate requirements contained herein in its evaluation of the adequacy of any independent remedial actions performed. Nothing in this chapter prohibits persons from performing such actions before the department is ready to act at the site; however, all interim and cleanup actions must be reported to the department under WAC 173-340-300. Furthermore, independent remedial actions are done at the potentially liable person's own risk and the department may take or require additional remedial actions at these sites at any time. (See WAC 173-340-510.)

(c) Public participation. The public will receive notice and an opportunity to comment on most of the steps in the cleanup process. At many sites, a public participation plan

will be prepared to provide opportunities for more extensive public involvement in the cleanup process.

These requirements are described in WAC 173-340-600.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-120, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-120, filed 4/3/90, effective 5/4/90.]

WAC 173-340-130 Administrative principles. (1)

Introduction. The department shall conduct or require remedial actions consistent with the provisions of this section, as typically defined by the subsequent sections.

(2) **Information sharing.** It is the policy of the department to make available information about releases or threatened releases with property owners or other persons with potential liability for a site in order to encourage them to conduct prompt remedial action. It is also the policy of the department to make information available to interested members of the public.

(3) **Information exchange.**

(a) **Technical assistance.** Persons are encouraged to contact the department and seek assistance on the general administrative and technical requirements of this chapter. The department may provide informal advice and assistance to potentially liable persons at any time during the development of a remedial action. Unless the department is providing formal guidance for the implementation of an order or decree any comments by the department or its agents are advisory and not commitments or approvals binding on the department. A person may not represent this advice as an approval of a remedial action. If the person requesting the advice is seeking binding commitments or approvals an order or consent decree shall be used. The department advises persons requiring site-specific legal or technical assistance to hire an attorney or engineering consultant with the appropriate environmental expertise.

(b) **Response to requests.** If the department believes that responding to a request for technical assistance would involve substantial time or resources or would not be in the public interest, the department may decline to provide the requested assistance. The department shall inform the requester of its response. The department may require one or more of the following before devoting time to the request:

(i) A proposed schedule;

(ii) Payment, in advance, for its costs in responding to the request;

(iii) Other assurances that the requester is serious about carrying out the provisions of this chapter; or

(iv) Other information.

(4) **Scope of public participation.** The department seeks to encourage public participation in all steps of the cleanup process. The department shall encourage a level of participation appropriate to the conditions at a facility and the level of the public's interest.

(5) **Scope of information.** It is the department's intention that adequate information will be gathered at a site to enable decisions on appropriate actions. It is also the department's intention that decisions be made once adequate information is obtained. Studies can be performed and submittals made at varying levels of detail appropriate to the conditions at the site. For example, the department might decide that a study of a small site with minimal ground

water impacts need not include as detailed an analysis of the ground water flow system as for a study of a geologically more complex site. Once the department has adequate information it will make cleanup decisions within the framework provided in this chapter and in site-specific orders or decrees.

(6) **Combining steps.** Several steps in the cleanup process may be combined into fewer steps, when appropriate. For example, the department and a potentially liable person may agree that conditions at a site are such that the remedial investigation/feasibility study and remedial design and implementation steps could be combined into a single step.

(7) **Routine cleanup actions.** Flexibility in the scope of investigations and in combining steps may be particularly appropriate for routine cleanup actions. For example, the department may decide to approve a routine cleanup action based upon a single investigation that includes a site hazard assessment and a simplified state remedial investigation/feasibility study and engineering design plan.

(a) A cleanup action may be considered routine if the following criteria are met:

(i) It involves an obvious and limited choice among cleanup methods;

(ii) It uses a cleanup method that is reliable and has proven capable of accomplishing cleanup standards;

(iii) Cleanup standards for each hazardous substance addressed by the cleanup are obvious and undisputed, and allow an adequate margin of safety for protection of human health and the environment;

(iv) The department has experience with similar actions; and

(v) The action does not require an environmental impact statement.

(b) Routine cleanup actions consist of or are comparable to one or more of the following remedial actions:

(i) Cleanup of above-ground structures;

(ii) Cleanup of below-ground structures;

(iii) Cleanup of contaminated soils where the action would restore the site to cleanup levels; or

(iv) Cleanup of solid wastes, including containers.

(c) Cleanup of ground water will not normally be considered a routine cleanup action.

(d) A routine cleanup action may be conducted under any of the procedures described in WAC 173-340-510. However, the department will attempt to ensure that all routine cleanup action decisions are consistent with this chapter.

(8) **Preparation of documents.** Except for the initial investigation, any of the studies, reports, or plans used in the cleanup process can be prepared by either the department or the potentially liable person. The department retains all authority to review and verify the documents submitted and to make decisions based on the documents.

(9) **Inter-agency coordination.**

(a) The department shall ensure appropriate local, state, and federal agencies and tribal organizations are kept informed and, as appropriate, involved in the development and implementation of remedial actions. The department may require a potentially liable person to undertake this responsibility. If the potentially liable person demonstrates that they are unable to obtain adequate involvement to allow

the remedial action to proceed by a particular government agency or tribe, the department shall request the involvement of the agency or tribe.

(b) The nature and degree of coordination and consultation shall be commensurate with the other agencies and tribes interest and need at the site. Interested agencies and tribes shall also be included in the mailing list for public notices under WAC 173-340-600. To facilitate coordination, it is important for the agencies and tribes to provide specific comments, including the identification of additional information needed or mitigating measures that are necessary or desirable to satisfy their concerns.

(c) In order to provide for expeditious cleanup actions, all federal, state, and local agencies are encouraged to coordinate when providing notices, holding meetings and hearings, and preparing documents. Whenever reasonable, the department shall coordinate and combine its activities with other agencies and tribes to minimize the duplication of notices, hearings and preparation of documents, unless otherwise prohibited.

(10) Appeals. Unless otherwise indicated all department decisions made under this chapter are remedial decisions and may be appealed only as provided for in RCW 70.105D.060.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-130, filed 4/3/90, effective 5/4/90.]

WAC 173-340-140 Deadlines. (1) Purpose. It is the department's intent to move sites through the cleanup process as expeditiously as possible. However, the department is limited by the amount of personnel and funds it can expend in any given fiscal year. This section is intended to establish reasonable deadlines for remedying releases within these constraints. The procedure for setting priorities is described in WAC 173-340-330 and 173-340-340.

(2) Within ninety days of learning of a release or threatened release of a hazardous substance, the department shall complete an initial investigation under WAC 173-340-310.

(3) At least twice a year, the department will determine which sites with completed initial investigations are a high priority for further investigation. At that time, the department will schedule high priority sites for further investigations to commence within six months. This determination will be based on best professional judgment of department staff. Sites may be scheduled for further investigation at any time if the department determines that the site warrants expedited action.

(4) The department shall complete the site hazard assessment and hazard ranking on high priority sites within one hundred eighty days of the scheduled start date. These sites will be identified in the department's site register. Sites not designated as a high priority will be scheduled for future investigations and listed in the biennial report to the legislature (WAC 173-340-340). The department will conduct at least thirty-five site hazard assessments each fiscal year until the number of sites needing site hazard assessments are reduced below this number.

(5) Within thirty days of ranking, the department shall designate which sites are a high priority for a state remedial investigation/feasibility study and which sites are a lower priority where further action can be delayed. The depart-

ment shall review these lower priority sites and provide an opportunity for public comment as part of the biennial report to the legislature (WAC 173-340-340).

(6) For all sites designated as a high priority the state remedial investigation/feasibility study shall be completed under WAC 173-340-350 within eighteen months of signing the order or decree. The department may extend the deadline up to twelve months if the circumstances at the site merit a longer timeframe. The department shall provide the public an opportunity to comment on any extension. The department shall initiate a state remedial investigation/feasibility study on at least ten sites per fiscal year.

(7) The department shall select the cleanup action under WAC 173-340-360 and file a consent decree or issue an order for cleanup action for all designated high priority sites within six months of the completion of the state remedial investigation/feasibility study. The department may extend the deadline for up to four months for consent decree and order discussions. The department shall provide the public with an opportunity to comment on any deadline extension.

(8) The department will publish site schedules for designated high priority sites in the site register under WAC 173-340-600(6).

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-140, filed 4/3/90, effective 5/4/90.]

PART II—DEFINITIONS AND USAGE

WAC 173-340-200 Definitions. For the purpose of this chapter, the following definitions shall apply:

"Act" means the same as the "Model Toxics Control Act" and "chapter 70.105D RCW."

"Acute toxicity" means the ability of a hazardous substance to cause injury or death to an organism as a result of a short-term exposure to a hazardous substance.

"Agreed order" means an order issued under WAC 173-340-530.

"All practicable methods of treatment" means all technologies and/or methods currently available and demonstrated to work under similar site circumstances or through pilot studies, and applicable to the site at reasonable cost. These include "all known available and reasonable methods of treatment" (AKART) for discharges or potential discharges to waters of the state, and "best available control technologies" for releases of hazardous substances into the air resulting from cleanup actions.

"Applicable state and federal laws" means all legally applicable requirements and those requirements that the department determines, based on the criteria in WAC 173-340-710(3), are relevant and appropriate requirements.

"Area background" means the concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

"Bioconcentration factor" means the ratio of the concentration of a hazardous substance in the tissue of an aquatic organism divided by the hazardous substance concentration in the ambient water in which the organism resides.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will

apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogen Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Carcinogenic potency factor" or "CPF" means the upper 95th percentile confidence limit of the slope of the dose-response curve and is expressed in units of (mg/kg-day)⁻¹. When derived from human epidemiological data, the carcinogenic potency factor may be a maximum likelihood estimate.

"Chronic reference dose" means an estimate (with an uncertainty spanning an order of magnitude or more) of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of adverse effects during a lifetime.

"Chronic toxicity" means the ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

"Cleanup" means the implementation of a cleanup action or interim action.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-360.

"Cleanup action plan" means the document prepared by the department under WAC 173-340-360 which selects the cleanup action and specifies cleanup standards and other requirements for the cleanup action.

"Cleanup level" means the concentration of a hazardous substance in soil, water, air, or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

"Cleanup process" means the process for identifying, investigating, and cleaning up hazardous waste sites under chapter 70.105D RCW.

"Cleanup standards" means the standards promulgated under RCW 70.105D.030 (2)(d). Establishing cleanup standards requires specification of the following:

Hazardous substance concentrations that protect human health and the environment ("cleanup levels");

The location on the site where those cleanup levels must be attained ("points of compliance"); and

Additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site. These requirements are specified in applicable state and federal laws and are generally established following the selection of a specific cleanup action.

"Closure site assessment" means a site assessment required for closure of an underground storage tank pursuant to rules adopted under chapter 90.76 RCW.

"Compliance monitoring" means a remedial action that consists of monitoring as described in WAC 173-340-410.

"Containment" means a container, vessel, barrier, or structure, whether natural or constructed, which confines a

hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

"Contaminant" means any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

"Curie" means the measure of radioactivity defined as that quantity of radioactive material which decays at the rate of 3.70×10^{10} transformations per second. This decay rate is nearly equivalent to that exhibited by 1 gram of radium in equilibrium with its disintegration products.

"Day" means calendar day; however, any document due on the weekend or a holiday may be submitted on the first working day after the weekend or holiday.

"Decree" means consent decree under WAC 173-340-520. "Consent decree" is synonymous with decree.

"Department" means the department of ecology.

"Developmental reference dose" means an estimate (with an uncertainty of an order of magnitude or more) of an exposure level for the human population, including sensitive subgroups, that is likely to be without an appreciable risk of developmental effects.

"Direct contact" means exposure to hazardous substances through ingestion or dermal contact.

"Director" means the director of ecology or the director's designee.

"Environment" means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington.

"Exposure" means subjection of an organism to the action, influence, or effect of a hazardous substance (chemical agent) or physical agent. Exposure is quantified as the amount of the agent available at the exchange boundaries (e.g., skin, lungs, gut) and available for absorption.

"Exposure parameters" means those parameters used to derive an estimate of the exposure to a hazardous substance.

"Exposure pathway" means the path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from a site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source of the hazardous substance, the exposure pathway also includes a transport/exposure medium.

"Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Federal cleanup law" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., as

presently promulgated or as subsequently amended or repromulgated.

"Fish diet fraction" means the percentage of the total fish or shellfish in an individual's diet that is obtained or has the potential to be obtained from the site.

"Food crop" means any domestic plant which is produced for the purpose of, or may be used in whole or in part for, consumption by people or livestock. This shall include nursery, root, or seedstock to be used for the production of food crops.

"Free product" means a hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

"Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water.

"Hazard index" means the sum of two or more hazard quotients for multiple hazardous substances and/or multiple exposure pathways.

"Hazardous sites list" means the list of hazardous waste sites maintained under WAC 173-340-330.

"Hazardous substance" means any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste as designated by rule under chapter 70.105 RCW; any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule under chapter 70.105 RCW; any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C., Sec. 9601(14); petroleum or petroleum products; and any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Hazard quotient" or "HQ" means the ratio of the dose of a single hazardous substance over a specified time period to a reference dose for that hazardous substance derived for a similar exposure period.

"Highest beneficial use" means the beneficial use of a resource generally requiring the highest quality in the resource. For example, for many hazardous substances, providing protection for the beneficial use of drinking water will generally also provide protection for a great variety of other existing and future beneficial uses of ground water.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or decree.

"Indicator hazardous substances" means the subset of hazardous substances present at a site selected under WAC 173-340-708 for monitoring and analysis during any phase of remedial action for the purpose of characterizing the site or establishing cleanup requirements for that site.

"Inhalation correction factor" means a multiplier that is used to adjust exposure estimates based on ingestion of

drinking water to take into account exposure to hazardous substances which are volatilized and inhaled during use of the water.

"Initial investigation" means a remedial action that consists of an investigation under WAC 173-340-310 to determine that a release or threatened release may have occurred that warrants further action under this chapter.

"Institutional control" means a measure undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances at the site.

"Integrated risk information system" or "IRIS" means a data base developed by the United States Environmental Protection Agency which provides a summary of information on hazard identification and dose-response assessment for specific hazardous substances.

"Interim action" means a remedial action conducted under WAC 173-340-430 that partially addresses the cleanup of a site.

"Interspecies scaling factor" means the conversion factor used to take into account differences between animals and humans.

"Legally applicable requirements" means those cleanup standards, standards of control, and other human health and environmental protection requirements, criteria, or limitations promulgated under state or federal law that specifically address a hazardous substance, cleanup action, location, or other circumstances at the site.

"Lowest observed adverse effect level" or "LOAEL" means the lowest concentration of a hazardous substance at which there is a statistically or biologically significant increase in the frequency or severity of an adverse effect between a population and a control group.

"Mail" means delivery through the United States Postal Service or an equivalent method of delivery or transmittal, including private mail carriers, or personal delivery.

"Maximum contaminant level" or "MCL" means the maximum concentration of a contaminant established by either the Washington state board of health or the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in chapter 248-54 WAC or 40 C.F.R. 141 as presently promulgated or subsequently amended or repromulgated.

"Maximum contaminant level goal" or "MCLG" means the maximum concentration of a contaminant established by either the Washington state board of health or the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in chapter 248-54 WAC or 40 C.F.R. 141 as presently promulgated or subsequently amended or repromulgated, for which no known or anticipated adverse effects on human health occur, including an adequate margin of safety.

"Method detection limit" or "MDL" means the minimum concentration of a compound that can be measured and reported with 99% confidence that the value is greater than zero.

"Millirem" or "mrem" means the measure of the dose of any radiation to body tissue in terms of its estimated biological effect relative to a dose received from an exposure

to one roentgen (R) of x-rays. One millirem equals 0.001 rem.

"Mixed funding" means any funding provided to potentially liable persons from the state toxics control account under WAC 173-340-560.

"Model Toxics Control Act" or "act" means the act approved by the voters at the November 1988 general election, also known as Initiative 97 (chapter 70.105D RCW).

"Natural background" means the concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities. For example, several metals naturally occur in the bedrock and soils of Washington state due solely to the geologic processes that formed these materials and the concentration of these metals would be considered natural background. Also, low concentrations of some particularly persistent organic compounds such as polychlorinated biphenyls (PCBs) can be found in surficial soils and sediment throughout much of the state due to global use of these hazardous substances. These low concentrations would be considered natural background. Similarly, concentrations of various radionuclides which are present at low concentrations throughout the state due to global distribution of fallout from bomb testing and nuclear accidents would be considered natural background.

"Natural person" means any unincorporated individual or group of individuals. The term "individual" is synonymous with "natural person."

"No observed adverse effect level" or "NOAEL" means the exposure level at which there are no statistically or biologically significant increases in frequency or severity of adverse effects between the exposed population and its appropriate control; some effects may be produced at this level, but they are not considered to be adverse, nor precursors to specific adverse effects.

"Null hypothesis" means an assumption about hazardous substance concentrations at a site when evaluating compliance with cleanup levels established under this chapter. The null hypothesis is that the site is contaminated at concentrations which exceed cleanup levels. This shall not apply to cleanup levels based on background concentrations.

"Order" means an enforcement order issued under WAC 173-340-540 or an agreed order issued under WAC 173-340-530.

"Owner or operator" means any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment. The term does not include:

An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or

A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility.

"PAHs (carcinogenic)" means those PAHs substances identified as A (known human) or B (probable human) carcinogens by the United States Environmental Protection Agency. These include benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene.

"Permanent solution" means a cleanup action in which cleanup standards of WAC 173-340-700 through 173-340-760 can be met without further action being required at the site being cleaned up or any other site involved with the cleanup action, other than the approved disposal of any residue from the treatment of hazardous substances.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

"Picocurie" or "pCi" means 10⁻¹² curie.

"Point of compliance" means the point or points where cleanup levels established in accordance with WAC 173-340-720 through 173-340-760 shall be attained.

"Polychlorinated biphenyls" or "PCB mixtures" means those aromatic compounds containing two benzene nuclei with two or more substituted chlorine atoms. For the purposes of this chapter, PCB includes those congeners which are identified using the appropriate analytical methods as specified in WAC 173-340-830.

"Polycyclic aromatic hydrocarbons" or "PAH" means those hydrocarbon molecules composed of two or more fused benzene rings. For the purpose of this chapter, PAH includes those compounds which are identified and quantified using the appropriate analytical methods as specified in WAC 173-340-830. The specific compounds generally included are acenaphthene, acenaphthylene, fluorene, naphthalene, anthracene, fluoranthene, phenanthrene, benzo[a]anthracene, benzo[b]fluoranthene, benzo[k]fluoranthene, pyrene, chrysene, benzo[a]pyrene, dibenzo[a,h]anthracene, indeno[1,2,3-cd]pyrene, and benzo[ghi]perylene.

"Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Practicable" means (except when used in the phrase "permanent to the maximum extent practicable" which is defined in WAC 173-340-360(5)) capable of being designed, constructed and implemented in a reliable and effective manner including consideration of cost. When considering cost under this analysis, an alternative shall not be considered practicable if the incremental cost of the alternative is substantial and disproportionate to the incremental degree of protection provided by the alternative over other lower cost alternatives.

"Practical quantitation limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions, using department approved methods.

"Public notice" means, at a minimum, adequate notice mailed to all persons who have made a timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in

the city or county of the proposed action; and opportunity for interested persons to comment.

"Public participation plan" means a plan prepared under WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

"Rad" means that quantity of ionizing radiation that results in the absorption of 100 ergs of energy per gram of irradiated material, regardless of the source of radiation.

"Radionuclide" means a type of atom which spontaneously undergoes radioactive decay. Radionuclides are hazardous substances under the act.

"Recovery by-products" means any hazardous substance, water, sludge or other materials collected in the free product removal process in response to a release from an underground storage tank.

"Reasonable maximum exposure" means the highest exposure that can be reasonably expected to occur for a human or other living organisms at a site under current and potential future site use.

"Reference dose" or "RFD" means a benchmark dose, derived from the NOAEL or LOAEL for a hazardous substance by consistent application of uncertainty factors used to estimate acceptable daily intake doses and an additional modifying factor, which is based on professional judgment when considering all available data about a substance, expressed in units of milligrams per kilogram body weight per day. This includes chronic reference doses, subchronic reference doses, and developmental reference doses.

"Regional office" means one of the regional offices of the department of ecology.

"Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

"Relevant and appropriate requirements" means those cleanup standards, standards of control, and other human health and environmental requirements, criteria, or limitations established under state and federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, the department determines address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. The criteria specified in WAC 173-340-710(3) shall be used to determine if a requirement is relevant and appropriate.

"Rem" means the unit of radiation dose equivalent that is the dosage in rads multiplied by a factor representing the different biological effects of various types of radiation.

"Remedy" or "remedial action" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Restoration time frame" means the period of time needed to achieve the required cleanup levels at the points of compliance established for the site.

"Risk" means the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

"Routine cleanup action" means a remedial action that consists of a cleanup action meeting the requirements in WAC 173-340-130(7).

"Safety and health plan" means a plan prepared under WAC 173-340-810.

"Sample mean" means the arithmetic mean or the average of a set of measurements. The arithmetic mean is defined as the sum of all measurements divided by the number of measurements.

"Sampling and analysis plan" means a plan prepared under WAC 173-340-820.

"Saturated zone" means the area below the water table in which all interstices are filled with water.

"Science advisory board" means the advisory board established by the department under RCW 70.105D.030(4).

"Secondary maximum contaminant level" means the maximum concentration of a secondary contaminant in water established by the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in 40 C.F.R. 143 as presently promulgated or as subsequently amended or repromulgated.

"Sensitive environment" means an area of particular environmental value, where a release could pose a greater threat than in other areas including: Wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

"Site" means the same as facility.

"Site characterization report" means a written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450(4)(b).

"Site check" means the investigation conducted pursuant to rules adopted under chapter 90.76 RCW in order to confirm a release from an underground storage tank.

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

"Site register" means the public information document described in WAC 173-340-600.

"Soil" means a mixture of organic and inorganic solids, air, water, and biota which exists on the earth's surface above bedrock, including materials of anthropogenic sources such as slag, sludge, etc.

"State remedial investigation/feasibility study" means a remedial action that consists of activities performed under WAC 173-340-350 to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup plan under WAC 173-340-360.

"Status report" means a written or verbal report on the status of the interim actions taken in response to a release from an underground storage tank, as described in WAC 173-340-450(4)(b).

"Subchronic reference dose" means an estimate (with an uncertainty of an order of magnitude or more) of a daily exposure level for the human population, including sensitive

subgroups, that is likely to be without appreciable risk of adverse effects during a portion of a lifetime.

"Surface water" means lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

"Technically possible" means capable of being designed, constructed and implemented in a reliable and effective manner, regardless of cost.

"Total excess cancer risk" means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances and multiple exposure pathways.

"Total petroleum hydrocarbons" or "TPH" means any fraction of crude oil that is contained in plant condensate, crankcase motor oil, gasoline, aviation fuels, kerosene, diesel motor fuel, benzol, fuel oil, and other products derived from the refining of crude oil. For the purposes of this chapter, TPH will generally mean those fractions of the above products that are quantified by EPA Methods 8015 or 418.1 as appropriate or other test methods approved by the department.

"Type I error" means the error made when it is concluded that an area of a site is below cleanup levels when it actually exceeds cleanup levels. This is the rejection of a true null hypothesis.

"Underground storage tank" or "UST" means an underground storage tank and connected underground piping as defined in the rules adopted under chapter 90.76 RCW.

"Underground storage tank operator" means any underground storage tank operator as defined in the rules adopted under chapter 90.76 RCW.

"Underground storage tank owner" means any underground storage tank owner as defined in the rules adopted under chapter 90.76 RCW.

"Underground storage tank release" means a confirmed release from an underground storage tank pursuant to the rules adopted under chapter 90.76 RCW.

"Unrestricted site use conditions" means restrictions on the use of the site or natural resources affected by releases of hazardous substances from the site are not required to ensure continued protection of human health and the environment.

"Upper bound on the estimated excess cancer risk of one in one hundred thousand" means the upper 95th percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per one hundred thousand individuals.

"Upper bound on the estimated excess cancer risk of one in one million" means the upper 95th percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per one million individuals.

"Volatile organic compound" means those carbon-based compounds listed in EPA methods 601, 602, 603, 624, 8010, 8015, 8020, 8030, 8240, 502.1, 502.2, 503.1, 524.1, 524.2, and those with similar vapor pressures or boiling points.

"Wastewater facility" means all structures and equipment required to collect, transport, treat, reclaim, or dispose of domestic, industrial, or combined domestic/industrial wastewaters.

"Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or

near the surface or the land is covered by shallow water. For the purposes of this classification, wetlands must have one or more of the following attributes at least periodically, the land supports predominantly hydrophytes; the substrate is predominately undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-200, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-200, filed 4/3/90, effective 5/4/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-340-210 Usage. For the purposes of this chapter, the following shall apply:

(1) Unless the context clearly requires otherwise the use of the singular shall include the plural and conversely.

(2) The terms "applicable," "appropriate," "relevant," "unless otherwise directed by the department" and similar terms implying discretion mean as determined by the department, with the burden of proof on other persons to demonstrate the requirements are or are not necessary.

(3) "Approved" means for department conducted or ordered remedial actions, or for potentially liable person conducted cleanups agreed to by the department in an agreed order or decree governing remedial actions at the site.

(4) "Conduct" means to perform or undertake whether directly or through an agent or contractor, unless this chapter expressly provides otherwise.

(5) "Include" means included but not limited to.

(6) "May" means the provision is optional and permissive, and does not impose a requirement.

(7) "Shall" means the provision is mandatory.

(8) "Threat" means threat or potential threat.

(9) "Under" means pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-210, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-210, filed 4/3/90, effective 5/4/90.]

PART III—SITE REPORTS AND CLEANUP DECISIONS

WAC 173-340-300 Site discovery and reporting. (1) Purpose. As part of a program to identify hazardous waste sites, this section sets forth the requirements for reporting a release of a hazardous substance due to past activities, whether discovered before or after the effective date of this regulation. It also sets forth the requirements for reporting independent cleanup actions. The department may take any other actions it deems appropriate to identify potential hazardous waste sites consistent with chapter 70.105D RCW.

(2) Release report. Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment shall report such information to the department by June 1, 1990, or for discovery of releases after this date, within ninety days of discovery. Releases from underground storage tanks as described in the rules adopted under chapter 90.76 RCW

must be reported within twenty-four hours of release confirmation, in accordance with WAC 173-340-450. To the extent known, the report shall include: The identification and location of the hazardous substance, circumstances of the release and the discovery, and any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the department.

(3) Exemptions. The following releases are exempt from these notification requirements:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) Lawful and nonnegligent use of hazardous substances by a natural person for personal or domestic purposes;

(c) A release in accordance with a permit that authorizes the release;

(d) A release previously reported to the department in fulfillment of a reporting requirement in this chapter or in another law or regulation;

(e) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 9603(c));

(f) A release to the air;

(g) Releases discovered in public water systems regulated by the department of health; or

(h) A release to a permitted wastewater facility.

An exemption from these notification requirements does not imply a release from liability in future actions by the department.

(4) Report of independent actions.

(a) Report. Any person who conducts an independent interim action or cleanup action shall submit a written report to the department within ninety days of the completion of the action. For the purposes of this section, the department will consider an interim action or cleanup action complete if no remedial action other than compliance monitoring has occurred at the site for ninety days. This is not intended to preclude earlier reporting of such actions. See WAC 173-340-450 for additional requirements for reporting independent interim actions for releases from underground storage tanks.

(b) Contents. The report shall include the information in subsection (2) of this section if not already reported, and results of all site investigations, cleanup actions and compliance monitoring planned or underway. The department may require additional reports on the work performed.

(c) Combined reports. If the independent interim action or cleanup action is completed within ninety days of discovery, a single written report may be submitted on both the release and the action taken. The reports shall contain the information specified in subsections (2) and (4) of this section and shall be submitted within ninety days of completion of the interim action or cleanup action.

(d) Notification. The department shall publish a notice of all reports on independent interim actions and cleanup actions received under this section in the site register.

(5) Department response. Within ninety days of receipt of information under this section, the department shall respond in accordance with WAC 173-340-310. Receipt of information regarding an independent interim action or cleanup action under subsection (3) or (4) of this section shall not obligate the department to take any action beyond that prescribed in WAC 173-340-310 and subsection (4)(d)

of this section. Neither submission of information on independent interim action and cleanup actions nor any response by the department shall release the person submitting the report or any other person from liability. The department reserves all rights to pursue any subsequent action it deems appropriate.

(6) Other obligations. Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-300, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-300, filed 4/3/90, effective 5/4/90.]

WAC 173-340-310 Initial investigation. (1) Purpose. The purpose of the initial investigation is to determine whether or not a release or threatened release of a hazardous substance may have occurred that warrants further action under this chapter.

(a) Applicability and timing. Whenever the department receives information and has a reasonable basis to believe that there may be a release or a threatened release of a hazardous substance that may pose a threat to human health or the environment, the department shall conduct an initial investigation within ninety days.

(b) Exemptions. The department shall not be required to conduct an initial investigation when:

(i) The circumstances associated with the release or threatened release are known to the department and have previously been or currently are being evaluated by the department or other government agency; or

(ii) The release is permitted.

(2) Contents. The initial investigation shall include at a minimum: A site visit and documentation of conditions observed.

(3) Department deferral to others. The department may rely on another government agency or a contractor to the department to conduct an initial investigation on its behalf, provided the department determines such agency or contractor is not suspected to have contributed to the release or threatened release of a hazardous substance and that no conflict of interest exists.

(4) Department decision. Based on the information obtained about the site, the department shall within thirty days of completion of the initial investigation make one or more of the following decisions:

(a) A site hazard assessment is required;

(b) Emergency remedial action is required;

(c) Interim action is required; or

(d) The site requires no further action under this chapter at this time because either:

(i) There has been no release or threatened release of a hazardous substance; or

(ii) A release or threatened release of a hazardous substance has occurred, but in the department's judgment, does not pose a threat to human health or the environment; or

(iii) Action under another authority is appropriate.

A decision for a particular follow-up action does not preclude the department from requiring some other action in the future based on reevaluation of the site or additional information.

(5) Early notice letter.

(a) For sites requiring further remedial action under chapter 70.105D RCW, the department will notify the owner, operator, and any potentially liable person known to the department of its decision. This letter may be combined with the notice in WAC 173-340-500.

(b) The notification shall be a letter mailed to the person which includes:

(i) The basis for the department's decision;

(ii) Information on the cleanup process provided for in this chapter;

(iii) A statement that it is the department's policy to work cooperatively with persons to accomplish prompt and effective cleanups;

(iv) A person or office of the department to contact regarding the contents of the letter; and

(v) A statement that the letter is not a determination of liability and that cooperating with the department in planning or conducting a remedial action is not an admission of guilt or liability.

Nothing in this section shall preclude the department from taking or requiring appropriate remedial action at any time.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-310, filed 4/3/90, effective 5/4/90.]

WAC 173-340-320 Site hazard assessment. (1)

Purpose. The purpose of the site hazard assessment is to provide sufficient sampling data and other information to:

(a) Confirm or rule out that a release or threatened release of a hazardous substance has occurred;

(b) To identify the hazardous substance and provide some information regarding the extent and concentration of the substance;

(c) Identify site characteristics that could result in the hazardous substance entering and moving through the environment;

(d) Evaluate the potential for the threat to human health and the environment; and

(e) Determine the hazard ranking of the site under WAC 173-340-330, if appropriate.

(2) **Timing.** Unless otherwise directed by the department, a site hazard assessment shall be completed before proceeding to any subsequent phase of remedial action, other than an emergency or interim action.

(3) **Administrative options.** The site hazard assessment may be conducted under any of the procedures described in WAC 173-340-510.

(4) **Scope and content.** A site hazard assessment is an early study to provide preliminary data regarding the relative potential hazard of the site. A site hazard assessment is not intended to be a detailed site characterization, however it shall include sufficient sampling, site observations, maps, and other information needed to meet the purposes specified in subsection (1) of this section. To fulfill this requirement, a site hazard assessment shall include, as appropriate, the following information:

(a) Identification of hazardous substances, including what was released and is threatened to be released and/or, if known, what products of decomposition, recombination, or

chemical reaction are currently present on site, and an estimate of their quantities and concentrations;

(b) Evidence confirming a release or threatened release of hazardous substances to the environment;

(c) Description of facilities containing releases, if any, and their condition;

(d) Identification of the location of all areas where a hazardous substance is known or suspected to be, indicated on a site map;

(e) Consideration of surface water run-on and run-off and the hazardous substances leaching potential;

(f) Preliminary characterization of the subsurface and ground water actually or potentially affected by the release, including vertical depth to ground water and distance to nearby wells, bodies of surface water, and drinking water intakes;

(g) Preliminary evaluation of receptors, including: Human population, food crops, recreation areas, parks, sensitive environments, irrigated areas, and aquatic resources currently or potentially affected by ground water, air, or surface water containing the release of hazardous substances at the site, including distances to these receptors; and

(h) Any other physical factors which may be significant in estimating the potential or current exposure to sensitive biota.

(5) **Guidance.** The department shall make available guidance for how to conduct a site hazard assessment to meet the requirements of this section.

(6) **Notification.** The department shall make available the results of the site hazard assessment to the site's owner and operator and any person who has received a potentially liable person status letter under WAC 173-340-500 regarding the site. If the department finds after a site hazard assessment that the site requires no further action, it shall publish this decision in the site register.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-320, filed 4/3/90, effective 5/4/90.]

WAC 173-340-330 Hazardous sites list. (1) **Purpose.**

The department shall maintain a list of sites where remedial action has been determined by the department to be necessary. This hazardous sites list shall fulfill the department's responsibilities under RCW 70.105D.030 (2)(b) and (3). From this list, the department shall select those sites where action is anticipated and include those in the biennial program report. (See WAC 173-340-340.)

(2) **Hazard ranking.** Sites placed on the list shall be given a hazard ranking. The purpose of hazard ranking is to estimate, based on the information compiled during the site hazard assessment, the relative potential risk posed by the site to human health and the environment. This assessment considers air, ground water, and surface water migration pathways, human and nonhuman exposure targets, properties of the substances present, and the interaction of these variables.

(a) The department shall evaluate each site on a consistent basis using the procedure described in the "*Washington Ranking Method Scoring Manual*," and all revisions and additions thereto. The ranking procedure and major amendments to the manual shall be reviewed by the science advisory board established under chapter 70.105D RCW.

Information obtained in the site hazard assessment, plus any additional data specified in the manual, shall be included in the hazard ranking evaluation.

(b) The department shall periodically provide notification of the results of hazard ranking in the site register established under WAC 173-340-600. The department shall make available hazard ranking results for each site to the site owner and operator and any potentially liable person known to the department prior to publishing in the site register.

(c) The department may at its discretion re-rank a site if, prior to the initiation of state action at the site, the department receives additional information within the scope of the evaluation criteria which indicates that a significant change in rank may result.

(3) Listing.

(a) Sites shall be placed on the hazardous sites list if, after the completion of a site hazard assessment, the department has determined that further action is required at the site. The list shall be updated at least once per year. Placement of a site on the hazardous sites list does not, by itself, imply that persons associated with the site are liable under chapter 70.105D RCW.

(b) The hazardous sites list shall also reflect the current status of remedial action at each site. The department may change a site's status to reflect current conditions. The status for each site shall be identified as one of the following:

- (i) Sites awaiting further remedial action;
- (ii) Sites with remedial action in progress;
- (iii) Sites where a cleanup action has been conducted but confirmational monitoring is underway;
- (iv) Sites with independent remedial actions; or
- (v) Other categories established by the department.

(4) Removing sites from the list.

(a) The department may remove a site from the list only after it has determined that:

(i) All remedial actions except confirmational monitoring have been completed and compliance with the cleanup standards has been achieved at the site; or

(ii) The listing was erroneous.

(b) A site owner, operator, or potentially liable person may request that a site be removed from the list by submitting a petition to the department. The petition shall include thorough documentation of all investigations performed, all cleanup actions taken, and of adequate compliance monitoring to demonstrate to the department's satisfaction that one of the conditions in (a) of this subsection has been met. The department may require payment of costs incurred, including an advance deposit, for review and verification of the work performed. The department shall review such petitions; however, the timing of the review shall be at its discretion and as resources may allow.

(c) The department will maintain a record of sites that have been removed from the list under (a)(i) of this subsection. This record will be made available to the public upon request.

(5) Relisting of sites. The department may relist a site which has previously been removed if it determines that the site requires further remedial action.

(6) Notice. The department shall provide public notice and an opportunity to comment when the department proposes to remove a site from the list. Additions to the list,

changes in site status, and removal from the list shall be published in the site register.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-330, filed 4/3/90, effective 5/4/90.]

WAC 173-340-340 Biennial program report. (1)

Before November 1 of each even-numbered year, the department shall prepare a biennial program report for the legislature containing its plan for conducting remedial actions for the following two fiscal years. This report shall identify the projects and expenditures recommended for appropriation from both the state and local toxics control accounts. In determining which sites the department shall consider for planned action, emphasis shall be given to sites posing the highest risk to human health and the environment, as indicated by a site's hazard ranking. The department may also consider other factors in setting site priorities. After legislative action and any revisions, this report shall become the department's biennial program plan.

(2) The department shall provide public notice and a hearing on the proposed plan. For purposes of this subsection only, public notice shall consist of mailings to all persons who have made a timely request and to appropriate news media, and publication in the state register. Notice shall also be provided in the site register. The public comment period on the proposed plan shall run for at least thirty days from the date of the publication in the site register.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-340, filed 4/3/90, effective 5/4/90.]

WAC 173-340-350 State remedial investigation and feasibility study. (1) Purpose. The purpose of a state remedial investigation/feasibility study is to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360.

(2) Timing. Unless otherwise directed by the department, a state remedial investigation/feasibility study shall be completed before selecting a cleanup action under WAC 173-340-360, except for an emergency or interim action.

(3) Administrative options. A state remedial investigation/feasibility study may be conducted under any of the procedures described in WAC 173-340-510.

(4) Public participation will be accomplished in a manner consistent with WAC 173-340-600.

(5) Scope. The scope of a state remedial investigation/feasibility study will depend on the informational needs of the specific facility. This requires that the process remain flexible, with the scope of the state remedial investigation/feasibility study varying from site to site to avoid the collection of unnecessary information so that the cleanup can proceed in a timely manner. However, in all cases sufficient information must be collected, developed, and evaluated to enable the selection of a cleanup action under WAC 173-340-360. In addition, for facilities on the federal national priorities list, the state remedial investigation/feasibility study shall comply with federal requirements.

(6) Contents. A state remedial investigation/feasibility study shall include the following information as appropriate:

(a) General facility information. General information, including: Project title; name, address, and phone number of

project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history; and other pertinent information.

(b) Site conditions map. An existing site conditions map which illustrates relevant current site features such as: Property boundaries; proposed facility boundaries; surface topography; surface and subsurface structures; utility lines; well locations; and other pertinent information.

(c) Field investigations. Sufficient investigations to characterize the distribution of hazardous substances present at the site, and threat to human health and the environment. Where applicable to the site, these investigations will need to address the following:

(i) Surface water and sediments. Investigations of surface water and sediments to characterize significant hydrologic features such as: Surface drainage patterns and quantities, areas of erosion and sediment deposition, surface waters, floodplains, and actual or potential hazardous substance migration routes towards and within these features. Sufficient surface water and sediment sampling shall be performed to adequately characterize the areal and vertical distribution and concentrations of hazardous substances. Properties of surface and subsurface sediments which are likely to influence the type and rate of hazardous substance migration, or are likely to affect the ability to implement alternative cleanup actions shall be characterized.

(ii) Soils. Investigations to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the soil due to the facility. Properties of surface and subsurface soils which are likely to influence the type and rate of hazardous substance migration, or which are likely to affect the ability to implement alternative cleanup actions shall be characterized.

(iii) Geology and ground water system characteristics. Investigations of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water and those features which affect the fate and transport of these hazardous substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected ground waters; ground water divides; areas of ground water recharge and discharge; location of public and private production wells; and ground water quality data.

(iv) Air. An evaluation of air quality impacts, including sampling, where appropriate, and information regarding local and regional climatological characteristics which are likely to affect the hazardous substance migration such as: Seasonal patterns of rainfall; the magnitude and frequency of significant storm events; temperature extremes; prevailing wind direction; and wind velocity.

(v) Land use. Information characterizing human populations exposed or potentially exposed to the hazardous substance released from the facility and present and proposed land uses and zoning for the site and potentially affected areas.

(vi) Natural resources and ecology. Information to determine the impact or potential impact of the hazardous substance from the facility on the natural resources and

ecology of the area such as: Sensitive environment, plant and animal species, and other environmental receptors.

(vii) Hazardous substance sources. A description of and sufficient sampling to define the location, quantity, areal and vertical extent, concentration within and sources of waste disposal areas. Where relevant, information on the physical and chemical characteristics, and the biological effects of hazardous substances shall be provided.

(viii) Regulatory classifications. Regulatory designations classifying affected air, surface water and ground water, if any.

(d) Risk assessment. A risk assessment characterizing the current and potential threats to human health and the environment that may be posed by hazardous substances. This assessment may not be required when the department determines that proposed cleanup standards are obvious and undisputed and allow an adequate margin of safety for protection of human health and the environment.

(e) Cleanup action alternatives. An evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route, shall be required. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the facility. A phased approach for evaluation of alternatives may be required for certain facilities, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of cleanup action alternatives that pass the initial screening shall be evaluated for compliance with the requirements in WAC 173-340-360.

(f) Work plans. A sampling and analysis plan, and a safety and health plan shall be prepared as part of state remedial investigation/feasibility study activities. These plans shall conform to the requirements specified in this chapter.

(g) Treatability studies. The department may require treatability studies as necessary to provide sufficient information to develop and evaluate cleanup action alternatives for a site.

(h) Any information needed to fulfill the applicable requirements of the State Environmental Policy Act.

(i) Other information as required by the department.

(7) In appropriate cases the department may allow departure from the requirements of subsection (6) of this section and will allow information to be incorporated by reference to avoid unnecessary duplication.

(8) Report. A report shall be prepared at the completion of the remedial investigation/feasibility study. Additionally, the department may require reports to be submitted following discrete elements of the remedial investigation/feasibility study. Reports prepared under this section and under an order or decree shall be submitted to the department for review and approval.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-350, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-350, filed 4/3/90, effective 5/4/90.]

WAC 173-340-360 Selection of cleanup actions. (1) Purpose.

(a) This section describes the requirements for selecting cleanup actions. It specifies the criteria for approving cleanup actions, the order of preference for cleanup technologies, policies for permanent solutions, the application of these criteria to particular situations, and the process for making these decisions. This section is intended to be used in conjunction with the cleanup standards defined in WAC 173-340-700 through 173-340-760 and the administrative principles for the overall cleanup process (WAC 173-340-130).

(b) Because cleanup actions will often involve the use of several cleanup technologies or methods at a single site, the overall cleanup action shall meet the requirements of this section.

(2) Threshold requirements.

All cleanup actions conducted under this chapter shall protect human health and the environment; shall comply with cleanup standards (see WAC 173-340-700 through 173-340-760); shall comply with applicable state and federal laws (see WAC 173-340-710); and shall provide for compliance monitoring (see WAC 173-340-410).

(3) Other requirements. In addition, the cleanup action conducted shall:

(a) Use permanent solutions to the maximum extent practicable (see WAC 173-340-360 (4), (5), (7), and (8));

(b) Provide for a reasonable restoration time frame (see WAC 173-340-360(6)); and

(c) Consider public concerns raised during public comment on the draft cleanup action plan (see WAC 173-340-360 (10) through (13)).

(4) Cleanup technologies.

(a) Cleanup of hazardous waste sites shall be conducted using technologies which minimize the amount of untreated hazardous substances remaining at a site. Toward that end, the following technologies for addressing specific hazardous substances or pathways shall be considered in order of descending preference:

(i) Reuse or recycling;

(ii) Destruction or detoxification;

(iii) Separation or volume reduction followed by reuse, recycling, destruction, or detoxification of the residual hazardous substance;

(iv) Immobilization of hazardous substances;

(v) On-site or off-site disposal at an engineered facility designed to minimize the future release of hazardous substances and in accordance with applicable state and federal laws;

(vi) Isolation or containment with attendant engineering controls; and

(vii) Institutional controls and monitoring.

(b) A combination of technologies from more than one of the categories under (a) of this subsection may be used at a specific site. For example, the source of the hazardous substance may be recovered and recycled or destroyed, while containment is used to stop the migration of hazardous substances that have reached the ground water.

(c) Since cleanup actions will often involve a combination of technologies, cleanup action alternatives shall maximize the use of higher preference technologies.

(d) Ecology does not expect that one type of technology will be used for all sites. The adoption of the technology preferences in this subsection is designed to make it more

difficult to select a cleanup action with a low preference without careful explanation of why technologies above it have not been used. As noted in subsection (9) of this section, ecology expects that lower options will be appropriate for some sites.

(5) Permanent solutions.

(a) When selecting a cleanup action, preference shall be given to permanent solutions to the maximum extent practicable.

(b) A permanent solution is one in which cleanup standards can be met without further action being required at the original site or any other site involved with the cleanup action, other than the approved disposal of any residue from preferred treatment technologies under subsection (4)(a)(i) through (iii) of this section.

(c) In general, technologies which reuse, recycle, destroy, or detoxify hazardous substances will result in permanent solutions if residual hazardous substance concentrations are below cleanup levels established under WAC 173-340-700 through 173-340-760. Containment of hazardous substances and/or institutional controls alone are not permanent solutions. Other technologies, such as immobilization of hazardous substances, may provide permanent solutions under some conditions.

(d) Ecology recognizes that permanent solutions may not be practicable for all sites. A determination that a cleanup action satisfies the requirement to use permanent solutions to the maximum extent practicable is based upon consideration of a number of factors. The following criteria shall be used to determine whether a cleanup action is "permanent to the maximum extent practicable":

(i) Overall protectiveness of human health and the environment including the degree to which existing risks are reduced, time required to reduce risk at the facility and attain cleanup standards, on-site and off-site risks resulting from implementing the alternative, the degree the cleanup action may perform to a higher level than specific standards in WAC 173-340-700 through 173-340-760, and improvement of the overall environmental quality;

(ii) Long-term effectiveness including degree of certainty that the alternative will be successful, long-term reliability, magnitude of residual risk, and effectiveness of controls required to manage treatment residues or remaining wastes;

(iii) Short-term effectiveness including protection of human health and the environment during construction and implementation of the alternative, and the degree of risk to human health and the environment prior to attainment of cleanup standards;

(iv) Permanent reduction of toxicity, mobility and volume of the hazardous substance including adequacy of the alternative in destroying the hazardous substances, reduction or elimination of hazardous substance releases and sources of releases, degree of irreversibility of waste treatment process, and the characteristics and quantity of treatment residuals generated;

(v) Ability to be implemented including consideration of whether the alternative is technically possible, availability of necessary off-site facilities, services and materials, administrative and regulatory requirements, scheduling, size, complexity, monitoring requirements, access for construction, operations and monitoring, and integration with existing

facility operations and other current or potential remedial actions;

(vi) Cleanup costs. A cleanup action shall not be considered practicable if the incremental cost of the cleanup action is substantial and disproportionate to the incremental degree of protection it would achieve over a lower preference cleanup action. When selecting from among two or more cleanup action alternatives which have an equivalent level of preference under subsection (4) of this section, preference may be given to the least cost alternative. In performing this evaluation, the top three preferences in subsection (4) of this section shall be considered equivalent unless there are overriding public concerns or technical uncertainties;

(vii) The degree to which community concerns are addressed.

(e) To ensure a bias toward permanent solutions, cleanup actions conducted under this chapter including consideration of prior actions at the site shall comply with the following requirements:

(i) The cleanup action shall prevent or minimize present and future releases and migration of hazardous substances in the environment;

(ii) The cleanup action shall provide for a net reduction in the amount of a hazardous substance being released from the source area;

(iii) The cleanup action shall not rely primarily on dilution and dispersion of the hazardous substance if active remedial measures are technically possible;

(iv) A cleanup action relying primarily on institutional controls and monitoring shall not be used where it is technically possible to implement a cleanup action alternative that utilizes a higher preference cleanup technology for all or a portion of the site; and

(v) A cleanup action involving off-site transport and disposal of hazardous substances without treatment shall not be used if a treatment technology or method exists which will attain cleanup standards and is practicable.

(6) Restoration time frame.

(a) The cleanup action selected shall provide for a reasonable restoration time frame. The factors to be considered when establishing a reasonable restoration time frame shall include:

(i) Potential risks posed by the site to human health and the environment;

(ii) Practicability of achieving a shorter restoration time frame;

(iii) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(iv) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(v) Availability of alternative water supplies;

(vi) Likely effectiveness and reliability of institutional controls;

(vii) Ability to control and monitor migration of hazardous substances from the site;

(viii) Toxicity of the hazardous substances at the site; and

(ix) Natural processes which reduce concentrations of hazardous substances and have been documented to occur at the site or under similar site conditions.

(b) A longer period of time may be used for the restoration time frame for a site to achieve cleanup levels at the point of compliance if higher preference cleanup technologies in accordance with subsections (4) and (5) of this section are selected instead of on-site or off-site disposal, isolation, or containment options.

(c) When area background concentrations would result in recontamination of the site to levels which exceed cleanup levels, that portion of the cleanup action which addresses cleanup below area background concentrations may be delayed until the off-site sources of hazardous substances are controlled. In these cases the remedial action shall be considered an interim action until cleanup levels are attained.

(d) Where cleanup levels determined under method C in WAC 173-340-707 are below technically possible concentrations, concentrations that are technically possible to achieve shall be met within a reasonable time frame considering the factors in (a) of this subsection. In these cases the remedial action shall be considered an interim action until cleanup levels are attained.

(e) Extending the restoration time frame shall not be used as a substitute for active cleanup actions, when such actions are practicable.

(7) Ground water restoration.

(a) Ground water treatment to achieve the levels in WAC 173-340-720 throughout the ground water at and beyond the point of compliance shall be required where such treatment is practicable or where such treatment is not practicable, but deemed by the department to be in the public interest.

(b) When ground water treatment to achieve the cleanup levels at or beyond the point of compliance within an existing ground water plume is not practicable the following measures shall be taken:

(i) Treatment shall be used to reduce the levels to the maximum extent practicable;

(ii) Ground water containment, including barriers or hydraulic control through ground water pumping or both, shall be implemented to the maximum extent practicable to avoid lateral and vertical expansion of the ground water volume affected by the hazardous substance;

(iii) Source control measures shall be implemented to prevent or minimize additional releases to the ground water;

(iv) Adequate ground water monitoring to demonstrate control and containment of the hazardous substance shall be conducted;

(v) The potentially liable person shall provide an alternative water supply or treatment for persons with water supplies rendered unusable by the release; and

(vi) The practicability of achieving ground water cleanup levels by treating the ground water affected by the release shall be reevaluated during the periodic review under WAC 173-340-420.

(c) Appropriate restrictions on the use of ground water shall be placed under WAC 173-340-440 until cleanup levels established under WAC 173-340-720 are achieved.

(d) The integrity and continued operation of any treatment or containment system shall be assured in accordance with WAC 173-340-440.

(8) Containment actions.

(a) A cleanup action which relies primarily on on-site disposal, isolation, or containment of hazardous substances shall not be conducted if it is practicable to reuse, destroy, or detoxify those substances in a manner that remaining concentrations are below cleanup levels established under WAC 173-340-700 through 173-340-760.

(b) Long-term monitoring (WAC 173-340-410) and institutional controls (WAC 173-340-440) shall be required if on-site disposal, isolation, or containment is the selected cleanup action for a site or a portion of a site. Such measures shall be required until residual hazardous substance concentrations no longer exceed site cleanup levels established under WAC 173-340-700 through 173-340-760.

(c) If the proposed cleanup action involves on-site containment, the draft cleanup action plan shall specify the types, levels, and amounts of hazardous substances remaining on-site and the measures that will be utilized to prevent migration and contact with those substances.

(9) Expectations. Ecology has the following expectations for cleanup actions conducted under this chapter. The department recognizes that there may be sites where these expectations are not appropriate:

(a) Ecology expects that treatment technologies will be used wherever practicable. Use of treatment technologies should be emphasized at sites containing liquid wastes, areas contaminated with high concentrations of hazardous substances, highly mobile materials, and/or discrete areas of hazardous substances which lend themselves to treatment;

(b) To minimize the need for long-term management of contaminated materials, ecology expects that hazardous substances will be totally destroyed, detoxified, and/or removed to concentrations below cleanup levels throughout sites containing small volumes of hazardous substances;

(c) Ecology recognizes the need to use engineering controls, such as containment, for sites or portions of sites that contain large volumes of materials with relatively low levels of hazardous substances where treatment is impracticable;

(d) Ecology expects institutional controls, such as water use restrictions and deed restrictions, will be used to supplement engineering controls in order to prevent or limit exposure to hazardous substances and protect the integrity of the cleanup action;

(e) Ecology expects that cleanup actions will return useable ground waters to their beneficial uses wherever practicable, within a reasonable time frame. When restoration of ground water to beneficial uses is not practicable, ecology expects to require measures to minimize/prevent further migration, minimize ongoing releases, prevent exposure to contaminated water, and other appropriate measures (see WAC 173-340-360(7));

(f) In order to minimize the potential for migration of hazardous substances, ecology expects that active measures will be taken to prevent precipitation and subsequent runoff from coming into contact with contaminated soils and waste materials. When such measures are impracticable, such as during active cleanup, ecology expects that site runoff will be contained and treated prior to release from the site;

(g) Ecology expects that when hazardous substances remain on-site at concentrations which exceed cleanup levels, those hazardous substances will be consolidated to the

maximum extent practicable where needed to minimize the potential for direct contact and migration of hazardous substances;

(h) Ecology expects that, for facilities adjacent to a surface water body, active measures will be taken to prevent/minimize releases to surface water via surface runoff and ground water discharges. Ecology expects that dilution will not be the sole method for demonstrating compliance with cleanup standards; and

(i) Ecology expects that cleanup actions conducted under this chapter will not result in a significantly greater overall threat to human health and the environment than other alternatives.

(10) Draft cleanup action plan. The department shall issue a draft cleanup action plan for cleanup actions conducted by the department or conducted by a potentially liable person under an order or decree. The level of detail in the draft cleanup action plan shall be commensurate with the complexity of the site and proposed cleanup action.

(a) The draft cleanup action plan shall include the following:

(i) A general description of the proposed cleanup action including compliance monitoring;

(ii) A brief summary of other alternative cleanup actions evaluated in the state remedial investigation/feasibility study or comparable documents;

(iii) Site cleanup levels and points of compliance for each hazardous substance and for each media of concern;

(iv) The schedule for implementation of the cleanup action plan including, if known, restoration time frame;

(v) Required institutional controls and site use restrictions, if any, for the proposed cleanup action;

(vi) Justification for selecting a cleanup action that uses cleanup technologies that have a lower preference than higher representative cleanup technologies listed in subsection (4)(a) of this section;

(vii) Applicable state and federal laws for the proposed cleanup action, when these are known at this step in the cleanup process (this does not preclude subsequent identification of applicable state and federal laws);

(viii) A preliminary determination by the department that the proposed cleanup action will comply with subsections (2) and (3) of this section; and

(ix) Where the cleanup action involves on-site containment, specification of the types, levels, and amounts of hazardous substances remaining on site and the measures that will be utilized to prevent migration and contact with those substances.

(b) For routine actions the department may use an order or decree to fulfill the requirements of a cleanup action plan, provided that the information in (a) of this subsection is included therein. The scope of detail for the required information shall be commensurate with the complexity of the site and proposed cleanup action.

(11) Public participation. The department will provide public notice and opportunity for comment on the draft cleanup plan as described in WAC 173-340-600.

(12) Final plan. Upon completion of the public comment period the department, after review and consideration of the comments received, shall issue a final cleanup action plan and publish its availability in the site register and by other appropriate methods. If the department determines,

following the implementation of the preferred alternative, that the cleanup levels established in the cleanup action plan cannot be achieved, the department shall issue public notice of this determination.

(13) Federal cleanup sites. A record of decision or order or consent decree prepared under the Federal Cleanup Law that provides for a cleanup action may be used by the department to meet the requirements of this section provided:

- (a) The cleanup action meets the requirements in subsections (2) and (3) of this section;
- (b) The state has concurred with the cleanup action; and
- (c) An opportunity was provided for the public to comment on the cleanup action.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-360, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-360, filed 4/3/90, effective 5/4/90.]

PART IV—SITE CLEANUP AND MONITORING

WAC 173-340-400 Cleanup actions. Unless otherwise directed by the department, cleanup actions shall comply with this section except for emergencies or interim actions.

(1) Purpose. The purpose of this section is to ensure that the cleanup action is designed, constructed, and operated in a manner which is consistent with:

- (a) The cleanup action plan;
- (b) Accepted engineering practices; and
- (c) The requirements of WAC 173-340-360 (1) and (2).

(2) Administrative options. A cleanup action may be conducted under any of the procedures described in WAC 173-340-510.

(3) Public participation. During cleanup action implementation, public participation shall be accomplished in a manner consistent with the requirements of WAC 173-340-600.

(4) Plans describing the cleanup action. Design, construction, and operation of the cleanup action shall be consistent with the purposes of this section and shall consider relevant information provided by the state remedial investigation/feasibility study. For most cleanups, to ensure this is done it will be necessary to prepare the following engineering documents. The scope and level of detail in these documents may vary from site to site depending on the site specific conditions and nature and complexity of the proposed cleanup action. In some cases it may be appropriate to combine the information in these various documents into one report to avoid unnecessary duplication. Any document prepared in order to implement a cleanup may be used to satisfy these requirements provided they contain the required information. In addition, for facilities on the national priorities list the plans prepared for the cleanup action shall also comply with federal requirements.

(a) Engineering design report. The engineering design report shall include sufficient information for the development and review of construction plans and specifications. It shall document engineering concepts and design criteria used for design of the cleanup action. The following information shall be included in the engineering design report, as appropriate:

(i) Goals of the cleanup action including specific cleanup or performance requirements;

(ii) General information on the facility including a summary of information in the state remedial investigation/feasibility study updated as necessary to reflect the current conditions;

(iii) Identification of who will own, operate, and maintain the cleanup action during and following construction;

(iv) Facility maps showing existing site conditions and proposed location of the cleanup action;

(v) Characteristics, quantity, and location of materials to be treated or otherwise managed, including ground water containing hazardous substances;

(vi) A schedule for final design and construction;

(vii) A description and conceptual plan of the actions, treatment units, facilities, and processes required to implement the cleanup action including flow diagrams;

(viii) Engineering justification for design and operation parameters, including: Design criteria, assumptions and calculations for all components of the cleanup action; expected treatment, destruction, immobilization, or containment efficiencies and documentation on how that degree of effectiveness is determined; demonstration that the cleanup action will achieve compliance with cleanup requirements by citing pilot or treatability test data, results from similar operations, or scientific evidence from the literature;

(ix) Design features for control of hazardous materials spills and accidental discharge (for example, containment structures, leak detection devices, run-on and run-off controls);

(x) Design features to assure long-term safety of workers and local residences (for example, hazardous substances monitoring devices, pressure valves, bypass systems, safety cutoffs);

(xi) A discussion of methods for management or disposal of any treatment residual and other waste materials containing hazardous substances generated as a result of the cleanup action;

(xii) Facility specific characteristics which may affect design, construction, or operation of the selected cleanup action, including: Relationship of the proposed cleanup action to existing facility operations; probability of flooding, probability of seismic activity, temperature extremes, local planning and development issues; soil characteristics and ground water system characteristics;

(xiii) A general description of construction testing which will be used to demonstrate adequate quality control;

(xiv) A general description of compliance monitoring which will be performed during and after construction to meet the requirements of WAC 173-340-410;

(xv) A general description of construction procedures proposed to assure that the safety and health requirements of WAC 173-340-810 are met;

(xvi) Any information not provided in the state remedial investigation/feasibility study needed to fulfill the applicable requirements of the State Environmental Policy Act (chapter 43.21C RCW);

(xvii) Any additional information needed to address the applicable state, federal and local requirements; and property access issues which need to be resolved to implement the cleanup action; and

(xviii) Other information as required by the department.

(b) Construction plans and specifications. Construction plans and specifications shall detail the cleanup actions to be performed. The plans and specifications shall be prepared in conformance with currently accepted engineering practices and techniques and shall include the following information as applicable:

(i) A general description of the work to be performed and a summary of the engineering design criteria from the engineering design report;

(ii) General location map and existing facility conditions map;

(iii) A copy of any permits and approvals;

(iv) Detailed plans and procedural material specifications necessary for construction of the cleanup action;

(v) Specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods;

(vi) Startup procedures and criteria to demonstrate the cleanup action is prepared for routine operation;

(vii) Additional information to address applicable state, federal, and local requirements;

(viii) A compliance monitoring plan prepared under WAC 173-340-410 describing monitoring to be performed during construction, and a sampling and analysis plan meeting the requirements of WAC 173-340-820;

(ix) Provisions to assure safety and health requirements of WAC 173-340-810 are met; and

(x) Other information as required by the department.

(c) Operation and maintenance plan. An operation and maintenance plan which presents technical guidance and regulatory requirements to assure effective operations under both normal and emergency conditions. The operation and maintenance plan shall include the following elements, as appropriate:

(i) Name and phone number of the responsible individuals;

(ii) Process description and operating principles;

(iii) Design criteria and operating parameters and limits;

(iv) General operating procedures, including startup, normal operations, operation at less than design loading, shutdown, and emergency or contingency procedures;

(v) A discussion of the detailed operation of individual treatment units, including a description of various controls, recommended operating parameters, safety features, and any other relevant information;

(vi) Procedures and sample forms for collection and management of operating and maintenance records;

(vii) Spare part inventory, addresses of suppliers of spare parts, equipment warranties, and appropriate equipment catalogues;

(viii) Equipment maintenance schedules incorporating manufacturers recommendations;

(ix) Contingency procedures for spills, releases, and personnel accidents;

(x) A compliance monitoring plan prepared under WAC 173-340-410 describing monitoring to be performed during operation and maintenance, and a sampling and analysis plan meeting the requirements of WAC 173-340-820;

(xi) Description of procedures which assure that the safety and health requirements of WAC 173-340-810 are

met, including specification of contaminant action levels and contingency plans, as appropriate;

(xii) Procedures for the maintenance of the facility after completion of the cleanup action, including provisions for removal of unneeded appurtenances, and the maintenance of covers, caps, containment structures, and monitoring devices; and

(xiii) Other information as required by the department.

(5) In appropriate cases the department may authorize departure from the requirements of subsection (4) of this section, and may allow information to be incorporated by reference to avoid unnecessary duplication.

(6) Permits and approvals, if required for construction or to otherwise implement the cleanup action shall be identified and where possible, resolved prior to, or during, the design phase to avoid delays during construction and implementation of the cleanup action.

(7) Construction. Construction shall be conducted in accordance with the construction plans and specifications, and other plans prepared under this section.

(a) Department inspections.

(i) The department may perform site inspections and construction oversight. The department may require that construction activities be halted at a site if construction or any supporting activities: Are not consistent with approved plans; are not in compliance with environmental regulations or accepted construction procedures; or endanger human health or the environment.

(ii) The department may conduct a formal inspection of the site following construction and an initial operational shake down period to ensure satisfactory completion of the construction. If such an inspection is performed, the construction documentation report and engineer's opinion specified in (b)(ii) of this subsection shall be available prior to the inspection.

(b) Construction documentation.

(i) All aspects of construction shall be performed under the supervision of a professional engineer registered in the state of Washington or a qualified technician under the direct supervision of a professional engineer registered in the state of Washington. During construction detailed records shall be kept of all aspects of the work performed including construction techniques and materials used, items installed, and tests and measurements performed.

(ii) As built reports. At the completion of construction the engineer responsible for the supervision of construction shall prepare as built drawings and a report documenting all aspects of facility construction. The report shall also contain an opinion from the engineer, based on testing results and inspections, as to whether the cleanup action has been constructed in substantial compliance with the plans and specifications and related documents.

(iii) In appropriate cases the department may authorize departure from the requirements of this subsection and may allow information to be incorporated by reference to avoid unnecessary duplication.

(c) Plan modifications. Changes in the design or construction of the cleanup action performed under an order or decree shall be approved by the department.

(8) If the department determines that any plans prepared under this section represent a substantial change from the cleanup action plan, the department shall provide public

notice and opportunity for comment under WAC 173-340-600.

(9) Plans or reports prepared under this section and under an order or decree shall be submitted to the department for review and approval.

(10) Waste management. Any waste contaminated by a hazardous substance generated during cleanup activities and requiring off-site treatment, storage or disposal, shall be transported to a facility permitted or approved to handle these wastes.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-400, filed 4/3/90, effective 5/4/90.]

WAC 173-340-410 Compliance monitoring requirements. (1) Purpose. The purposes of compliance monitoring and evaluation of the data are to:

(a) Protection monitoring. Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or cleanup action as described in the safety and health plan;

(b) Performance monitoring. Confirm that the interim action or cleanup action has attained cleanup standards and, if appropriate, other performance standards;

(c) Confirmational monitoring. Confirm the long-term effectiveness of the interim action or cleanup action once cleanup standards and, if appropriate, other performance standards have been attained.

(2) General requirements. Compliance monitoring shall be required for all cleanup actions, and may be required for interim and emergency actions, performed under this chapter.

(3) Compliance monitoring plans. A compliance monitoring plan shall be prepared for all cleanup actions and may be required for interim and emergency actions unless otherwise directed by the department. Plans prepared under this section and under an order or decree shall be submitted to the department for review and approval. Protection monitoring may be addressed in the safety and health plan. Performance and confirmational monitoring may be addressed in separate plans and may be combined with other plans or submittals, such as those in WAC 173-340-400 and 173-340-820.

Compliance monitoring plans shall be specific for the media being tested and shall contain the following elements:

(a) A sampling and analysis plan meeting the requirements of WAC 173-340-820 which shall explain in the statement of objectives how the purposes of WAC 173-340-410(2) are met;

(b) Data analysis and evaluation procedures used, to demonstrate and confirm compliance and justification for these procedures, including:

(i) A description of any statistical method to be employed; or

(ii) If sufficient data is not available prior to writing the plan to propose a reliable statistical method to demonstrate and confirm compliance, a contingency plan proposing one or more reliable statistical methods to demonstrate and confirm compliance, and the conditions under which the methods would be used at the facility; and

(c) Other information as required by the department.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-410, filed 4/3/90, effective 5/4/90.]

WAC 173-340-420 Periodic review. (1) If the department selects or approves a cleanup action that results in hazardous substances remaining at a site at concentrations which exceed method A or method B cleanup levels established under WAC 173-340-700 through 173-340-760 or if conditional points of compliance have been established, the department shall review the cleanup action no less frequently than every five years after the initiation of such cleanup action to assure that human health and the environment are being protected.

(2) When evaluating whether human health and the environment are being protected, the factors the department shall consider shall include:

(a) The effectiveness of ongoing or completed cleanup actions;

(b) New scientific information for individual hazardous substances or mixtures present at the site;

(c) New applicable state and federal laws for hazardous substances present at the site;

(d) Current and projected site uses;

(e) The availability and practicability of higher preference technologies as defined in WAC 173-340-360(4); and

(f) The availability of improved analytical techniques to evaluate compliance with cleanup levels.

(3) The department shall publish a notice of all periodic reviews in the site register and provide an opportunity for public comment.

(4) When the department determines that substantial changes in the cleanup action are necessary to protect human health and the environment at the site, a revised cleanup action plan shall be prepared. The department shall provide opportunities for public review and comment on the draft cleanup action plan consistent with the requirements in WAC 173-340-360 and 173-340-600.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-420, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-420, filed 4/3/90, effective 5/4/90.]

WAC 173-340-430 Interim actions. (1) Purpose. The purpose of this section is to describe how certain interim actions can occur prior to the selection and completion of a cleanup action. An interim action is:

(a) An action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a facility; or

(b) An action that corrects a problem that may become substantially worse or cost substantially more to address if the action is delayed; or

(c) An action needed to provide for completion of a site hazard assessment, state remedial investigation/feasibility study or design of a cleanup action.

Example. A site is identified where oil-based wood preservative has leaked from a tank and is puddled on the ground and is floating on the water table. Run-off from adjacent properties passes through the site. Neighborhood children have been seen on the site. In this case, several interim actions would be appropriate prior to fully defining the extent of the distribution of hazardous substances at the

site and selecting a cleanup action. These interim actions might consist of removing the tank, fencing the site, rerouting run-off, and removing the product puddled on the ground and floating on the water table. Further studies would then determine what additional soil and ground water cleanup would be needed.

(2) General requirements.

(a) Interim actions may:

(i) Achieve cleanup standards for a portion of the site;

or

(ii) Provide a partial cleanup, that is, clean up hazardous substances from all or part of the site, but not achieve cleanup standards; or

(iii) Provide a partial cleanup of hazardous substances and not achieve cleanup standards, but provide information on how to achieve cleanup standards for a cleanup. For example, demonstration of an unproven cleanup method.

(b) Relationship to the cleanup action:

(i) If the cleanup action is known, the interim action shall be consistent with the cleanup action.

(ii) If the cleanup action is not known, the interim action shall not foreclose reasonable alternatives for the cleanup action. This is not meant to preclude the destruction or removal of hazardous substances.

(3) Timing.

(a) Interim actions may occur anytime during the cleanup process. Interim actions shall not be used to delay or supplant the cleanup process. An interim action may be done prior to or in conjunction with a site hazard assessment and hazard ranking. However, sufficient technical information must be available regarding the facility to ensure the interim action is appropriate and warranted.

(b) Interim actions shall be followed by additional remedial actions unless compliance with cleanup standards has been confirmed at the site.

(c) The department shall set appropriate deadlines commensurate with the actions taken for completion of the interim action.

(4) Administrative options. Except as provided in WAC 173-340-530, interim cleanup actions may be conducted under any of the procedures described in WAC 173-340-510.

(5) Public participation will be accomplished in a manner consistent with WAC 173-340-600.

(6) Submittal requirements. Unless otherwise directed by the department and except for underground storage tank releases being addressed under WAC 173-340-450 and emergencies, a report shall be prepared prior to conducting an interim action. Reports prepared under an order or decree shall be submitted to the department for review and approval. Reports shall be of a scope and detail commensurate with the work performed and site-specific characteristics, and shall include, as appropriate:

(a) A description of the interim action and how it will meet the criteria identified in subsections (1) and (2) of this section;

(b) Information from the applicable subsections of the remedial investigation/feasibility study of WAC 173-340-350, including at a minimum;

(i) A description of existing site conditions and a summary of all available data related to the interim action;

(ii) Alternative interim actions considered and an explanation why the proposed alternative was selected;

(c) Information from the applicable subsections of the design and construction requirements of WAC 173-340-400;

(d) A compliance monitoring plan meeting the applicable requirements of WAC 173-340-410;

(e) A safety and health plan meeting the requirements of WAC 173-340-810; and

(f) A sampling and analysis plan meeting the requirements of WAC 173-340-820.

(7) Construction. Construction of the interim action shall be in conformance with WAC 173-340-400(7).

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-430, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-430, filed 4/3/90, effective 5/4/90.]

WAC 173-340-440 Institutional controls. (1)

Purpose. Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or cleanup action or result in exposure to hazardous substances at a site. Such measures shall be required to assure both the continued protection of human health and the environment and the integrity of an interim action or cleanup action in the following circumstances:

(a) Where a cleanup action results in residual concentrations of hazardous substances which exceed method A or method B cleanup levels, as applicable, established under WAC 173-340-700 through 173-340-760; or

(b) If conditional points of compliance have been established; or

(c) When the department determines such controls are required to assure the continued protection of human health and the environment or the integrity of the cleanup action.

(2) Institutional controls shall not be used as a substitute for cleanup actions that would otherwise be technically possible.

(3) Institutional controls include:

(a) Physical measures, such as fences and signs, to limit activities that may interfere with the cleanup action or result in exposure to hazardous substances at the site; and

(b) Legal and administrative mechanisms used to ensure that such measures are maintained over time.

(4) Format.

(a) For properties owned by the potentially liable parties, appropriate institutional controls shall be described in a restrictive covenant on the property executed by the property owner and recorded with the register of deeds for the county in which the site is located. This restrictive covenant shall run with the land, and be binding on the owner's successors and assigns.

(b) For other properties containing hazardous substances, the department may approve cleanup actions which include restrictive covenants or other legal and/or administrative mechanisms.

(5) Where required, the restrictive covenant shall:

(a) Prohibit activities on the site that may interfere with a cleanup action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the cleanup action and continued protection of human health and the environment;

(b) Prohibit activities that may result in the release of a hazardous substance which was contained as a part of the cleanup action;

(c) Require notice to the department of the owner's intent to convey any interest in the site. No conveyance of title, easement, lease, or other interest in the property shall be consummated by the property owner without adequate and complete provision for the continued operation, maintenance and monitoring of the cleanup action, and for continued compliance with this subsection;

(d) Require notice and approval by the department of any proposal to use the site in a manner which is inconsistent with the restrictive covenant. If the department, after public notice and comment approves the proposed change, the restrictive covenant shall be amended to reflect the change.

(e) Grant the department and its designated representatives the right to enter the property at reasonable times for the purpose of evaluating compliance with the cleanup action plan and other required plans, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records.

(6) Financial assurances. The department may require the potentially liable person to provide financial assurances, through a trust fund or equivalent financial mechanism approved by the department, sufficient to cover all costs of operation and maintenance including compliance monitoring and undertaking appropriate corrective measures. It is the department's expectation that such assurances will be required wherever the cleanup action includes containment and in other appropriate circumstances.

(7) Removal of restrictions. If the residual hazardous substances remaining at the site are subsequently reduced in concentration such that the method A or method B cleanup levels, as applicable, established under WAC 173-340-700 through 173-340-760 are met without a conditional point of compliance, then the owner may request that the restrictive covenant or other restrictions be eliminated. The restrictive covenant or other restrictions shall be removed, if the department, after public notice and opportunity for comment, concurs.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-440, filed 1/28/91, effective 2/28/91.]

WAC 173-340-450 Releases from underground storage tanks. (1) Purpose. The purpose of this section is to set forth the requirements for addressing releases which may pose a threat to human health or the environment from USTs defined under chapter 90.76 RCW and rules adopted therein, including heating oil USTs of greater than 1,100 gallons capacity.

(a) Releases from USTs exempted under chapter 90.76 RCW and rules adopted therein are still subject to all other requirements of this chapter.

(b) Unless the department requires otherwise, UST owners and UST operators shall comply with the requirements in this section after confirmation of an UST release which may pose a threat to human health or the environment.

(2) Initial response. Within twenty-four hours of the UST release, the UST owner or the UST operator shall perform the following actions:

(a) Report the UST release to the department and other authorities with jurisdiction, in accordance with rules adopted under chapter 90.76 RCW and any other applicable law;

(b) Remove as much of the hazardous substance from the UST as is possible and necessary to prevent further release to the environment;

(c) Eliminate or reduce any fire, explosion or vapor hazards in such a way as to minimize any release of hazardous substances to surface water and ground water; and

(d) Visually inspect any aboveground releases or exposed belowground releases and prevent the hazardous substance from spreading into surrounding soils, ground water and surface water.

(3) Interim actions.

(a) As soon as possible but no later than twenty days following confirmation of an UST release, the UST owner or the UST operator shall perform the following interim actions:

(i) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product which may have migrated from the UST into structures in the vicinity of the site, such as sewers or basements;

(ii) Reduce the threat to human health and the environment posed by contaminated soils that are excavated or discovered as a result of investigation or cleanup activities. Treatment, storage and disposal of soils must be carried out in compliance with all applicable federal, state and local requirements;

(iii) Test for hazardous substances in the environment where they are most likely to be present. Such testing shall be done in accordance with a sampling and analysis plan prepared under WAC 173-340-820. The sample types, sample locations, and measurement methods shall be based on the nature of the stored substance, type of subsurface soils, depth to ground water and other factors as appropriate for identifying the presence and source of the release. If contaminated soil is found in contact with the ground water or soil contamination appears to extend below the lowest soil sampling depth, then testing shall include the installation of ground water monitoring wells to test for the presence of possible ground water contamination. Information gathered for the site check or closure site assessment conducted pursuant to rules adopted under chapter 90.76 RCW, which sufficiently characterizes the releases at the site, may be substituted for the testing required under this paragraph;

(iv) The testing performed under (a)(iii) of this subsection shall include, at a minimum, the following:

(A) Benzene, toluene, ethylbenzene, xylene, lead, and total petroleum hydrocarbons where leaded gasoline may be present;

(B) Benzene, toluene, ethylbenzene, xylene and total petroleum hydrocarbons where unleaded gasoline may be present;

(C) Total petroleum hydrocarbons and other appropriate indicator hazardous substances where any petroleum product other than gasoline may be present;

(D) The hazardous substance stored and any likely decomposition by-products where a hazardous substance other than petroleum may be present; and

- (E) Any other tests required by the department; and
- (v) Investigate for the presence of free product.

(b) Free product removal. At sites where investigations indicate free product is present, the UST owner or the UST operator shall conduct, as soon as possible after discovery, an interim action to remove the free product while continuing, as necessary, any other actions required under this section. To accomplish this the UST owner or UST operator shall:

(i) Conduct free product removal to the maximum extent practicable and in a manner which minimizes the spread of hazardous substances, by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. The objective of free product removal system must be, at a minimum, to stop the free product migration;

(ii) Properly treat, discharge, or dispose of recovery by-products in compliance with all applicable local, state, and federal regulations and permits; and

(iii) Handle all flammable products safely to prevent fires and explosions.

(4) Reporting requirements. The following reports are required to be submitted to the department:

(a) Status report. Within twenty days after an UST release, the UST owner or UST operator shall submit a status report to the department. The status report shall identify if known, the types, amounts, and locations of hazardous substances released, how the release occurred, evidence confirming the release, actions taken under subsections (2) and (3) of this section, any planned remedial actions, and any results of work done up to the time of the report. This report may be provided verbally to the department.

(b) Site characterization reports. Within ninety days after release confirmation, unless directed to do otherwise by the department, the UST owner or UST operator shall submit a report to the department about the site and nature of the release. This report shall be submitted to the department in writing and may be combined with the twenty-day status report, if the information required is available at that time. The site characterization report shall include, at a minimum, the following information:

(i) The information required for the status report under (a) of this subsection;

(ii) A site conditions map indicating approximate boundaries of the property, all areas where hazardous substances are known or suspected to be located, and sampling locations. This map may consist of a sketch of the site at a scale sufficient to illustrate this information;

(iii) Available data regarding surrounding populations, surface and ground water quality, use and approximate location of wells potentially affected by the release, subsurface soil conditions, depth to ground water, direction of ground water flow, proximity to and potential for affecting surface water, locations of sewers and other potential conduits for vapor or free product migration, surrounding land use, and proximity to sensitive environments;

(iv) Results of tests for hazardous substances performed under subsection (3)(a)(iii) and (iv) of this section;

(v) Results of the free product investigation required under subsection (3)(a)(v) of this section;

(vi) Results of all completed site investigations, interim actions and cleanup actions and a description of any remain-

ing investigations, cleanup actions and compliance monitoring which are planned or underway; and

(vii) Information on the free product removal efforts at sites where investigations indicate free product is present. This shall include, at a minimum, the following information:

(A) Name of the person responsible for implementing the free product removal measures;

(B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes and excavations;

(C) The type of free product recovery system used;

(D) The location of any on-site or off-site discharge during the recovery operation;

(E) The type of treatment applied to, and the effluent quality expected from, any discharge;

(F) The steps taken and planned to obtain necessary permits for any discharge;

(G) Disposition of recovered free product; and

(viii) Any other information required by the department.

(5) State remedial investigation and feasibility study.

(a) The scope of a state remedial investigation and feasibility study under this chapter will depend on the informational needs at a specific site and will vary from site to site to avoid the collection of unnecessary information. For sites with UST releases, a state remedial investigation and feasibility study must at a minimum address the elements in WAC 173-340-350 (6)(a), (b), (c)(ii), (c)(iii), (c)(v) through (c)(vii) and (e). The department may require additional information when needed to select a cleanup action. UST owners and operators shall conduct a state remedial investigation and feasibility study for sites where the following conditions exist:

(i) There is evidence that the release has caused hazardous substances to be present in the ground water in excess of the ground water standards promulgated under chapter 90.48 RCW or cleanup levels in WAC 173-340-720 (Table 1);

(ii) Free product is found; or

(iii) Where otherwise required by the department.

(b) UST owners and UST operators shall submit the information collected for the state remedial investigation/feasibility study to the department as soon as practicable. The information may be included with other reports submitted under this section.

(6) If the department determines, based on the results of the remedial investigation/feasibility study or other information, that additional remedial action is required, the department may require the UST owner or the UST operator to submit engineering documents as described in WAC 173-340-400.

(7) Unless directed to do otherwise by the department, cleanup actions performed by UST owners or UST operators shall comply with cleanup standards, WAC 173-340-700 through 173-340-750 and the requirements for the selection of cleanup actions, WAC 173-340-360.

(8) Independent cleanup actions. In addition to work performed under subsections (2) through (5), and (7) of this section, UST owners or UST operators performing independent cleanup actions shall:

(a) Notify the department of their intention to begin cleanup. This can be included with other reports under this section;

(b) Comply with any conditions imposed by the department to assure adequate protection of human health and the environment; and

(c) Within ninety days of completion of the cleanup action, submit the results of all investigations, interim and cleanup actions and compliance monitoring not previously submitted to the department.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-450, filed 1/28/91, effective 2/28/91.]

PART V—ADMINISTRATIVE PROCEDURES FOR REMEDIAL ACTIONS

WAC 173-340-500 Determination of status as a potentially liable person. (1) Status letter. The department shall issue a potentially liable person status letter to any person it believes to be potentially liable as provided for in RCW 70.105D.020(8), unless an emergency requires otherwise. Persons will be notified when the department has credible evidence of their potential liability under RCW 70.105D.040 and when the department is ready to proceed with remedial action except for emergencies and initial investigations. The status letter shall be sent by certified mail, return receipt requested, or by personal service.

(2) Contents of letter. The status letter shall provide:

(a) The name of the person the department believes to be potentially liable;

(b) A general description of the location of the facility;

(c) The basis for the department's belief that the person has a relationship to the facility;

(d) The basis for the department's belief that a release or threatened release of a hazardous substance has occurred at the facility and that the release or threatened release poses a threat to human health or the environment;

(e) An indication of the department's intentions regarding enforcement or other actions at the facility; and

(f) The names of other persons to whom the department has sent a status letter.

(3) Opportunity to comment. Any comments shall be submitted in writing to the department within thirty days from the date of receipt by the potentially liable person of the status letter unless the department provides an extension.

(4) Determination of status. If after reviewing any comments submitted, the department concludes that credible evidence supports a finding of potential liability, then the department shall issue a determination of potentially liable person status.

(5) Voluntary waiver. Persons may accept status as a potentially liable person at any time through a voluntary waiver of their right to notice and comment.

(6) Additional potentially liable persons. The department reserves the right to notify additional potentially liable persons at any time, and as resources permit, will facilitate potentially liable persons' efforts to identify additional potentially liable persons. The department shall notify in writing, all persons who previously received a status letter for the facility whenever additional status letters have been sent.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-500, filed 4/3/90, effective 5/4/90.]

WAC 173-340-510 Administrative options for remedial actions. (1) Policy. It is the responsibility of each and every liable person to conduct remedial action so that sites are cleaned up well and expeditiously where a release or threatened release of a hazardous substance requires remedial action. Potentially liable persons are encouraged to initiate discussions and negotiations with the department and the office of the attorney general which may lead to an agreement on the remedial action to be conducted with the state of Washington. The department may provide informal advice and assistance on the development of proposals for remedial action, as provided by WAC 173-340-130. Any approval by the department or the state of remedial action shall occur by one of the means described in subsections (2) and (3) of this section.

(2) Actions initiated by the potentially liable person. Potentially liable persons may initiate a remedial action, as follows:

(a) A person may initiate negotiations for a consent decree by submitting a letter under WAC 173-340-520(1).

(b) A person may request an agreed order by submitting a letter under WAC 173-340-530.

(3) Action initiated by the department. The department may initiate remedial action by:

(a) Issuing a letter inviting negotiations on a consent decree under WAC 173-340-520(2); or

(b) Issuing an enforcement order under WAC 173-340-540.

(4) Department remedial action. Nothing in this chapter shall preclude the department from taking appropriate remedial action on its own at any time. Except for emergency actions and initial investigations, reasonable effort will be made to notify potentially liable persons prior to the department taking remedial actions for which the recovery of public funds can be sought under RCW 70.105D.050(3).

(5) Independent remedial action. Nothing in this chapter shall preclude potentially liable persons from taking independent remedial action without oversight or approval from the department at sites not in discussions or negotiations for, or under, an order or decree. A potentially liable person may not take independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree unless:

(a) Such action does not foreclose or preempt the remedial actions under discussion or negotiations and such action does not foreclose the selection of cleanup action; or

(b) If the potentially liable person has provided reasonable notice to the department and the department does not object to such action.

The department will use the appropriate requirements contained herein to evaluate the adequacy of any independent remedial action performed. Persons performing independent remedial actions do so at their own risk and may be required to take additional remedial actions if the department deems such actions necessary. In such circumstances, the department reserves all of its rights to take actions authorized by law.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-510, filed 4/3/90, effective 5/4/90.]

WAC 173-340-520 Consent decrees. (1) Initiated by potentially liable persons. To request a consent decree a person shall submit a letter to the department and office of the attorney general via certified mail, return receipt requested, or by personal delivery.

(a) Request. The letter shall describe, based on available information:

(i) The proposed remedial action, including the schedule for the work;

(ii) Information which demonstrates that the settlement will lead to a more expeditious cleanup, be consistent with cleanup standards if the remedial action is a cleanup action, and be consistent with any previous orders;

(iii) The facility, including location and boundaries;

(iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;

(v) A summary of the relevant historical use or conditions at the facility;

(vi) The date on which the potentially liable person will be ready to submit a detailed proposal;

(vii) Any special scheduling considerations for implementing the remedial actions;

(viii) Names of other persons who the person has reason to believe may be potentially liable persons at the facility; and

(ix) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include the elements listed in WAC 173-340-600(8).

(b) The letter may include:

(i) A waiver of the procedural requirements of WAC 173-340-500 and acceptance, for purposes of settlement, of potentially liable person status.

(ii) The contents of detailed proposal under (f) of this subsection.

(c) Recognizing that the steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a state remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, if not already done by the department, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(e) Response. The department shall respond to the request within sixty days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. This determination will be based in part on a preliminary finding by the department that any resulting consent decree would be in accordance with RCW 70.105D.040 (4)(a). The department may:

(i) Request additional information;

(ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or

(iii) Provide written reasons for denying the request.

(f) Contents of detailed proposal. The proposal shall contain:

(i) A proposed technical scope of work describing the remedial action to be conducted;

(ii) The data, studies, or any other information upon which the settlement proposal is based;

(iii) A statement describing the potentially liable person's ability to conduct or finance the remedial action as described in the proposed scope of work; and

(iv) A schedule for proposed negotiations and implementation of the proposed remedial actions.

(g) The department and the office of the attorney general shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially liable person within sixty days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

(h) Time limits for negotiations. The department shall set the time period and starting date for negotiations. The department and the office of the attorney general shall then negotiate with those potentially liable persons who have received a notice under (e) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action. The length of the negotiation period specified by the department shall be no less than that proposed by the potentially liable person provided it does not conflict with the deadlines established under WAC 173-340-140.

(i) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW, but the duration of such stay shall not exceed one hundred twenty days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances.

The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(2) State-initiated procedures. When the department believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may initiate the procedures set forth in this subsection by sending a letter to the potentially liable person. The letter shall be sent via certified mail, return receipt requested, or by personal service.

(a) The letters may be delivered with potentially liable person status letters issued under WAC 173-340-500. The period for negotiation shall not commence until the thirty-day comment period required by WAC 173-340-500 has expired or the person expressly waives the procedural requirements of WAC 173-340-500.

(b) Contents of letter. The letter shall:

(i) Inform potentially liable person(s) that the department and the attorney general want to begin negotiations which may lead to a consent decree providing for remedial action;

(ii) Propose a draft consent decree and scope of work;

(iii) Define the negotiation process and schedule which shall not exceed ninety days;

(iv) Reference the department's finding under WAC 173-340-500;

(v) Request a written statement of the potentially liable person's willingness to proceed with the negotiation process defined in the letter; and

(vi) Request the names of other persons whom the person has reason to believe may be potentially liable persons at the facility.

(c) The letter may request the potentially liable person to respond, in writing, to the proposed draft consent decree and scope of work prior to initiating the negotiation phase.

(d) Negotiations. The department and the office of the attorney general shall negotiate with potentially liable persons who have indicated to the department a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially liable person receives the letter under (a) of this subsection unless modified by the department. Negotiations may address one or more phases of remedial action.

(e) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW, but the duration of the stay shall not exceed ninety days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances. The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(f) Deadline extensions. The department may at its discretion extend the deadline for negotiations established in (b) of this subsection, provided the extension does not exceed thirty days.

(3) Filing a decree. After satisfying the public comment and hearing requirements, the department shall determine whether the proposed settlement negotiated under subsection (1) or (2) of this section, is more expeditious and consistent with cleanup standards established and in compliance with any order issued by the department relevant to the remedial action. After making the requisite findings, the department shall forward the proposed consent decree with the findings required by RCW 70.105D.040(4), to the office of the attorney general. If agreed to by the office of the attorney general, the consent decree will be filed by that office with the appropriate superior court or the federal court having jurisdiction over the matter.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-520, filed 4/3/90, effective 5/4/90.]

WAC 173-340-530 Agreed orders. (1) Agreed orders may be used for all remedial actions except for nonroutine cleanup actions and interim actions that constitute a substantial majority of a cleanup action likely to be selected. Since an agreed order is not a settlement, an agreed order shall not provide for mixed funding, a covenant not to sue, or protection from claims for contribution. An agreed order means that the potentially liable person agrees to perform remedial actions at the site in accordance with the provisions of the agreed order and that the department will not take additional

enforcement action against the potentially liable person to require those remedial actions specified in the agreed order so long as the potentially liable person complies with the provisions of the order. The department may require additional remedial actions should it deem such actions necessary.

(2) Request.

(a) To request an agreed order, a person shall submit a letter to the department based on available information, describing:

(i) The proposed remedial action including a schedule for the work;

(ii) The facility, including location and boundaries;

(iii) The environmental problems to be addressed, including the releases at the facility and the potential impact of those releases to human health and the environment;

(iv) A summary of the relevant historical use or conditions at the facility;

(v) Names of other persons whom the person has reason to believe may be potentially liable persons at the facility; and

(vi) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include at a minimum the elements listed in WAC 173-340-600(8).

(b) The letter may include a waiver of the procedural requirements of WAC 173-340-500, and acceptance, for purposes of the agreed order, of potentially liable person status.

(c) Recognizing that the basic steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the step in the process for which the order is requested. For example, a request for an agreed order for a state remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(3) Response. The department shall respond to the request within sixty days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. The department may:

(a) Request additional information;

(b) Proceed with discussions, if the department believes it is in the public interest to do so; or

(c) Provide written reasons for denying the request.

(4) Discussions on the agreed order shall not exceed sixty days unless the department decides continued discussions are in the public interest.

Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW; however, the duration of such stay shall not exceed sixty days from the date discussions begin. Furthermore, the department can withdraw from discussions if it determines that:

(a) Reasonable progress is not being made toward an agreed order acceptable to the department; or

(b) The agreed order is inappropriate based on new information or changed circumstances.

The department may commence with enforcement action after notifying the potentially liable person in writing of its intent to withdraw from discussions.

(5) Focus of discussions. The focus of discussions for the agreed order shall ordinarily be the technical scope of work and work schedule. This subsection is not intended to preclude discussion on any item. It is intended to convey the expectation that the scope of work and work schedule will be the primary topics of discussion in formulating agreed orders.

(6) When issuing an agreed order, the department shall provide appropriate public participation opportunities under WAC 173-340-600. If the agreed order is for a routine cleanup action and any person requests judicial review, then the applicable consent decree procedures under WAC 173-340-520 will be initiated.

(7) Revisions. If the department and the potentially liable person signing the order agree to substantial changes in the order, the department shall provide appropriate additional public notice and opportunity to comment.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-530, filed 4/3/90, effective 5/4/90.]

WAC 173-340-540 Enforcement orders. The department may issue an enforcement order requiring remedial action after issuing a notice of potentially liable person status letter under WAC 173-340-500. In emergencies, the notice of potentially liable person status may occur concurrently with the issuance of the order. Unless an emergency requires otherwise, the issuance of a potentially liable person status letter shall precede or take place concurrently with the issuance of an enforcement order. Furthermore, except in an emergency, the department shall issue its determination under WAC 173-340-500(4) before an enforcement order can become effective. Failure to comply with an enforcement order may result in substantial liability for costs and penalties as specified in RCW 70.105D.050.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-540, filed 4/3/90, effective 5/4/90.]

WAC 173-340-550 Payment of remedial action costs. (1) Policy. RCW 70.105D.050(3) requires that the state seek to recover the amounts spent by the department for investigative and remedial actions and orders. It is the department's intention to recover those costs which are reasonably attributable to the site. Timing of cost recovery for individual sites will be considered on a case-by-case basis, however, the department may demand payment of costs as they are incurred.

(2) Costs. Each person who is liable under chapter 70.105D RCW is liable for remedial action costs incurred by the department. Remedial action costs are costs reasonably attributable to the site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. The department may send its request for payment to all potentially liable persons who are under an order or decree for the remedial action costs at the site. The department shall charge an hourly rate based on direct staff costs plus support costs. It is the department's

intention that the resulting hourly rate charged be less than the hourly rate typically charged by a comparably sized consulting firm providing similar services. The department shall use the following formula for computing hourly rates:

Hourly Rate = DSC + DSC(ASCM) + DSC(PSCM), where

DSC = Direct Staff Costs defined in (a) of this subsection,

ASCM = Agency Support Cost Multiplier defined in (b) of this subsection, and

PSCM = Program Support Cost Multiplier defined in (c) of this subsection

(a) Costs of direct activities are direct staff costs and other direct costs. Direct staff costs (DSC) are the costs of hours worked directly on a contaminated site, including salaries, retirement plan benefits, Social Security benefits, health care benefits, leave and holiday benefits, and other benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of department staff working on a contaminated site including, for example, costs of: Travel related to the site, printing and publishing of documents about the site, purchase or rental of equipment used for the site, and contracted work for the site.

(b) Agency support costs are the costs of facilities, communications, personnel, fiscal, and other state-wide and agency-wide services. The agency support cost multiplier (ASCM) used shall be the agency indirect rate approved by the agency's federal cognizant agency (which, as of July 1, 1993, was the United States Department of the Interior) for each fiscal year.

(c) Program support costs are the costs of administrative time spent by site managers and other staff who work directly on sites and a portion of the cost of management, clerical, policy, computer, financial, and other support provided by other program staff to site managers and other staff who work directly on sites. Other activities of the toxics cleanup program not included in program support costs include, for example, community relations not related to a specific site, policy development, and a portion of the cost of nonsite management, clerical, policy, computer, financial, and other support staff. The program support cost multiplier (PSCM) used shall be calculated by dividing actual program support costs by the direct staff costs of all hours charged to site related work. This multiplier shall be evaluated at least biennially and any changes published in at least two publications of the *Site Register*. The calculation and source documents used in any revision shall be audited by either the state auditor's office or a private accounting firm. Audit results shall be available for public review. This multiplier shall not exceed 1.0 (one).

(3) Request for payment. When the department requests payment of remedial action costs it shall provide an itemized statement documenting the costs incurred.

(4) Interest charges. A minimum of twelve percent interest shall accrue on all remedial action costs not paid within ninety days of the billing date, or within another longer time period designated by the department.

(5) Private rights of action. The purpose of this subsection is to facilitate private rights of action and minimize department staff involvement in these actions by providing guidance to potentially liable persons and the court

on what remedial actions the department would consider the substantial equivalent of a department-conducted or department-supervised remedial action. In determining substantial equivalence, the department anticipates the requirements in this section will be evaluated as a whole and that a claim would not be disallowed due to omissions that do not diminish the overall effectiveness of the remedial action. For the purposes of this section, the department would consider the following remedial actions to be the substantial equivalent of a department-conducted or department-supervised remedial action.

(a) A remedial action conducted by the department;

(b) A remedial action that has been or is being conducted under an order or decree and the remedial requirements of the order or decree have been satisfied for those portions of the remedial action for which the private right of action is being sought; or

(c) A remedial action that has been conducted as an independent remedial action that includes the following elements:

(i) Information on the site and remedial actions conducted has been reported to the department in accordance with WAC 173-340-300 and 173-340-450, as applicable;

(ii) The department has not objected to the remedial action being conducted or any such objection has been cured as determined by the court;

(iii) Except for emergency remedial actions, prior to conducting an interim action or cleanup action, reasonable steps have been taken to provide advance public notice. The notice may be combined with any notices under another law. These public notice procedures apply only to interim actions or cleanup actions conducted as independent remedial actions after the effective date of this section. For interim actions or cleanup actions conducted as independent remedial actions prior to the effective date of this section, the department recognizes little or no public notification typically occurred because there were no department-specified requirements other than the reporting requirements in this chapter. For these actions, this chapter contains no other specific public notice requirements or guidance, and the court will need to determine such requirements, if any, on a case-by-case basis. For independent remedial actions consisting of site investigations and studies, it is anticipated that public notice would not normally be done since often these early phases of work are to determine if a release even requires an interim action or cleanup action. For the purposes of this subsection only, unless the court determines other notice procedures are adequate for the site-specific circumstances, the following constitutes adequate public notice and supersedes the requirements in WAC 173-340-600:

(A) Except for emergency remedial actions, written notification has been mailed at least fifteen days prior to beginning construction of the interim action or cleanup action to the last known address of the following persons: The department which shall publish a summary of the notice in the *Site Register*; the local jurisdictional health department/district; the town, city or county with land use jurisdiction; the land owners identified by the tax assessor at the time the action is commenced for that portion of the facility where the interim action or cleanup action is being conducted; and persons potentially liable under RCW 70.105D.040 known to the person conducting the interim action or

cleanup action. In identifying other potentially liable persons who are to be noticed under this provision, the person doing the remedial action need only make a reasonable effort to review information currently readily available. Where the interim action or cleanup action is complex, notification prior to beginning detailed design is recommended but not required. For emergency remedial actions, written notice should be provided as soon as practicable;

(B) The notice includes: A brief statement describing the releases being remedied and the interim actions or cleanup actions expected to be conducted; the schedule for these interim actions or cleanup actions; and, for persons potentially liable under RCW 70.105D.040 known to the person conducting the interim actions or cleanup actions, a statement that they could be held liable for the costs of remedial actions being conducted; and

(C) Posting a sign at the site at a location visible to the general public indicating what interim actions or cleanup actions are being conducted and identifying a person to contact for more information. Except for emergency remedial actions this sign should be posted not later than the beginning of construction of any interim action or cleanup action and should remain posted for the duration of the construction. For emergency remedial actions posting of a sign should be done as soon as practicable;

(iv) The remedial actions have been conducted substantially equivalent with the technical standards and evaluation criteria contained in the following sections, where applicable. Where documents are required by the following sections, the documents prepared need not be the same in title or format. Other documents can be used in place of the documents specified in these sections as long as sufficient information is included in the record to serve the same purpose. When using these sections to determine substantial equivalence it should be recognized that there are often many alternative methods for cleanup of a facility that would comply with these provisions. In applying these sections, reference should be made to the other applicable sections of this chapter, with particular attention to WAC 173-340-130 (Administrative principles), WAC 173-340-200 (Definitions) and WAC 173-340-210 (Usage):

(A) WAC 173-340-350 (State remedial investigation and feasibility study);

(B) WAC 173-340-360 (Selection of cleanup actions);

(C) WAC 173-340-400 (Cleanup actions);

(D) WAC 173-340-410 (Compliance monitoring requirements);

(E) WAC 173-340-430 (Interim actions);

(F) WAC 173-340-440 (Institutional controls);

(G) WAC 173-340-450 (Releases from underground storage tanks);

(H) WAC 173-340-700 through WAC 173-340-760 (Cleanup standards); and

(I) WAC 173-340-810 through WAC 173-340-850 (General provisions); and

(v) For facilities where hazardous substances have been disposed of as part of the remedial action, documentation is available indicating where these substances were disposed of and that this disposal was in compliance with applicable state and federal laws. It is not the intent of this provision to require extensive documentation. For example, if the remedial action results in solid wastes being transported off-

site for disposal, it would be sufficient to have records indicating the wastes have been disposed of at a permitted solid waste or hazardous waste landfill.

(6) Natural resource damages. Nothing in this section shall affect the authority of the department and the office of attorney general to recover natural resource damages.

(7) Independent remedial actions.

(a) The department has established a mechanism to recover the direct and support costs associated with the review and evaluation of independent remedial action reports submitted under WAC 173-340-300(4). This enables the department to evaluate independent cleanups and facilitates the return of property to productive use. Participation in this program is voluntary, and ecology will recover only the costs of review under the independent remedial action program from those persons requesting the department's review of an independent remedial action report. Ecology shall recover its costs of providing the review of independent remedial action reports, including:

(i) Providing a written determination regarding the adequacy of the remedial actions performed at a site;

(ii) Providing a written determination regarding the adequacy of the remedial actions performed at a site and removing sites or portions of sites from the hazardous sites list if the department has sufficient information to show that the independent remedial efforts are appropriate to characterize and address contamination at the site, as provided for in WAC 173-340-330 (4)(b); or

(iii) Providing a written determination describing the deficiencies with the report or remedial action conducted at the site.

(b) The mechanism used to recover ecology's costs shall be evaluated in June 1994, and, if necessary, adjusted. The mechanism used to recover ecology's costs of review shall be evaluated every other year thereafter.

(c) It is the department's policy, in conducting reviews under this subsection, to promote independent remedial actions by delisting sites or portions of sites whenever petitions and supporting documents show that the actions taken are appropriate to characterize and address the contamination at the site.

(8) Prepayment of costs. Persons may request the department's oversight of remedial actions through a prepayment agreement. The purpose of such an agreement is to enable department oversight of remedial actions at lower priority sites. The department shall make a determination that such an agreement is in the public interest. A prepayment agreement requires a person to pay the department's remedial action costs, in advance, allowing the department to increase staff for the unanticipated workload. Agreements may cover one or more facilities.

[Statutory Authority: RCW 70.105D.030 (1)(f), 70.105D.040(2) and SB 5404. 93-24-064, § 173-340-550, filed 11/24/93, effective 12/25/93. Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-550, filed 4/3/90, effective 5/4/90.]

WAC 173-340-560 Mixed funding. (1) Introduction. Under RCW 70.105D.070 (2)(d)(xi), the department may provide public funds from the state toxics control account to a potentially liable person for the purpose of assisting with the payment of remedial action costs regardless of when incurred. This assistance can be provided in the form of a

loan or a contribution, in cash or in kind. Any funding decision under this section is solely the responsibility of the director.

(2) Applicability and request.

(a) Mixed funding shall be provided only to potentially liable persons whom the department has found to be eligible and who have entered into a consent decree with the department under the requirements of this chapter.

(b) The consent decree shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the potentially liable person, costs to be borne by the state toxics control account and terms of the agreement. In the case of loans, the consent decree shall also define any terms and conditions under which the potentially liable person receiving mixed funding has agreed to reimburse the state toxics control account.

(c) The potentially liable person shall submit sufficient documentation to support its request for mixed funding.

(3) Eligibility and mixed funding criteria. The director shall make a determination, based upon specific criteria whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

(a) A substantially more expeditious or enhanced cleanup than would otherwise occur; and

(b) The prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either:

(i) Prevent or mitigate unfair economic hardship faced by the potentially liable person if the remedial action plan were to be implemented without public funding; or

(ii) Achieve greater fairness with respect to the payment of remedial action costs between the potentially liable person entering into a consent decree with the department and any nonsettling potentially liable persons.

(4) Funding decision. The department may have informal discussions on mixed funding. If a potentially liable person is found to be eligible for mixed funding, the director shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the director and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.

(5) The department may recover the amount of public funding spent on investigations and remedial actions from potentially liable persons who have not entered into a consent decree under this chapter. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial action costs paid by the department.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-560, filed 4/3/90, effective 5/4/90.]

PART VI—PUBLIC PARTICIPATION

WAC 173-340-600 Public notice and participation.

(1) Purpose. Public participation is an integral part of the department's responsibilities under the Model Toxics Control Act. The department's goal is to provide the public with timely information and meaningful opportunities for participation which are commensurate with each site. The depart-

ment will meet this goal through a public participation program that includes: The early planning and development of a site-specific public participation plan; the provision of public notices; a site register; public meetings or hearings; and the participation of regional citizens' advisory committees.

(2) Criteria. In order to promote effective and meaningful public participation, the department may determine that public participation opportunities in addition to those specifically required by chapter 70.105D RCW, or this chapter, are appropriate and should be provided. In making this determination, the department may consider:

(a) Known or potential risks to human health and the environment that could be avoided or reduced by providing information to the public;

(b) Public concerns about the facility;

(c) The need to contact the public in order to gather information about the facility;

(d) The extent to which the public's opportunity to affect subsequent departmental decisions at the facility may be limited or foreclosed in the future;

(e) The need to prevent disclosure of confidential, unverified, or enforcement-sensitive information;

(f) The routine nature of the contemplated remedial action; and

(g) Any other factors as determined by the department.

(3) Public notice. Whenever public notice is required by chapter 70.105D RCW, the department shall at a minimum provide or require notice as described in this section except as specified for the biennial report in WAC 173-340-340.

(a) Request. Notice shall be mailed to persons who have made a timely request. A request for notice is timely if received prior to or during the public comment period for the current phase of remedial action at the facility. However, the receipt of a request for notice shall not require the department to extend the comment period associated with the notice.

(b) Mail. Notice shall be mailed to persons who reside within the potentially affected vicinity of the proposed action. The potentially affected vicinity shall include all property adjoining the site and any other area that the department determines to be directly affected by the proposed action.

(c) Newspaper publication. Notice of the proposed action shall be published in the newspaper of largest circulation in the city or county of the proposed action, by one or more of the following methods: Display ad; legal notice; or any other appropriate format, as determined by the department.

(d) Other news media. Notice of the proposed action shall be mailed to any other news media which the department determines to be appropriate. The department may consider how a medium compares with the newspaper of largest circulation in terms of: Audience reached; timeliness; adequacy in conveying the particular information in the notice; cost; or other relevant factors.

(e) Comment periods. All public notices shall indicate the public comment period on the proposed action. Unless stated otherwise, comment periods shall be for thirty days at a minimum.

(f) Combining public comment requirements. Whenever reasonable, the department shall consolidate public notice and opportunities for public comment under this chapter with public notice and comment requirements under other laws and regulations.

(4) Public meetings. During any comment period announced by a public notice issued under this chapter, if ten or more persons request a public meeting on the subject of the public notice, the department shall hold a public meeting for the purpose of receiving comments.

(5) Additional methods. In addition to "public notice" required by chapter 70.105D RCW, or this chapter, the department may use any of the following methods to provide information to the public:

(a) Press releases;

(b) Fact sheets;

(c) Public meetings;

(d) Publications;

(e) Personal contact by department employees;

(f) Posting signs at the facility;

(g) Notice in the site register;

(h) Any other methods as determined by the department.

(6) Site register. The department shall regularly publish and maintain a site register, giving notice of the following:

(a) Determinations of no further action under WAC 173-340-320;

(b) Results of site hazard rankings;

(c) Availability of annual and biennial reports;

(d) Issuance of enforcement orders, agreed orders, or proposed consent decrees;

(e) Public meetings or hearings;

(f) Scoping notice of department-conducted state remedial investigation/feasibility study;

(g) Availability of state remedial investigation/feasibility study reports and draft and final cleanup plans;

(h) Change in site status or placing sites on or removing sites from the hazardous sites list under WAC 173-340-330;

(i) Availability of engineering design reports under WAC 173-340-400;

(j) Schedules developed under WAC 173-340-140;

(k) Reports of independent cleanup actions received under WAC 173-340-300;

(l) Commencement of negotiations or discussions under WAC 173-340-520 and 173-340-530;

(m) Deadline extensions or missed deadlines under WAC 173-340-140; and

(n) Any other notice that the department deems appropriate for inclusion.

(7) Evaluation. As part of requiring or conducting a remedial action at any facility, the department shall evaluate public participation needs at the facility, including an identification of the potentially affected vicinity for the remedial action.

(8) Public participation plans.

(a) Scope. The public participation plans required by this section are intended to encourage a coordinated and effective public involvement tailored to the public's needs at a particular facility. The scope of a plan shall be commensurate with the nature of the proposed remedial actions; the level of public concern; and the risks posed by the facility.

(b) Early planning encouraged. In order to develop an appropriate plan, the department or potentially liable person

(if submitting a plan to the department) should engage in an early planning process to assess the public participation needs at the facility. This process may include identifying and conferring with individuals, community groups, local governments, tribes, public agencies, or any other organizations that may have an interest in or knowledge of the facility.

(c) Plan development. The department shall develop the plan, or work with the potentially liable person to develop the plan. If a plan already exists for a facility, the department shall consider whether the existing plan is still appropriate or whether the plan should be amended. For example, a plan originally developed to address a state remedial investigation/feasibility study may need to be amended to address implementation phases.

(d) Plans required. As part of requiring or conducting a remedial action, except emergency actions, at any site that has been assigned a hazard ranking score, the department shall ensure that a public participation plan is developed and implemented. The department may also require the development of a public participation plan for facilities which have not been assigned a hazard ranking score as part of an agreed order or consent decree with a potentially liable person.

(e) Plan as part of order or decree. A potentially liable person will ordinarily be required to submit a proposed public participation plan as part of its request for an agreed order or a consent decree. If a plan already exists for the facility, the potentially liable person may either resubmit the existing plan with any proposed amendments or submit an entirely new proposed plan. The proposed plan may be revised during the course of discussions or negotiations on the agreed order or consent decree.

The final public participation plan may become part of the agreed order or consent decree.

(f) Contents. The public participation plan shall include the following:

(i) Applicable public notice requirements and how these will be met, including: When public notice will occur; the length of the comment periods accompanying each notice; the potentially affected vicinity and any other areas to be provided notice, to the extent known.

(ii) Information repositories. The plan should identify at least one location where the public can review information about the remedial action. Multiple locations may be appropriate.

(iii) Methods of identifying the public's concerns. Such methods may include: Interviews; questionnaires; meetings; contacts with community groups or other organizations which have an interest in the site; establishing citizen advisory groups for sites; or obtaining advice from the appropriate regional citizens' advisory committee.

(iv) Methods of addressing the public's concerns and conveying information to the public. These may include any of the methods listed in subsection (5) of this section.

(v) Coordination of public participation requirements. The plan should identify any public participation requirements of other applicable federal, state or local laws, and address how such requirements can be coordinated. For example, if Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) applies to the

proposed action, the plan should explain how CERCLA and this chapter's public comment periods will be coordinated.

(vi) Amendments to the plan. The plan should outline the process for amending the plan. Any amendments must be approved by the department.

(vii) Any other elements that the department determines to be appropriate for inclusion in the final public participation plan.

(g) Implementation. The department shall retain approval authority over the actions taken by a potentially liable person to implement the plan.

(9) Consent decrees. In addition to any other applicable public participation requirements, the following shall be required for consent decrees.

(a) A public participation plan which meets the requirements of subsection (8) of this section shall be developed when required by subsection (8)(d) of this section.

(b) Notice of negotiations. When the department decides to proceed with negotiations it shall place a notice in the site register advising the public that negotiations have commenced. This notice shall include the name of the facility, a general description of the subject of the order and the deadlines for negotiations.

(c) Notice of proposed decree. The department shall provide or require public notice of proposed consent decree. The notice may be combined with notice of other documents under this chapter, such as a cleanup action plan, or under other laws. The notice shall briefly:

(i) Identify and generally describe the facility;

(ii) Identify the person(s) who are parties to the consent decree;

(iii) Generally describe the remedial action proposed in the proposed consent decree;

(iv) Indicate the date, place, and time of the public hearing on the proposed consent decree; and

(v) Invite the public to comment at the public hearing or in writing. The public comment period shall run for at least thirty days from the date of the issuance of the notice.

(d) Public hearing. The department shall hold a public hearing on the proposed consent decree for the purpose of providing the public with an opportunity to comment.

(e) Revisions. If the state and the potentially liable person agree to substantial changes to the proposed consent decree, the department shall provide additional public notice and opportunity to comment.

(f) Extensions. The department shall publish in the next site register the extension of deadlines for designated high priority sites.

(10) Agreed orders. In addition to any other applicable public participation requirements, the following shall be required for agreed orders under WAC 173-340-530.

(a) Public participation plan. A plan meeting the requirements of subsection (8) of this section shall be developed when required by subsection (8)(d) of this section.

(b) Notice of discussions. When the department decides to proceed with discussions it shall place a notice in the site register advising the public that discussions have commenced. This notice shall include the name of the facility, a general description of the subject of the order and the deadlines for discussions.

(c) Notice of agreed orders. Public notice shall be provided by the department for any agreed order. For all

agreed orders, notice shall be mailed no later than three days after the issuance of the agreed order. For agreed orders covering a state remedial investigation/feasibility study, the comment period shall be at least thirty days and shall be completed before the agreed order becomes effective. For other agreed orders, the agreed order may be effective before the comment period is over, unless the department determines it is in the public interest to complete the public comment period prior to the effective date of the agreed order. The department may determine that it is in the public interest to provide public notice prior to the effective date of any agreed order or to hold a public meeting or hearing on the agreed order. This notice shall briefly:

- (i) Identify and generally describe the facility;
 - (ii) Identify the person(s) who are parties to the order;
 - (iii) Generally describe the remedial action proposed in the proposed order; and
 - (iv) Invite the public to comment on the proposed order.
- (d) Revisions. If the department and the potentially liable person agree to substantial changes to the proposed order, the department shall provide additional public notice and opportunity to comment.

(e) Extensions. The department shall publish in the next site register the extension of deadlines for designated high priority sites.

(11) Enforcement orders. In addition to any other applicable public participation requirements, the department shall provide public notice of all enforcement orders. Except in the case of emergencies, notice shall be mailed no later than three days after the date of the issuance of the order. In emergencies, notice shall be mailed no later than ten days after the issuance of the order.

- (a) Contents of notice. All notices shall briefly:
- (i) Identify and generally describe the facility;
 - (ii) Identify the person(s) who are parties to the order;
 - (iii) Generally describe the terms of the proposed order;
- and
- (iv) Invite the public to comment on the proposed order.
- (b) The department may amend the order on the basis of public comments. The department shall provide additional public notice and opportunity to comment if the order is substantially changed.

(12) State remedial investigation/feasibility study. In addition to any other applicable public participation requirements, the following shall be required during a state remedial investigation/feasibility study.

(a) Scoping. When the department elects to perform a state remedial investigation/feasibility study, public notice and an opportunity to comment on the scope of the state remedial investigation/feasibility study will be provided.

(b) Extensions. The department shall publish in the next site register the extension of deadlines for designated high priority sites.

(c) Report. The department shall provide or require public notice of state remedial investigation/feasibility study reports prepared under WAC 173-340-350. This public notice may be combined with public notice of the draft cleanup action plan. At a minimum, public notice shall briefly:

- (i) Describe the site and state remedial investigation/feasibility study results;

- (ii) If available, identify the department's selected cleanup action and provide an explanation for its selection;

- (iii) Invite public comment on the report. The public comment period shall extend for at least thirty days from the date of mailing of the notice.

(13) Selection of cleanup actions. In addition to any other applicable public participation requirements, the department shall:

(a) Provide a notice of availability of draft or final cleanup action plans and a brief description of the proposed or selected alternative in the site register;

(b) Provide public notice of the draft cleanup action plan. A notice of a draft cleanup plan may be combined with notice on the state remedial investigation/feasibility study. Notice of a draft cleanup action plan may be combined with notice on a draft consent decree or on an order. At a minimum, public notice shall briefly:

- (i) Describe the site;
- (ii) Identify the department's proposed cleanup action and provide an explanation for its selection;
- (iii) Invite public comment on the draft cleanup action plan. The public comment period shall run for at least thirty days from the date of issuance of the public notice.

(14) Cleanup action implementation. In addition to any other applicable public participation requirements, the following shall be required during cleanup action implementation.

(a) Public notice and opportunity to comment on any plans prepared under WAC 173-340-400 that represent a substantial change from the cleanup action plan.

(b) When the department conducts a cleanup action, public notice and an opportunity to comment shall be provided on the engineering design report and notice shall be given in the site register.

(15) Routine cleanup and interim actions. In addition to any other applicable public participation requirements, the following will be required for routine cleanup actions and interim actions.

(a) Public notice shall be provided for any proposed routine cleanup or interim actions under WAC 173-340-130 or 173-340-430. This public notice shall be combined with public notice of an order or settlement whenever practicable.

(b) At a minimum, public notice shall briefly:

- (i) Describe the site;
- (ii) Identify the proposed action;
- (iii) Identify the likely or planned schedule for the action;

- (iv) Reference any planning documents prepared for the action;

- (v) Identify department staff who may be contacted for further information; and

- (vi) Invite public comment on the routine cleanup or interim action.

The public comment period shall extend for at least thirty days from the date of the mailing of notice.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-600, filed 4/3/90, effective 5/4/90.]

WAC 173-340-610 Regional citizens' advisory committees. (1) The department shall establish regional citizens' advisory committees as part of a public participa-

tion program. The regional citizens' advisory committees are intended to promote meaningful and effective public involvement in the department's remedial action program under chapter 70.105D RCW. The committees will advise the department as to the concerns of citizens locally and regionally regarding the remedial actions within each committee's region, with emphasis on issues that affect the region as a whole, rather than site-specific concerns.

(2) Location. There shall be a regional citizens' advisory committee representing each geographic region of the state served by a regional office of the department.

(3) Membership. At any time, each committee shall have no fewer than five and no more than twelve members. The director shall, no later than July 1, 1990, appoint five members to each committee to represent citizens' interests in the region. These members shall serve three-year terms that may be renewed at the director's discretion. These members should represent citizen interests in the region.

(a) The director may appoint up to seven additional members to represent communities that may be affected by the remedial actions within each region. These members shall serve two-year terms that may be renewed at the director's discretion.

(b) At no time shall more than twenty-five percent of the membership of any committee consist of persons who are elected or appointed public officials or their representatives.

(c) The department shall advise the public as to whether any vacancies exist on the committees, and shall accept applications from interested citizens.

(d) The following persons shall not be eligible to serve on any committee:

(i) Persons whom the department has found are potentially liable persons under WAC 173-340-500 with regard to any facility that is currently the subject of department investigative, remedial or enforcement actions, not including compliance monitoring;

(ii) Agents or employees of such potentially liable persons as described in (d)(i) of this subsection; and

(iii) Agents or employees of the department.

(e) A member shall refrain from participating in a committee matter if that member for any reason cannot act fairly and in the public interest with regard to that matter.

(f) The director may dismiss a member for cause in accordance with the terms of the regional citizens' advisory committee charter.

(4) Meetings. The committees shall meet at least twice a year at the regional offices or elsewhere as agreed upon by a committee and the department. Appropriate department staff may attend these meetings. The department shall brief the committees on the program's major planned and ongoing activities for the year.

(a) The department and the committees may agree to additional meetings.

(b) Each committee will designate one of its members to serve as chair. The committee chairs shall meet every year with the program manager or his/her designee.

(c) All committee meetings shall be open to the public. The department shall inform the public of committee meetings.

(5) Resources to be allocated to the committees.

(a) The department shall determine, after consulting with the committees, the amount of staff time and other depart-

ment resources that shall be available to the committees for each biennium.

(b) The department shall designate staff to work with the committees.

(c) Members shall be reimbursed for travel expenses (as provided for in chapter 43.03 RCW) for any meetings approved by the department.

(6) Responsibilities. The committees are directed to:

(a) Meet at least twice annually;

(b) Inform citizens within each region as to the existence of the committees and their availability as a resource;

(c) Review the department's biennial program priorities, and advise the department of citizen concerns regarding the program priorities;

(d) Advise the department on a timely basis of citizen concerns regarding investigative or remedial activities within each region, and where possible, suggest ways in which the department can address those concerns;

(e) Annually prepare a brief report to the department describing:

(i) Major citizen concerns that have been brought to the committee's attention during the past year;

(ii) Any committee proposals or recommendations to address these concerns;

(iii) The committee's plans for the coming year; and

(iv) Any other information or issues which the committee believes appropriate for inclusion.

(7) The committees are encouraged to work with the department and the public to develop additional committee goals or responsibilities.

[Statutory Authority: Chapter 70.105D RCW, 90-08-086, § 173-340-610, filed 4/3/90, effective 5/4/90.]

PART VII—CLEANUP STANDARDS

WAC 173-340-700 Overview of cleanup standards.

(1) Purpose. This section provides an overview of the methods for establishing cleanup standards that apply to a release or threatened release of a hazardous substance at a site. If there are any inconsistencies between this section and any specifically referenced section, the referenced section shall govern.

(2) Cleanup standards versus selection of cleanup actions.

(a) Cleanup standards are identified for the particular hazardous substances at a site and the specific areas or pathways, such as land or water, where humans and the environment can become exposed to these substances. This part provides uniform methods state-wide for identifying cleanup standards and requires that all cleanups under the act meet these standards. The actual degree of cleanup may vary from site to site and will be determined by the cleanup action alternative selected under WAC 173-340-360. Establishing cleanup standards for individual sites requires the specification of the following:

(i) Hazardous substance concentrations that protect human health and the environment ("cleanup levels");

(ii) The location on the site where those cleanup levels must be attained ("points of compliance"); and

(iii) Additional regulatory requirements that apply to a cleanup action because of the type of action and/or the

location of the site. These requirements are specified in applicable state and federal laws and are generally established in conjunction with the selection of a specific cleanup action.

(b) For most sites, there are several cleanup technologies or combinations of cleanup technologies ("cleanup action alternatives") that may be used to comply with cleanup standards at individual sites. Other parts of this rule govern the process for planning and deciding on the cleanup action to be taken at a site. For example, WAC 173-340-350 (State remedial investigation and feasibility study) (RI/FS) specifies the studies that are prepared to define the nature and extent of contamination ("RI") and to identify and evaluate cleanup action alternatives ("FS"). WAC 173-340-360 (Selection of cleanup actions) specifies the criteria for selecting the preferred alternative. WAC 173-340-410 specifies the monitoring required to assure that the remedy is effective.

(c) The department recognizes that cleanup actions selected under WAC 173-340-360 may involve containment of hazardous substances. In these cases, the cleanup action may be determined to comply with cleanup standards, provided the compliance monitoring program is designed to ensure the long-term integrity of the containment system, and the other requirements for containment technologies in WAC 173-340-360(8) are met.

(3) Three basic methods for establishing cleanup levels. These rules provide three approaches for establishing cleanup levels:

(a) Method A: Tables. On some sites, the cleanup action may be routine (WAC 173-340-130) or may involve relatively few hazardous substances. Under Method A, cleanup levels for hazardous substances are established at concentrations at least as stringent as concentrations specified in applicable state and federal laws and Tables 1, 2, or 3 of this chapter. Method A cleanup levels for hazardous substances not addressed under applicable state and federal laws or Tables 1, 2, or 3 are established at concentrations which do not exceed the natural background concentration or the practical quantitation limit for the substance in question.

(b) Method B: Standard method. Method B is the standard method for determining cleanup levels for ground water, surface water, soil, and air. Cleanup levels for individual hazardous substances are established using applicable state and federal laws or the risk equations specified in WAC 173-340-720 through 173-340-750. For individual carcinogens, cleanup levels are based upon the upper bound of the estimated excess lifetime cancer risk of one in one million (1×10^{-6}). For individual noncarcinogenic substances, cleanup levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health and the environment. Where a hazardous waste site involves multiple hazardous substances and/or multiple pathways of exposure, method B cleanup levels for individual substances must be modified in accordance with the procedures in WAC 173-340-708. Under this method, the total excess lifetime cancer risk for a site shall not exceed one in one hundred thousand (1×10^{-5}) and the hazard index for substances with similar noncarcinogenic toxic effects shall not exceed one (1).

(c) Method C: Conditional method. Compliance with cleanup levels developed under the method A or B may be

impossible to achieve or may cause greater environmental harm. In those situations, method C cleanup levels for individual hazardous substances may be established on the basis of applicable state and federal laws and a site-specific risk assessment. Method C cleanup levels may also be established at industrial sites which meet the criteria in WAC 173-340-745. For individual carcinogens, method C cleanup levels are based upon the upper bound of the estimated lifetime cancer risk of one in one hundred thousand (1×10^{-5}). For individual noncarcinogenic substances, method C cleanup levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health and no significant adverse effects on the protection and propagation of aquatic and terrestrial organisms. Where a hazardous waste site involves multiple hazardous substances and/or multiple pathways of exposure, method C cleanup levels for individual substances must be modified in accordance with the procedures in WAC 173-340-708. Under this method, the total excess lifetime cancer risk for a site shall not exceed one in one hundred thousand (1×10^{-5}) and the hazard index for substances with similar noncarcinogenic toxic effects shall not exceed one (1).

(4) Additional requirements for setting cleanup levels. Several requirements apply to cleanups under any of the three basic methods. Some of these requirements, such as the identification of applicable state and federal laws, describe analyses used along with methods A, B or C in order to set cleanup levels for particular substances at a site. Others describe the technical procedures to be used.

(a) Applicable state and federal laws. RCW 70.105D.030 (2)(d) requires the cleanup standards in these rules to be "at least as stringent as all applicable state and federal laws." In addition to establishing minimum requirements for cleanup standards, applicable state and federal laws may also impose certain technical and procedural requirements for performing cleanup actions. These requirements are described in WAC 173-340-710 and are similar to the "ARAR" (applicable, relevant and appropriate requirements) approach of the federal superfund law.

(b) Cross-media contamination. In some situations, migration of hazardous substances from one medium may cause contamination in a second media. For example, the release of hazardous substances in soil may cause ground water contamination. Under methods A, B, and C, cleanup levels must be established at concentrations which prevent violations of cleanup levels for other media following implementation of the cleanup action.

(c) Risk assessment procedures. The analyses performed under methods B and C use several factors for defining cleanup levels for carcinogens and noncarcinogens. The individual factors and procedures for modifying these factors based on new scientific information are specified in WAC 173-340-708 and 173-340-720 through 173-340-750. WAC 173-340-708 also provides rules for use of indicator hazardous substances.

(d) Natural background. Cleanup levels shall not exceed concentrations established under methods A, B, or C except where the natural background concentration is greater than the cleanup level established under those methods. In such situations, the cleanup level shall be established at a concentration equal to the natural background concentration.

(5) Threshold criteria for all cleanup actions. WAC 173-340-360 specifies that all cleanup actions conducted under this chapter shall protect human health and the environment, comply with cleanup standards and applicable state and federal laws, and provide for compliance monitoring. These are the threshold criteria and all cleanup actions must meet these criteria regardless of other factors such as cost or technical limitations.

(6) Measuring compliance. Setting cleanup standards also involves being able to demonstrate that they have been met. This involves specifying where on the site the cleanup levels must be met ("points of compliance"), how long it takes for a site to meet cleanup levels ("restoration time frame"), and conducting sufficient monitoring to demonstrate that the cleanup standards have been met and will continue to be met in the future. The provisions for establishing points of compliance are in WAC 173-340-720 through 173-340-750. The provisions for establishing restoration time frames are in WAC 173-340-360. The compliance monitoring plan prepared under WAC 173-340-410 specifies precisely how these are measured for each site. Where cleanup levels are below the practical quantitation limit, compliance with cleanup standards will be based upon the practical quantitation limit.

(7) Administrative principles for cleanup standards.

(a) Remedial actions under this chapter shall be conducted in a manner that is consistent with this section. This section shall be used in combination with WAC 173-340-130, the more specific sections in Part VII of this chapter and WAC 173-340-360.

(b) Establishing cleanup standards and selecting an appropriate cleanup action involves many technical and public policy decisions. This chapter is intended to constrain the range of decisions needed to be made on individual sites to promote expeditious cleanups.

(c) The act contains policies which state, in part, each person has a fundamental and inalienable right to a healthful environment and it is essential that sites be cleaned up well. Consistent with these policies, cleanup standards under this chapter shall be established which provide conservative estimates of human health and environmental risks which protect susceptible individuals as well as the general population.

(d) Cleanup standards under this chapter shall be established which protect human health and the environment for current and potential future site and resource uses.

(e) Cleanup actions that achieve cleanup levels under methods A, B or C (as applicable) and comply with applicable state and federal laws shall be presumed to be protective of human health and the environment.

(f) Except as provided for in applicable state and federal laws, cost shall not be a factor in determining what cleanup level is protective of human health and the environment. In addition, where specifically provided for in this chapter, cost may be appropriate for certain other determinations related to cleanup standards such as point of compliance. Cost shall, however, be considered when selecting an appropriate cleanup action.

(g) At most sites, there is more than one hazardous substance and more than one pathway for hazardous substances to get into the environment. For many sites there is more than one technology that could address each of these.

When evaluating cleanup action alternatives it is appropriate to consider a representative range of technologies that could address each of these as well as different combinations of these technologies to accomplish the overall site cleanup.

(h) The cleanup of a particular media of a site will often affect other media at the site. These cross-media impacts shall be considered when establishing cleanup standards and selecting a cleanup action. Cleanup actions conducted under this chapter shall use appropriate engineering controls or other measures to minimize these cross-media impacts.

(i) In general, cleanup levels must be met throughout a site before the site will be considered to be clean. A remedy that leaves hazardous substances on a site in excess of cleanup levels may qualify as a cleanup action as long as the remedy is protective of human health and the environment, meets cleanup levels at specified points of compliance, complies with applicable state and federal laws, provides for adequate monitoring, and incorporates appropriate institutional controls. However, these rules are intended to promote thorough cleanups rather than long-term partial cleanups or containment measures.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-700, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-700, filed 4/3/90, effective 5/4/90.]

WAC 173-340-702 General policies. (1) Purpose. This section defines the policies and principles that the department shall utilize to ensure that cleanup standards under this chapter are established and implemented in a scientifically and technically sound manner.

(2) Relationship to federal cleanup law. When evaluating cleanup actions performed under the federal cleanup law, the department shall consider WAC 173-340-360 and 173-340-700 through 173-340-760 to be a legally applicable requirement under Section 121(d) of the Federal Cleanup Law.

(3) Regulation update. The department shall review and, as appropriate, update WAC 173-340-700 through 173-340-760 no less frequently than once every five years.

(4) Institutional controls. Institutional controls under WAC 173-340-440 shall be required whenever a cleanup action results in residual concentrations of hazardous substances which exceed method A or method B cleanup levels, as applicable, or conditional points of compliance are approved by the department under WAC 173-340-720 through 173-340-760. Institutional controls shall also be required when cleanup levels are established under WAC 173-340-745.

(5) Burden of proof. Any person responsible for undertaking a cleanup action under this chapter who proposes to establish a cleanup level under method C or a conditional point of compliance shall have the burden of demonstrating to the department that requirements in this part have been met to assure protection of human health and the environment. The department shall only approve cleanup levels under method C or conditional points of compliance when it determines that that the person undertaking the cleanup actions met this burden of proof.

(6) New scientific information. The department shall consider new scientific information when establishing cleanup levels for individual sites. In making a determina-

tion on how to use this new information, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-702, filed 1/28/91, effective 2/28/91.]

WAC 173-340-704 Use of method A. (1) Method A may be used to establish cleanup levels at the following types of sites:

(a) Sites undergoing routine cleanup actions as defined in WAC 173-340-130; or

(b) Sites where numerical standards are available in this chapter or applicable state and federal laws for all indicator hazardous substances in all media of concern.

(2) Method A cleanup levels shall be established in accordance with the procedures in WAC 173-340-720 through 173-340-760. Method A cleanup levels shall be at least as stringent as all of the following:

(a) Concentrations of individual hazardous substances listed in the tables in WAC 173-340-720, 173-340-740, or 173-340-745;

(b) Concentrations of individual hazardous substances established under applicable state and federal laws; and

(c) For individual hazardous substances not addressed under (a) and (b) of this subsection, concentrations that do not exceed natural background levels or the practical quantitation limit for the substance in question.

(3) The department may establish method A cleanup levels more stringent than those required by subsection (2) of this section, when based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(4) Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup action under this chapter.

(5) If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-704, filed 1/28/91, effective 2/28/91.]

WAC 173-340-705 Use of method B. (1) Method B is applicable to all sites. It shall be used to develop cleanup levels unless one or more of the conditions for using method A or method C are demonstrated to exist and the person conducting the cleanup action elects to utilize that method.

(2) Method B cleanup levels shall be established in accordance with the procedures in WAC 173-340-720 through 173-340-760. Method B cleanup levels shall be at least as stringent as all of the following:

(a) Concentrations of individual hazardous substances established under applicable state and federal laws;

(b) Concentrations which are estimated to result in no adverse effects on the protection and propagation of aquatic and terrestrial life;

(c) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(i) Concentrations which are estimated to result in no acute or chronic toxic effects on human health as determined using a hazard quotient of one (1) and the procedures specified in WAC 173-340-720 through 173-340-760;

(ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million as determined using the procedures specified in WAC 173-340-720 through 173-340-760; and

(iii) Concentrations which eliminate or minimize the potential for food chain contamination; and

(3) The department may establish method B cleanup levels that are more stringent than those required by subsection (2) of this section, when based upon a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(4) Concentrations of individual hazardous substances established under subsections (2) and (3) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures in WAC 173-340-708. In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand. These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.

(5) If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-705, filed 1/28/91, effective 2/28/91.]

WAC 173-340-706 Use of method C. (1) Method C cleanup levels represent concentrations which are protective of human health and the environment for specified site uses. Method C cleanup levels may be established where the person undertaking the cleanup action can demonstrate that such levels comply with applicable state and federal laws, that all practicable methods of treatment are utilized, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the following conditions exist:

(a) Where method A or B cleanup levels are below area background concentrations, method C cleanup levels may be established at concentrations that are equal to area background concentrations, but in no case greater than concentrations specified in subsection (2) of this section;

(b) Where attainment of method A or B cleanup levels has the potential for creating a significantly greater overall threat to human health or the environment than attainment of method C cleanup levels established under this chapter, method C cleanup levels may be established at concentrations which minimize those overall threats, but in no case greater than concentrations specified in subsection (2) of this section. Factors that shall be considered in making this determination include:

- (i) Results of a site-specific risk assessment;
- (ii) Duration of threats;
- (iii) Reversibility of threats;
- (iv) Magnitude of threats; and
- (v) Nature of affected population.

(c) Where method A or B cleanup levels are below technically possible concentrations, method C cleanup levels may be established at the technically possible concentrations, but in no case greater than levels specified in subsection (2) of this section; or

(d) The site is defined as an industrial site and meets the criteria for establishing soil cleanup levels under WAC 173-340-745.

(2) Method C cleanup levels shall be established in accordance with the procedures in WAC 173-340-720 through 173-340-760. Method C cleanup levels shall be at least as stringent as all of the following:

(a) Concentrations established under applicable state and federal laws;

(b) Concentrations which are estimated to result in no significant adverse effects on the protection and propagation of aquatic and terrestrial life;

(c) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which are protective of human health and the environment as determined by the following methods:

(i) Concentrations which are estimated to result in no significant adverse acute or chronic toxic effects on human health as estimated using a hazard quotient of one (1) and the procedures defined in WAC 173-340-720 through 173-340-760;

(ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand as determined using the procedures defined in WAC 173-340-720 through 173-340-760; and

(iii) Concentrations which eliminate or minimize the potential for food chain contamination.

(3) The department may establish method C cleanup levels that are more stringent than those required by subsection (2) of this section when based upon a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(4) Concentrations of individual hazardous substances established under subsections (2) and (3) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with WAC 173-340-708. In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one

in one hundred thousand. These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.

(5) If there are any inconsistencies between this subsection and any specifically referenced sections, the referenced section shall govern.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-706, filed 1/28/91, effective 2/28/91.]

WAC 173-340-707 Analytical considerations. (1) Analytical methods used to evaluate the effectiveness of a cleanup action shall comply with the requirements in WAC 173-340-830.

(2) The department recognizes that there may be situations where a hazardous substance is not detected or is detected at a concentration below the practical quantitation limit utilizing sampling and analytical procedures which comply with the requirements of WAC 173-340-830. If those situations arise and the practical quantitation limit is higher than the cleanup level for that substance, the cleanup level shall be considered to have been attained, subject to subsection (4) of this section, only when the more stringent of the following conditions are met:

(a) The practical quantitation limit is no greater than ten times the method detection limit; or

(b) The practical quantitation limit for the particular hazardous substance, medium, and analytical procedure is no greater than the practical quantitation limit established by the United States Environmental Protection Agency and used to establish requirements in 40 CFR 136, 40 CFR 141 through 143, or 40 CFR 260 through 270.

(3) In cases where a cleanup level required by this chapter is less than the practical quantitation limit using an approved analytical procedure, the department may also require one or more of the following:

(a) Use of surrogate measures of hazardous substance contamination;

(b) Use or development of specialized sample collection or analysis techniques to improve the method detection limit or practical quantitation limit for the hazardous substances at the site; or

(c) Monitoring to assure that the concentration of a hazardous substance does not exceed detectable levels.

(4) When the practical quantitation limit is above the cleanup level, the department shall consider the availability of improved analytical techniques when performing periodic reviews under WAC 173-340-420. Subsequent to those reviews, the department may require the use of improved analytical techniques with lower practical quantitation limits and other appropriate actions.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-707, filed 1/28/91, effective 2/28/91.]

WAC 173-340-708 Human health risk assessment procedures. (1) Purpose. This section defines the risk assessment framework that the department will utilize to establish cleanup levels.

(2) Selection of indicator hazardous substances.

(a) When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements.

(b) If the department considers this approach appropriate for a particular site, the factors evaluated when eliminating individual hazardous substances from further consideration shall include:

(i) The toxicological characteristics of the hazardous substance that influence its ability to adversely affect human health or the environment relative to the concentration of the hazardous substance at the site;

(ii) The chemical and physical characteristics of the hazardous substance which govern its tendency to persist in the environment;

(iii) The chemical and physical characteristics of the hazardous substance which govern its tendency to move into and through environmental media;

(iv) The natural background concentrations of the hazardous substance;

(v) The thoroughness of testing for the hazardous substance at the site;

(vi) The frequency that the hazardous substance has been detected at the site; and

(vii) Degradation by-products of the hazardous substance.

(c) When the department determines that the use of indicator hazardous substances is appropriate for a particular site, it may also require biological testing to address potential toxic effects associated with hazardous substances eliminated from consideration under this subsection.

(3) Reasonable maximum exposure.

(a) Cleanup levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions.

(b) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site under current and potential future site use. WAC 173-340-720 through 173-340-760 define the reasonable maximum exposures for ground water, surface water, soil, and air. These reasonable maximum exposures will apply to most sites where individuals or groups of individuals are or could be exposed to hazardous substances. For example, the reasonable maximum exposure for most ground water is defined as exposure to hazardous substances in drinking water and other domestic uses.

(c) Persons performing cleanup actions under this chapter may utilize the evaluation criteria in WAC 173-340-720 through 173-340-760 to demonstrate that the reasonable maximum exposure scenarios specified in those sections are not appropriate for a particular site. The use of an alternate exposure scenario shall be documented by the person performing the cleanup action. Documentation for the use of alternate exposure scenarios shall be based on the results of investigations performed in accordance with WAC 173-340-350.

(d) Individuals or groups of individuals may be exposed to hazardous substances through more than one exposure pathway. For example, a person may be exposed to hazardous substances from a site by drinking contaminated ground water, eating contaminated fish, and breathing contaminated air. At sites where the same individuals or groups of individuals are or could be consistently exposed through more than one pathway, the reasonable maximum exposure shall represent the total exposure through all of those pathways. At such sites, the cleanup levels derived for individual pathways under WAC 173-340-720 through 173-340-760 shall be adjusted downward to take into account multiple exposure pathways.

(4) Cleanup levels for individual hazardous substances. Cleanup levels for individual hazardous substances will generally be based on a combination of requirements in applicable state and federal laws and risk assessment.

(5) Multiple hazardous substances.

(a) Cleanup levels for individual hazardous substances established under methods B and C shall be adjusted downward to take into account exposure to multiple hazardous substances. Adverse effects resulting from exposure to two or more hazardous substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(b) Cancer risks resulting from exposure to two or more carcinogens are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(c) For purposes of establishing cleanup levels for noncarcinogens under methods B and C, the health threats resulting from exposure to two or more hazardous substances with similar types of toxic response may be apportioned between those hazardous substances in any combination as long as the hazard index does not exceed one (1).

(d) For purposes of establishing cleanup levels for carcinogens under methods B and C, the cancer risks resulting from exposure to multiple hazardous substances may be apportioned between hazardous substances in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand.

(e) The department may require biological testing to assess the potential interactive effects associated with chemical mixtures.

(6) Multiple pathways of exposure.

(a) Estimated doses of individual hazardous substances resulting from more than one pathway of exposure are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(b) Cleanup levels based on one pathway of exposure shall be adjusted downward to take into account exposures from more than one exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in WAC 173-340-708(3).

(c) For purposes of establishing cleanup levels for noncarcinogens under methods B and C, the health threats associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the hazard index does not exceed one (1).

(d) For purposes of establishing cleanup levels for carcinogens under methods B and C, the cancer risks associated with exposure via multiple pathways may be

apportioned between exposure pathways in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand.

(7) Reference doses.

(a) The chronic reference dose and the developmental reference dose shall be used to establish cleanup levels under this chapter. Cleanup levels shall be established using the value which results in the most protective concentration.

(b) Inhalation reference doses shall be used in WAC 173-340-750. Where the inhalation reference dose is reported as a concentration in air, that value shall be converted to a corresponding inhaled intake (mg/kg-day) using a human body weight of 70 kg and an inhalation rate of 20 m³/day.

(c) A subchronic reference dose may be utilized to evaluate potential noncarcinogenic effects resulting from exposure to hazardous substances over short periods of time. This value may be used in place of the chronic reference dose where it can be demonstrated that a particular hazardous substance will degrade to negligible concentrations during the exposure period.

(d) For purposes of establishing cleanup levels for hazardous substances under this chapter, a reference dose established by the United States Environmental Protection Agency and available through the "integrated risk information system" data base shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

(e) If a reference dose is not available through the "integrated risk information system" or is demonstrated to be inappropriate under (d) of this subsection, a reference dose shall be established utilizing the methods described in Risk Assessment Guidance for Superfund. Human Health Evaluation Manual, Part A. (October 1989.)

(f) In estimating a reference dose for a hazardous substance under (e) of this subsection, the department shall consult with the science advisory board, the department of health, and the United States Environmental Protection Agency.

(g) Where a reference dose other than those established under (d) of this subsection is used to establish a cleanup level at individual sites, the department shall summarize the scientific rationale for the use of those values in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC 173-340-360 and 173-340-600.

(8) Carcinogenic potency factor.

(a) For purposes of establishing cleanup levels for hazardous substances under this chapter, a carcinogenic potency factor established by the United States Environmental Protection Agency and available through the "integrated risk information system" data base shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

(b) If a carcinogenic potency factor is not available through the "integrated risk information system" or is demonstrated to be inappropriate under (a) of this subsection, one of the following methods shall be utilized to establish a carcinogenic potency factor:

(i) The carcinogenic potency factor may be derived from appropriate human epidemiology data on a case-by-case basis; or

(ii) The carcinogenic potency factor may be derived from animal bioassay data using the following procedures:

(A) All carcinogenesis bioassays shall be reviewed and data of appropriate quality shall be used for establishing the carcinogenic potency factor.

(B) The linearized multistage extrapolation model shall be utilized to estimate the slope of the dose-response curve unless the department determines that there is clear and convincing scientific data which demonstrates that the use of an alternate extrapolation model is more appropriate;

(C) All doses shall be adjusted to give an average daily dose over the study duration; and

(D) An interspecies scaling factor shall be used to take into account differences between animals and humans. This scaling factor shall be based on the assumption that milligrams per surface area is an equivalent dose between species unless the department determines there is clear and convincing scientific data which demonstrates that an alternate procedure is more appropriate. The slope of the dose response curve for the test species shall be multiplied by this scaling factor in order to obtain the carcinogenic potency factor, except where such scaling factors are incorporated into the extrapolation model under (B) of this subsection. Where adequate pharmacokinetic and metabolism studies are available, data from these studies may be utilized to adjust the interspecies scaling factor.

(c) In estimating a carcinogenic potency factor for a hazardous substance under (b) of this subsection, the department shall consult with the science advisory board, the department of health, and the United States Environmental Protection Agency.

(d) Where a carcinogenic potency factor other than that established under (a) of this subsection is used to establish cleanup levels at individual sites, the department shall summarize the scientific rationale for the use of that value in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC 173-340-360 and 173-340-600.

(9) Bioconcentration factors.

(a) For purposes of establishing cleanup levels for a hazardous substance under WAC 173-340-730, a bioconcentration factor established by the United States Environmental Protection Agency and utilized to establish the ambient water quality criterion for that substance under section 304 of the Clean Water Act shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of an alternate value is more appropriate.

(b) When utilizing a bioconcentration factor other than that utilized to establish the ambient water quality criterion, the department shall consult with the science advisory board, the department of health, and the United States Environmental Protection Agency.

(c) Where a bioconcentration factor other than that established under (a) of this subsection is used to establish cleanup levels at individual sites, the department shall summarize the scientific rationale for the use of that factor in the draft cleanup action plan. The department shall

provide the opportunity for public review and comment on the value in accordance with the requirements of WAC 173-340-360 and 173-340-600.

(10) Exposure parameters.

(a) As a matter of policy, the department has defined the exposure parameters to be used when establishing cleanup levels under this chapter. With the exception of the parameters identified in (b) of this subsection, these parameters shall not be modified for individual hazardous substances or sites in a manner which results in a less stringent cleanup level. The scientific and technical basis for these parameters shall be reviewed when updating this chapter under WAC 173-340-704(3).

(b) The department may approve the use of values other than those specified in WAC 173-340-720 through 173-340-760 where there is clear and convincing scientific data which demonstrates that one or more of the following parameters should be modified for an individual hazardous substance or site:

- (i) Gastrointestinal absorption rate;
- (ii) Inhalation correction factor;
- (iii) Bioconcentration factor; or
- (iv) Inhalation absorption rate.

(c) Where exposure parameters other than those established under WAC 173-340-720 through 173-340-760 are used to establish cleanup levels at individual sites, the department shall summarize the scientific rationale for the use of those parameters in the cleanup action plan. The department shall provide the opportunity for public review and comment on those values in accordance with the requirements of WAC 173-340-360 and 173-340-600.

(11) Methods for defining background concentrations.

(a) Sampling of hazardous substances in background areas may be conducted to distinguish site-related concentration from nonsite related concentrations of hazardous substances or to support the development of a method C cleanup level under the provisions of WAC 173-340-706. For purposes of this chapter, two types of background may be determined, natural background and area background concentrations.

(b) For purposes of defining background concentrations, samples shall be collected from areas that have the same basic characteristics as the medium of concern at the site, have not been influenced by releases from the site and, in the case of natural background concentrations, have not been influenced by releases from other localized human activities.

(c) The statistical method used to evaluate available data shall be appropriate for the distribution of each hazardous substance. If the distribution of the hazardous substance data is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions of individual hazardous substances differ, more than one statistical method may be required at a site. In general, appropriate statistical methods include the following:

(i) A tolerance interval procedure in which an interval for each hazardous substance is established from the distribution of background data and the cleanup level of each hazardous substance is compared to the lower tolerance limit; and

(ii) Other statistical methods proposed by the person undertaking the cleanup action and approved by the department.

(d) If a tolerance interval approach is used to evaluate natural background data, the tolerance interval shall have a coverage of ninety-five percent and a tolerance coefficient of ninety-five percent. When determining natural background concentrations, sample size of ten or more background soil samples shall be required. When determining area background concentrations, a sample size of twenty or more soil samples shall be required. The number of samples for other media shall be sufficient to provide a representative measure of background concentrations and shall be determined on a case-by-case basis.

(e) For purposes of estimating background concentrations, values below the method detection limit shall be assigned a value equal to one-half of the method detection limit. Measurements above the method detection limit, but below the practical quantitation limit shall be assigned a value equal to the method detection limit. The department may approve the use of alternate statistical procedures for handling data below the method detection limit or practical quantitation limit. Alternate statistical procedures may include probit analysis and regression analysis.

(12) Significant figures. Risk assessment results shall be presented using one significant figure.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-708, filed 1/28/91, effective 2/28/91.]

WAC 173-340-710 Applicable state and federal laws.

(1) Applicable state and federal laws.

(a) All cleanup actions conducted under this chapter shall comply with applicable state and federal laws. For purposes of this chapter, the term "applicable state and federal laws" shall include legally applicable requirements and those requirements that the department determines, based on consideration of the criteria in subsection (3) of this section, are relevant and appropriate requirements.

(b) The person conducting a cleanup action shall identify all applicable state and federal laws. The department shall make the final interpretation on whether these requirements have been correctly identified and are legally applicable or relevant and appropriate.

(2) Legally applicable requirements. Legally applicable requirements include those cleanup standards, standards of control, and other environmental protection requirements, criteria, or limitations promulgated under state or federal law that specifically address a hazardous substance, cleanup action, location or other circumstances at the site.

(3) Relevant and appropriate requirements. Relevant and appropriate requirements include those cleanup standards, standards of control, and other environmental requirements, criteria, or limitations established under state or federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. WAC 173-340-710 through 173-340-760 identifies several requirements the department shall consider relevant and appropriate for establishing cleanup standards. For other regulatory requirements, the following criteria shall be evaluated, where pertinent, to determine whether such requirements are relevant and appropriate for a particular hazardous substance, remedial action, or site:

(a) Whether the purpose for which the statute or regulations under which the requirement was created is similar to the purpose of the cleanup action;

(b) Whether the media regulated or affected by the requirement is similar to the media contaminated or affected at the site;

(c) Whether the hazardous substance regulated by the requirement is similar to the hazardous substance found at the site;

(d) Whether the entities or interests affected or protected by the requirement are similar to the entities or interests affected by the site;

(e) Whether the actions or activities regulated by the requirement are similar to the cleanup action contemplated at the site;

(f) Whether any variance, waiver, or exemption to the requirements are available for the circumstances of the site;

(g) Whether the type of place regulated is similar to the site;

(h) Whether the type and size of structure or site regulated is similar to the type and size of structure or site affected by the release or contemplated by the cleanup action; and

(i) Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the resources affected by the site or contemplated cleanup action.

(4) Variances. For purposes of this chapter, a regulatory variance or waiver provision included in an applicable state and federal law shall be considered potentially applicable to interim actions and cleanup actions and the department may determine that a particular regulatory variance or waiver is appropriate if the substantive conditions for such a regulatory variance or waiver are met. In all such cases, interim actions and cleanup actions shall be protective of human health and the environment.

(5) New requirements. The department shall consider new applicable state and federal laws as part of the periodic review under WAC 173-340-420. Cleanup actions shall be evaluated in light of these new requirements to determine whether the cleanup action is still protective of human health and the environment.

(6) Selection of cleanup actions. To demonstrate compliance with WAC 173-340-360, cleanup actions shall comply with all applicable state and federal laws in addition to the other requirements of this chapter. The following, which is not a complete list, are selected applications of specific applicable state and federal laws to cleanup actions.

(a) Water discharge requirements. Hazardous substances which are directly or indirectly released or proposed to be released to waters of the state shall be provided with all known, available and reasonable methods of treatment consistent with the requirements of chapters 90.48 and 90.54 RCW and the regulations that implement those statutes.

(b) Air emission requirements. Best available control technologies consistent with the requirements of chapter 70.94 RCW and the regulations that implement this statute shall be applied to releases of hazardous substances to the air resulting from cleanup actions at a site.

(c) Solid waste landfill closure requirements. For solid waste landfills, the solid waste closure requirements in chapter 173-304 WAC shall be minimum requirements for

cleanup actions conducted under this chapter. In addition, when the department determines that the closure requirements in chapter 173-303 WAC are applicable requirements, the more stringent closure requirements under that law shall also apply to cleanup actions conducted under this chapter.

(d) Sediment management requirements. Sediment cleanup actions conducted under this chapter shall comply with the sediment cleanup standards in chapter 173-204 WAC. In addition, a state remedial investigation/feasibility study conducted under WAC 173-340-350 shall also comply with the cleanup study plan requirements under chapter 173-204 WAC. The process for selecting sediment cleanup actions under this chapter shall comply with the requirements in WAC 173-340-360.

(7) Interim actions. Interim actions conducted under this chapter shall comply with legally applicable requirements. The department may also determine, based on the criteria in subsection (3) of this section, that other requirements, criteria, or limitations are relevant and appropriate for interim actions.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-710, filed 1/28/91, effective 2/28/91.]

WAC 173-340-720 Ground water cleanup standards. (1) General considerations.

(a) Ground water cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site use conditions. The department has determined that for most sites drinking water is the beneficial use requiring the highest quality of ground water and that exposure to hazardous substances via ingestion of drinking water and other domestic uses represents the reasonable maximum exposure. In the event of a release of a hazardous substance, treatment, removal, or containment measures shall be conducted to reduce the concentration of the hazardous substance in ground water to a concentration consistent with this use unless the following can be demonstrated:

(i) The ground water does not serve as a current source of drinking water;

(ii) The ground water is not a potential future source of drinking water for any of the following reasons:

(A) The ground water is present in insufficient quantity to yield greater than 0.5 gallon per minute on a sustainable basis to a well constructed in compliance with chapter 173-160 WAC and in accordance with normal domestic water well construction practices for the area in which the site is located;

(B) The ground water contains natural background concentrations of organic or inorganic constituents which make use of the water for drinking not practicable. Ground water containing total dissolved solids at concentrations greater than 10,000 mg/l shall normally be considered to have fulfilled this requirement; or

(C) The ground water is situated at a great depth or location which makes recovery of water for drinking water purposes technically impossible; and

(iii) The department determines it is unlikely that hazardous substances will be transported from the contaminated ground water to ground water that is a current or

potential future source of drinking water, as defined in (a)(ii) of this subsection, at concentrations which exceed ground water quality criteria published in chapter 173-200 WAC; or

(iv) More stringent concentrations are necessary to protect human health or the environment.

(b) In making a determination under (a)(iii) of this subsection, the department shall consider site-specific factors including:

(i) The extent of affected ground water;

(ii) The distance to existing water supply wells;

(iii) The likelihood of interconnection due to well construction practices in the area of the state where the site is located;

(iv) The physical and chemical characteristics of the hazardous substance;

(v) The hydrogeologic characteristics of the site;

(vi) The presence of discontinuities in the affected geologic stratum; and

(vii) The degree of confidence in any predictive modeling performed.

(c) The department recognizes that there may be sites where there is an extremely low probability that ground water classified as potential future source of drinking water under (b) of this subsection will actually be used for that purpose (i.e., the shallow ground waters on Harbor Island). At such sites, the department may approve ground water cleanup levels that are based on protecting beneficial uses of adjacent surface water if the person undertaking the cleanup action can demonstrate all of the following:

(i) There are known or projected points of entry of the ground water into the surface water;

(ii) The surface water is not classified as a suitable domestic water supply source under chapter 173-201 WAC;

(iii) Ground water flows into surface waters will result in no exceedances of surface water cleanup levels at the point of entry or at any downstream location where it is reasonable to believe that hazardous substances may accumulate;

(iv) The cleanup action includes institutional controls that will prevent the use of contaminated ground water at any point between the source of hazardous substances and the point(s) of entry of the ground water into the surface water; and

(v) The department determines it is unlikely that hazardous substances will be transported from the contaminated ground water to ground water that is a current or potential future source of drinking water, as defined in (b) of this subsection, at concentrations which exceed ground water quality criteria published in chapter 173-200 WAC.

(d) Where more stringent cleanup levels are necessary to protect beneficial uses of ground water other than drinking water, the cleanup level shall be established by the department under methods B or C as appropriate.

(e) Releases of hazardous substances to ground waters of the state shall not directly or indirectly cause violations of surface water, sediments, soil, or air cleanup standards established under this chapter or other applicable state and federal laws.

(2) Method A cleanup levels.

(a) Where the ground water is a current or potential future source of drinking water, method A cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations listed in Table 1:

Table 1
Method A Cleanup Levels - Ground Water^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	5.0 ug/liter ^b
Benzene	71-43-2	5.0 ug/liter ^c
Cadmium	7440-43-9	5.0 ug/liter ^d
Chromium (Total)	7440-47-3	50.0 ug/liter ^e
DDT	50-29-3	0.1 ug/liter ^f
1,2 Dichloroethane	107-06-2	5.0 ug/liter ^g
Ethylbenzene	100-41-4	30.0 ug/liter ^h
Ethylene dibromide	106-93-4	0.01 ug/liter ⁱ
Gross Alpha Particle Activity		15.0 pCi/liter ^j
Gross Beta Particle Activity		4.0 mrem/yr ^k
Lead	7439-92-1	5.0 ug/liter ^l
Lindane	58-89-9	0.2 ug/liter ^m
Methylene chloride	75-09-2	5.0 ug/liter ⁿ
Mercury	7439-97-6	2.0 ug/liter ^o
PAHs (carcinogenic)		0.1 ug/liter ^p
PCB mixtures		0.1 ug/liter ^q
Radium 226 and 228		5.0 pCi/liter ^r
Radium 226		3.0 pCi/liter ^s
Tetrachloroethylene	127-18-4	5.0 ug/liter ^t
Toluene	108-88-3	40.0 ug/liter ^u
Total Petroleum Hydrocarbons		1000.0 ug/liter ^v
1,1,1 Trichloroethane	71-55-6	200.0 ug/liter ^w
Trichloroethylene	79-01-5	5.0 ug/liter ^x
Vinyl chloride	75-01-4	0.2 ug/liter ^y
Xylenes	1330-20-7	20.0 ug/liter ^z

^a Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup action under this chapter.

^b Arsenic. Cleanup level based on background concentrations for state of Washington.

^c Benzene. Cleanup level based on applicable state and federal law.

^d Cadmium. Cleanup level based on applicable state and federal law and concentration derived using procedures in subsection (3)(a)(ii)(A) of this section and a hazard quotient of 0.2.

^e Chromium (Total). Cleanup level based on applicable state and federal law.

^f DDT. Cleanup levels based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section.

^g 1,2 Dichloroethane. Cleanup level based on applicable state and federal law.

^h Ethylbenzene. Cleanup level based on applicable state and federal law and prevention of adverse aesthetic characteristics.

ⁱ Ethylene dibromide. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.

^j Gross Alpha Particle Activity, excluding uranium. Cleanup level based on applicable state and federal law.

^k Gross Beta Particle Activity, including gamma activity. Cleanup level based on applicable state and federal law.

^l Lead. Cleanup level based on applicable state and federal law and prevention of unacceptable blood lead levels.

^m Lindane. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section.

ⁿ Methylene chloride. Cleanup level based on concentration derived using the procedures in subsection (3)(a)(ii)(B) of this section.

^o Mercury. Cleanup level based on applicable state and federal law.

^p PAHs (carcinogenic). Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.

- ^q PCB mixtures. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.
- ^r Radium 226 and 228. Cleanup level based on applicable state and federal law.
- ^s Radium 226. Cleanup level based on applicable state and federal law.
- ^t Tetrachloroethylene. Cleanup level based on applicable state and federal law.
- ^u Toluene. Cleanup level based on applicable state and federal law and prevention of adverse aesthetic characteristics.
- ^v Total Petroleum Hydrocarbons. Cleanup level based on prevention of adverse aesthetic characteristics.
- ^w 1,1,1 Trichloroethane. Cleanup level based on applicable state and federal law.
- ^x Trichloroethylene. Cleanup level based on applicable state and federal law.
- ^y Vinyl chloride. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.
- ^z Xylenes. Cleanup level based on applicable state and federal law and prevention of adverse aesthetic characteristics; and

(ii) Concentrations established under applicable state and federal laws, including the following requirements:

(A) Maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 141, as amended;

(B) Maximum contaminant level goals for noncarcinogens established under the Safe Drinking Water Act and published in 40 C.F.R. 141, as amended;

(C) Secondary maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 143, as amended; and

(D) Maximum contaminant levels established by the state board of health and published in chapter 248-54 WAC, as amended.

(b) The department may establish method A cleanup levels more stringent than those required by (a) of this subsection when, based upon site-specific evaluations, the department determines that such levels are necessary to protect human health and the environment.

(c) Cleanup levels to protect beneficial uses of ground water other than drinking water shall be established by the department under methods B or C, as appropriate.

(3) Method B cleanup levels.

(a) Where the ground water is a current or potential future source of drinking water, method B cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws, including the requirements in subsection (2)(a)(ii) of this section;

(ii) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health as determined by the following methods:

(A) Concentrations which are estimated to result in no acute or chronic toxic effects on human health as determined using the following equation and standard exposure assumptions:

$$\text{Ground water cleanup level} = \frac{\text{RFD} \times \text{ABW} \times \text{UCF} \times \text{HQ}}{\text{DWIR} \times \text{INH}} \text{ (ug/l)}$$

Where:

RFD = Reference Dose as specified in WAC 173-340-708(7) (mg/kg-day)

ABW = Average body weight during the period of exposure (16 kg)

UCF = Unit conversion factor (1,000 ug/mg)

HQ = Hazard quotient (1)

DWIR = Drinking water ingestion rate (1.0 liter/day)

INH = Inhalation correction factor as defined in WAC 173-340-720(7);

(B) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 1,000,000 as determined using the following equation and standard exposure assumptions:

$$\text{Ground water cleanup level} = \frac{\text{RISK} \times \text{ABW} \times \text{LIFE} \times \text{UCF}}{\text{CPF} \times \text{DWIR} \times \text{DUR} \times \text{INH}} \text{ (ug/l)}$$

Where:

RISK = Acceptable cancer risk level (1 in 1,000,000)

ABW = Average body weight during the period of exposure (70 kg)

LIFE = Lifetime (75 years)

UCF = Unit conversion factor (1,000 ug/mg)

CPF = Carcinogenic potency factor as specified in WAC 173-340-708(8) (kg-day/mg)

DWIR = Drinking water ingestion rate (2.0 liters/day)

DUR = Duration of exposure (30 years)

INH = Inhalation correction factor as defined in WAC 173-340-720(7);

(b) The department may establish method B cleanup levels that are more stringent than those required by subsection (3)(a) of this section, when, based on site-specific evaluations, the department determines such levels are necessary to protect human health and the environment. This may include the following:

(i) Concentrations which are necessary to protect sensitive sub-groups;

(ii) Concentrations which eliminate or minimize the potential for food chain contamination;

(iii) Concentrations which eliminate or minimize the potential for damage to soils or biota in the soils which could impair the use of the soil for agricultural or silvicultural purposes;

(iv) Concentrations which eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment; and

(v) Concentrations which protect nearby surface waters. In general, these will be based on attaining surface water cleanup levels in the surface water as close as technically possible to the point or points where the ground water flows into the surface water.

(c) Method B cleanup levels to protect beneficial uses of ground water other than drinking water shall be established by the department on a case-by-case basis.

(4) Method C cleanup levels.

(a) Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the conditions in WAC 173-340-706(1) exist.

(b) Where the ground water is a current or potential future source of drinking water as defined in subsection

(1)(a) of this section, method C cleanup levels for ground water shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws, including the requirements in subsection (2)(a)(ii) of this section;

(ii) For hazardous substances for which sufficiently protective, health-based standards or criteria have not been established under applicable state and federal laws, those concentrations that protect human health as determined using the following methods:

(A) Concentrations which are estimated to result in no significant acute or chronic toxic effects on human health and are estimated in accordance with WAC 173-340-720 (3)(a)(ii)(A) except that the average body weight shall be 70 kg and the drinking water intake rate shall be 2 liters/day;

(B) Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 and are estimated in accordance with WAC 173-340-720 (3)(a)(ii)(B);

(c) The department may establish method C cleanup levels that are more stringent than those required by (b) of this subsection when, based on a site-specific evaluation, the department determines such levels are necessary to protect human health and the environment. This may include consideration of those factors listed in subsection (3)(b) of this section.

(d) Method C cleanup levels that protect beneficial uses of ground water other than drinking water shall be established by the department on a case-by-case basis.

(5) Multiple hazardous substances/multiple pathways of exposure.

(a) Ground water cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand.

(b) The overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.

(6) Point of compliance.

(a) For ground water, the point of compliance is the point or points where the ground water cleanup levels established under subsections (2), (3), (4), and (5) of this section must be attained. Ground water cleanup levels shall be attained in all ground waters from the point of compliance to the outer boundary of the hazardous substance plume.

(b) The point of compliance shall be established throughout the site from the uppermost level of the saturated zone extending vertically to the lowest most depth which could potentially be affected by the site.

(c) Where hazardous substances remain on-site as part of the cleanup action, the department may approve a conditional point of compliance which shall be as close as

practicable to the source of hazardous substances, not to exceed the property boundary. Where a conditional point of compliance is proposed, the person responsible for undertaking the cleanup action shall demonstrate that all practicable methods of treatment are to be utilized in the site cleanup.

(d) At sites where the affected ground water flows into nearby surface water, the cleanup level may be based on protection of the surface water. At these sites, the department may approve a conditional point of compliance that is located within the surface water as close as technically possible to the point or points where ground water flows into the surface water. Conditional points of compliance may be approved only if the following requirements are met:

(i) Use of a dilution zone under WAC 173-201-035 to demonstrate compliance with surface water cleanup levels shall not be allowed;

(ii) Ground water discharges shall be provided with all known available and reasonable methods of treatment prior to release into surface waters;

(iii) Ground water discharges shall not result in violations of sediment quality values published in chapter 173-204 WAC; and

(iv) Ground water monitoring shall be performed to estimate contaminant flux rates and to address potential bioaccumulation problems resulting from surface water concentrations below method detection limits.

(7) Inhalation correction factors.

(a) The inhalation correction factor is an adjustment factor which takes into account exposure to hazardous substances which are volatilized and inhaled during showering and other domestic activities. When available, hazardous substance-specific information shall be used to estimate these values.

(b) Where hazardous substance-specific information is not available, inhalation correction factors shall be one of the following:

(i) For volatile organic hazardous substances, 2; or

(ii) Other hazardous substances, 1.

(c) Where separate toxicity factors (reference doses and carcinogenic potency factors) are available for inhalation and oral exposures, the health hazards associated with the inhalation of hazardous substances in ground water during showering and other domestic activities may be evaluated separately from the health hazards associated with ingestion of drinking water. In these cases, the ground water cleanup level based on ingestion of drinking water shall be modified to take into account multiple exposure pathways in accordance with WAC 173-340-708(6).

(8) Compliance monitoring.

(a) Compliance with ground water cleanup levels shall be determined by analyses of unfiltered ground water samples, unless it can be demonstrated that a filtered sample provides a more representative measure of ground water quality. Ecology expects that filtering will generally be acceptable for inorganic substances where:

(i) A properly constructed monitoring well cannot be sufficiently developed to provide low turbidity water samples;

(ii) Due to the natural background concentration of hazardous substances in the aquifer material, unfiltered samples would not provide a representative measure of ground water quality; and

(iii) Filtering is performed in the field with all practicable measures taken to avoid exposing the ground water sample to the ambient air prior to filtering.

(iv) Ecology expects that filtering will generally be allowed for hazardous substances such as iron and manganese.

(b) Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data which are representative of the site.

(c) The data analysis and evaluation procedures used to evaluate compliance with ground water cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. These procedures shall meet the following general requirements:

(i) Methods of data analysis shall be consistent with the sampling design;

(ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be utilized to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;

(iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods used shall be appropriate for the distribution of sampling data for each hazardous substance. If the distribution of sampling data for a hazardous substance is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions for hazardous substances differ, more than one statistical method may be required;

(iv) Compliance with ground water cleanup levels shall be determined for each ground water monitoring well or other monitoring points such as a spring;

(v) The data analysis procedures identified in the compliance monitoring plan shall specify the statistical parameters to be used to determine compliance with ground water cleanup levels.

(A) For clean levels based on short-term or acute toxic effects on human health or the environment, an upper percentile concentration shall be used to evaluate compliance with ground water cleanup levels.

(B) For cleanup levels based on chronic or carcinogenic threats, the mean concentration shall be used to evaluate compliance with ground water cleanup levels unless there are large variations in concentrations relative to the mean concentration or a large percentage of concentrations below the detection limit;

(vi) When active ground water restoration is performed, or containment technologies are used that incorporate active pumping of ground water, compliance with ground water cleanup levels shall be determined when the ground water characteristics at the site are no longer influenced by the cleanup action.

(d) Appropriate statistical methods include the following:

(i) A procedure in which a confidence interval for each hazardous substance is established from ground water sampling data and the ground water cleanup level is compared to the upper confidence interval; and

(ii) A parametric test for percentiles based on tolerance intervals to test the proportion of ground water samples having concentrations less than the ground water cleanup level; or

(iii) Other statistical methods approved by the department.

(e) If a confidence interval approach is used to evaluate compliance with a ground water cleanup level, the decision rule is a one-tailed test of the null hypothesis that the true ground water concentration exceeds the ground water cleanup level. Compliance with a ground water cleanup level shall be determined using the following criteria:

(i) The upper confidence limit on the true ground water concentration shall be less than the ground water cleanup level. Statistical tests shall be performed at a Type I error level of 0.05;

(ii) No single sample concentration shall be greater than two times the ground water cleanup level; and

(iii) Less than ten percent of the sample concentrations shall exceed the ground water cleanup level during a representative sampling period.

(f) If a method to test the proportion of ground water samples is used to evaluate compliance with a ground water cleanup level, compliance shall be determined using the following criteria:

(i) The true proportion of samples that exceed the ground water cleanup level shall be less than fifty percent. Statistical tests shall be performed with a Type I error level of 0.05; and

(ii) No single sample concentration shall be greater than two times the ground water cleanup level; and

(iii) Less than ten percent of the sample concentrations shall exceed the ground water cleanup level during a representative sampling period.

(g) For purposes of demonstrating compliance with ground water cleanup levels, measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit. Measurement above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit. The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit. Alternate procedures may include probit analysis and regression analysis.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-720, filed 1/28/91, effective 2/28/91.]

WAC 173-340-730 Surface water cleanup standards. (1) General considerations.

(a) Surface water cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site use conditions. The classification and the highest beneficial use of a surface water body shall be determined in accordance with chapter 173-201 WAC, as amended. In the event of a release of a hazardous substance, treatment, removal, or containment measures shall be conducted to reduce the level of hazardous substances in surface water to concentrations consistent with uses specified under this section and chapter 173-201 WAC, as amended.

(b) Surface water cleanup levels established under this section apply to those surface waters of the state affected or potentially affected by releases of hazardous substances from sites addressed under this chapter. Ecology does not expect that cleanup standards will be applied to storm water runoff that is in the process of being conveyed to a treatment system.

(c) Releases of hazardous substances to surface waters of the state shall not directly or indirectly cause violations of groundwater, soil, sediment, or air cleanup standards established under this chapter or other applicable state and federal laws.

(2) Method A cleanup levels.

(a) Method A cleanup levels shall be at least as stringent as concentrations established under applicable state and federal laws, including the following requirements:

(i) All water quality criteria published in the water quality standards for surface waters of the state of Washington, chapter 173-201 WAC, as amended;

(ii) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published pursuant to section 304 of the Clean Water Act.

(b) The department may establish method A cleanup levels that are more stringent than those required under subsection (2)(a) of this section, when, based on site-specific evaluations, the department determines that such levels are necessary to protect human health and the environment.

(3) Method B cleanup levels.

(a) Method B cleanup levels for surface waters shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws, including the following requirements:

(A) All water quality criteria published in the water quality standards for surface waters of the state of Washington, chapter 173-201 WAC, as amended; and

(B) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published pursuant to section 304 of the Clean Water Act unless it can be demonstrated that such criteria are not relevant and appropriate for a specific surface water body or hazardous substance.

(ii) Concentrations which are estimated to result in no adverse effects on the protection and propagation of wildlife, fish, and other aquatic life;

(iii) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health as determined by the following methods:

(A) For surface waters which support or have the potential to support fish or shellfish populations, concentrations which are anticipated to result in no acute or chronic toxic effects on human health as determined using the following equations and standard exposure assumptions:

$$\text{Surface water cleanup level} = \frac{\text{RFD} \times \text{ABW} \times \text{UCF1} \times \text{UCF2} \times \text{HQ}}{\text{BCF} \times \text{FCR} \times \text{FDF}} \text{ (ug/l)}$$

Where:

RFD = Reference Dose as specified in WAC 173-340-708(7) (mg/kg-day)

ABW = Average body weight during the exposure period (70 kg)

UCF1 = Unit conversion factor (1,000 ug/mg)

UCF2 = Unit conversion factor (1,000 grams/liter)

BCF = Fish bioconcentration factor as defined in WAC 173-340-708(9) (unitless)

FCR = Fish consumption rate (54 grams/day)

FDF = Diet fraction (0.5)

HQ = Hazard Index (1)

(B) For surface waters which support fish or shellfish populations, concentrations which are anticipated to result in an excess cancer risk less than or equal to 1 in 1,000,000 as determined using the following equation and standard exposure assumptions:

$$\text{Surface water cleanup level} = \frac{\text{RISK} \times \text{ABW} \times \text{LIFE} \times \text{UCF1} \times \text{UCF2}}{\text{CPF} \times \text{BCF} \times \text{FCR} \times \text{FDF} \times \text{DUR}} \text{ (ug/l)}$$

Where:

CPF = Carcinogenic Potency Factor as specified in WAC 173-340-708(8) (kg-day/mg)

RISK = Acceptable cancer risk level (1 in 1,000,000)

ABW = Average body weight during the exposure period (70 kg)

LIFE = Lifetime (75 years)

UCF1 = Unit conversion factor (1,000 ug/mg)

UCF2 = Unit conversion factor (1,000 grams/liter)

BCF = Fish bioconcentration factor as defined in WAC 173-340-708(9) (unitless)

FCR = Fish consumption rate (54 grams/day)

FDF = Diet fraction (0.5)

DUR = Duration of exposure (30 years);

(C) For surface waters which represent a source or potential future source of drinking water, concentrations which are anticipated to result in no adverse impacts on human health as established in accordance with WAC 173-340-720(3).

(b) The department may establish method B cleanup levels more stringent than those required by subsection (3)(a) of this section, when, based on site-specific evaluations, the department determines that such levels are necessary to protect human health and the environment.

(4) Method C cleanup levels.

(a) Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the conditions in WAC 173-340-706(1) exist.

(b) Method C cleanup levels for surface waters shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws, including the requirements identified in subsection (3)(a)(i) of this section;

(ii) Concentrations which are estimated to result in no significant adverse effects on the protection and propagation of wildlife, fish and other aquatic life;

(iii) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) For surface waters which support or have the potential to support fish or shellfish populations, concentrations which are estimated to result in no significant acute or chronic toxic effects on human health or the environment and are estimated in accordance with WAC 173-340-730

(3)(a)(iii)(A) except that the fish diet fraction shall be twenty percent;

(B) For surface waters which support or have the potential to support fish or shellfish populations, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 and are estimated in accordance with WAC 173-340-730 (3)(a)(iii)(B) except that the fish diet fraction shall be twenty percent;

(C) For surface waters which represent a source or potential future source of drinking water, concentrations which are estimated to result in no adverse impacts on human health and are established in accordance with WAC 173-340-720(4); and

(c) The department may establish method C cleanup levels that are more stringent than those required by (b) of this subsection when, based on site-specific evaluations, the department determines that such levels are necessary to protect human health and the environment.

(5) Multiple hazardous substances/multiple pathways of exposure.

(a) Surface water cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand.

(b) These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.

(6) Point of compliance.

(a) The point of compliance shall be the point or points at which hazardous substances are released to surface waters of the state unless the department has authorized a dilution zone in accordance with WAC 173-201-035.

(b) Where hazardous substances are released to the surface water as a result of ground water flows, no dilution zone shall be allowed to demonstrate compliance with surface water cleanup levels. See WAC 173-340-720 (6)(d) for additional requirements.

(7) Compliance monitoring.

(a) Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data which are representative of the site.

(b) The data analysis and evaluation procedures used to evaluate compliance with surface water cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410.

(c) Compliance with surface water cleanup standards shall be determined by analyses of unfiltered surface water samples, unless it can be demonstrated that a filtered sample provides a more representative measure of surface water quality.

(d) When surface water cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be utilized to evaluate compliance with surface water cleanup levels unless these procedures conflict with the intent of this section.

(e) Where procedures for evaluating compliance are not specified in an applicable state and federal law, the statistical methods used to evaluate compliance with surface water cleanup levels shall be appropriate for the distribution of the hazardous substance sampling data. If the distribution of the hazardous substance sampling data is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions of individual hazardous substances differ, more than one statistical method may be required.

(f) For purposes of demonstrating compliance, measurements below the method detection limit shall be assigned a value equal to one-half of the method detection limit. Measurements above the method detection limit but below the practical quantitation limit shall generally be assigned a value equal to the method detection limit. The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit. Alternate statistical procedures may include probit analysis and regression analysis.

(g) Sampling and analysis of fish tissue or shellfish may be required to supplement water column sampling during compliance monitoring.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-730, filed 1/28/91, effective 2/28/91.]

WAC 173-340-740 Soil cleanup standards. (1) General considerations.

(a) Soil cleanup levels shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential site use is generally the site use requiring the most protective cleanup levels and that exposure to hazardous substances under residential site use conditions represents the reasonable maximum exposure scenario. In the event of a release of a hazardous substance, treatment, removal, and/or containment measures shall be implemented for those soils with hazardous substance concentrations which exceed cleanup levels based on this use unless the following can be demonstrated:

(i) The site does not serve as a current residential area;

(ii) The site does not have the potential to serve as a future residential area based on the consideration of site zoning, statutory and regulatory restrictions, comprehensive plans, historical site use, adjacent land uses, and other relevant factors; and

(iii) Appropriate site use restrictions are implemented at the site; or

(iv) More stringent concentrations are necessary to protect human health and the environment.

(b) Soil cleanup levels for qualifying industrial sites may be established in accordance with the requirements in WAC 173-340-745.

(c) For industrial sites not qualifying under WAC 173-340-745 and commercial sites, the presumption is that soil

cleanup levels will be established in accordance with residential areas unless it can be clearly demonstrated that this is inappropriate.

(i) For a site to qualify under this subsection, it must be clearly demonstrated that:

(A) The site is currently zoned for or otherwise officially designated for industrial/commercial use;

(B) The site is currently used for industrial/commercial purposes or has a history of use for industrial/commercial purposes;

(C) Properties adjacent to and in the general vicinity of the site are used or are designated for use for industrial/commercial purposes; and

(D) The site is expected to be used for industrial/commercial purposes for the foreseeable future due to site zoning, statutory or regulatory restrictions, comprehensive plans, adjacent land use, and other relevant factors.

(ii) For industrial/commercial sites qualifying under this subsection, soil cleanup levels shall be established as close as practicable to the method B soil cleanup levels established under subsection (3) of this section and shall be at least as stringent as the method C soil cleanup levels established under subsection (4) of this section. The overall limits on hazard index and total excess cancer risk specified in subsections (3) through (5) of this section shall apply to these sites.

(iii) Institutional controls under WAC 173-340-440 shall be required for industrial/commercial sites qualifying under this subsection where soil cleanup levels are less stringent than method B soil cleanup levels established under subsection (3) of this section.

(iv) The department expects that only industrial/commercial sites located in the interior portion of a large industrial/commercial area will qualify for other than method A or method B cleanup levels under this subsection.

(d) Soil cleanup levels for other nonresidential site uses such as recreational or agricultural uses shall be established on a case-by-case basis. The overall limits on the hazard index and cancer risk specified in subsections (3) through (5) of this section shall apply to these types of sites. Cleanup levels for these types of sites shall be at least as stringent as method C cleanup levels established under subsection (4) of this section.

(e) Soil cleanup levels shall be established at concentrations which do not directly or indirectly cause violations of ground water, surface water, sediment, or air cleanup standards established under this chapter or applicable state and federal laws.

(2) Method A cleanup levels.

(a) Method A cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in the following table; and

Table 2
Method A Cleanup Levels - Soil^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20.0 mg/kg ^b
Benzene	71-43-2	0.5 mg/kg ^c
Cadmium	7440-43-9	2.0 mg/kg ^d
Chromium	7440-47-3	100.0 mg/kg ^e
DDT	50-29-3	1.0 mg/kg ^f

Ethylbenzene	100-41-4	20.0 mg/kg ^g
Ethylene dibromide	106-93-4	0.001 mg/kg ^h
Lead	7439-92-1	250.0 mg/kg ⁱ
Lindane	58-89-9	1.0 mg/kg ^j
Methylene chloride	75-09-2	0.5 mg/kg ^k
Mercury (inorganic)	7439-97-6	1.0 mg/kg ^l
PAHs (carcinogenic)		1.0 mg/kg ^m
PCB Mixtures		1.0 mg/kg ⁿ
Tetrachloroethylene	127-18-4	0.5 mg/kg ^o
Toluene	108-88-3	40.0 mg/kg ^p
TPH (gasoline)		100.0 mg/kg ^q
TPH (diesel)		200.0 mg/kg ^r
TPH (other)		200.0 mg/kg ^s
1,1,1 Trichloroethane	71-55-6	20.0 mg/kg ^t
Trichloroethylene	79-01-5	0.5 mg/kg ^u
Xylenes	1330-20-7	20.0 mg/kg ^v

^a Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup action under this chapter.

^b Arsenic. Cleanup level based on background concentrations in the state of Washington.

^c Benzene. Cleanup level based on protection of ground water.

^d Cadmium. Cleanup level based on plant protection.

^e Chromium. Cleanup level based on health risks associated with inhalation of resuspended dust.

^f DDT. Cleanup level based on concentrations derived using the procedures in subsection (3)(a)(iii)(B) of this section.

^g Ethylbenzene. Cleanup level based on protection of ground water.

^h Ethylene dibromide. Cleanup level based on protection of ground water.

ⁱ Lead. Cleanup level based on preventing unacceptable blood lead levels.

^j Lindane. Cleanup level based on concentration derived using the procedures in subsection (3)(a)(iii)(B) of this section.

^k Methylene chloride. Cleanup level based on protection of ground water.

^l Mercury. Cleanup level based on protection of ground water.

^m PAHs (carcinogenic). Cleanup level based on concentration derived using the procedures in subsection (3)(a)(iii)(B) of this section.

ⁿ PCB Mixtures. Cleanup level based on concentration derived using the procedures in subsection (3)(a)(iii)(B) of this section.

^o Tetrachloroethylene. Cleanup level based on protection of ground water.

^p Toluene. Cleanup level based on protection of ground water.

^q Total Petroleum Hydrocarbons (gasoline). Cleanup level based on protection of ground water.

^r Total Petroleum Hydrocarbons (diesel). Cleanup level based on protection of ground water.

^s Total Petroleum Hydrocarbons (other). Cleanup level based on protection of ground water.

^t 1,1,1 Trichloroethane. Cleanup level based on protection of ground water.

^u Trichloroethylene. Cleanup level based on protection of ground water.

^v Xylenes. Cleanup level based on protection of ground water.

(ii) Concentrations established under applicable state and federal laws;

(b) The department may establish method A cleanup levels that are more stringent than those required by subsection (2)(a) of this section, when based on a site-specific evaluation, the department determines that such levels are necessary to protect human health or environment.

(3) Method B cleanup levels.

(a) Method B cleanup levels for soils shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws;

(ii) Concentrations which will not cause contamination of ground water at levels which exceed method B ground water cleanup levels established under WAC 173-340-720 as determined using the following criteria:

(A) For individual hazardous substances or mixtures, concentrations that are equal to or less than one hundred times the ground water cleanup level established in accordance with WAC 173-340-720 unless it can be demonstrated that a higher soil concentration is protective of ground water at the site;

(B) For total petroleum hydrocarbons, the person undertaking the cleanup may elect to make this demonstration on the basis of data on individual hazardous substances that comprise the total petroleum hydrocarbons.

(iii) For those hazardous substances for which health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Concentrations which are estimated to result in no acute or chronic toxic effects on human health via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:

$$\text{Soil Cleanup Level} = \frac{\text{RFD} \times \text{ABW} \times \text{UCF2} \times \text{HQ}}{\text{SIR} \times \text{AB1} \times \text{FOC}}$$

(mg/kg)

Where:

- RFD = Reference Dose as defined in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight over the period of exposure (16 kg)
- UCF2 = Units conversion factor (1,000,000 mg/kg)
- SIR = Soil ingestion rate (200 mg/day)
- AB1 = Gastrointestinal absorption rate (1.0)
- FOC = Frequency of contact (1.0)
- HQ = Hazard quotient (1);

(B) Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 1,000,000 via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:

$$\text{Soil Cleanup Level} = \frac{\text{RISK} \times \text{ABW} \times \text{LIFE} \times \text{UCF1}}{\text{CPF} \times \text{SIR} \times \text{AB1} \times \text{DUR} \times \text{FOC}}$$

(mg/kg)

Where:

- RISK = Acceptable cancer risk level (1 in 1,000,000)
- ABW = Average body weight over the period of exposure (16 kg)
- LIFE = Lifetime (75 years)
- UCF1 = Unit conversion factor (1,000,000 mg/kg)
- CPF = Carcinogenic Potency Factor as defined in WAC 173-340-708(8) (kg-day/mg)
- SIR = Soil ingestion rate (200 mg/day)
- AB1 = Gastrointestinal absorption rate (1.0)
- DUR = Duration of exposure (6 years)
- FOC = Frequency of contact (1.0);

(iv) To assure that unacceptable risks do not result from inhalation of hazardous substances in or released from contaminated soils, soil concentrations which ensure that

releases of hazardous substances shall not result in ambient air concentrations which exceed method B cleanup levels established under WAC 173-340-750.

(b) The department may establish method B cleanup levels that are more stringent than those required under (a) of this subsection, when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health or environment, including the following:

(i) Concentrations which eliminate or substantially reduce the potential for food chain contamination;

(ii) Concentrations which eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;

(iii) Concentrations which eliminate or substantially reduce the potential for adverse effects on vegetation or wildlife;

(iv) Concentrations more stringent than those in (b) of this subsection where the department determines that such levels are necessary to protect the ground water at a particular site;

(v) Concentrations necessary to protect nearby surface waters from hazardous substances in runoff from the site; and

(vi) Concentrations which eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment.

(4) Method C cleanup levels.

(a) Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the conditions in WAC 173-340-706(1) exist.

(b) Method C cleanup levels for soils shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws;

(ii) Concentrations which will not cause contamination of ground water at levels which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the following procedures:

(A) For individual hazardous substances or mixtures, concentrations that are equal to or less than one hundred times the ground water cleanup level established in accordance with WAC 173-340-720 unless it can be demonstrated that a higher soil concentration is protective of ground water at the site;

(B) For total petroleum hydrocarbons, the person undertaking the cleanup may elect to make this demonstration on the basis of data on individual hazardous substances that comprise the total petroleum hydrocarbons;

(iii) For those hazardous substances for which health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Concentrations which are anticipated to result in no significant acute or chronic toxic effects on human health

and estimated in accordance with WAC 173-340-740 (3)(a)(iii)(A) except that the frequency of contact shall be 0.5, the soil ingestion rate shall be 100 milligrams per day, and the average body weight shall be 16 kilograms;

(B) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 and are estimated in accordance with WAC 173-340-740 (3)(a)(iii)(B) except that the frequency of contact shall be 0.5 and the soil ingestion rate shall be 100 milligrams per day; and

(iv) To assure that unacceptable risks do not result from inhalation of hazardous substances in or released from contaminated soils, soil concentrations which ensure that releases of hazardous substances shall not result in ambient air concentrations which exceed method C cleanup levels established under WAC 173-340-750.

(b) The department may establish method C cleanup levels that are more stringent than those required by (a) through (c) of this subsection when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment, including consideration of those factors listed in subsection (3)(c) of this section.

(5) Multiple hazardous substances/multiple pathways of exposure.

(a) Soil cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6).

In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand.

(b) These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.

(6) Point of compliance.

(a) The point of compliance is the point or points where the soil cleanup levels established under subsections (2), (3), (4), and (5) of this section shall be attained.

(b) For soil cleanup levels based on the protection of ground water, the point of compliance shall be established in the soils throughout the site.

(c) For soil cleanup levels based on human exposure via direct contact, the point of compliance shall be established in the soils throughout the site from the ground surface to fifteen feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.

(d) The department recognizes that, for those cleanup actions selected under WAC 173-340-360 that involve containment of hazardous substances, the soil cleanup levels will typically not be met at the points of compliance specified in (b) and (c) of this subsection. In these cases, the cleanup action may be determined to comply with cleanup

standards, provided the compliance monitoring program is designed to ensure the long-term integrity of the containment system, and the other requirements for containment technologies in WAC 173-340-360(8) are met.

(7) Compliance monitoring.

(a) Compliance with soil cleanup levels shall be based on total analyses of the soil fraction less than two millimeters in size. When it is reasonable to expect that larger soil particles could be reduced to two millimeters or less during current or future site use and this reduction could cause an increase in the concentrations of hazardous substances in the soil, soil cleanup levels shall also apply to these larger soil particles. Compliance with soil cleanup levels shall be based on dry weight concentrations. The department may approve the use of alternate procedures for stabilized soils.

(b) Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data which are representative of the area where exposure to hazardous substances may occur.

(c) The data analysis and evaluation procedures used to evaluate compliance with soil cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. These procedures shall meet the following general requirements:

(i) Methods of data analysis shall be consistent with the sampling design. Separate methods may be specified for surface soils and deeper soils;

(ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be utilized to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;

(iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods shall be appropriate for the distribution of sampling data for each hazardous substance. If the distribution of sampling data for a hazardous substance is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions for hazardous substances differ, more than one statistical method may be required; and

(iv) The data analysis plan shall specify which parameters are to be used to determine compliance with soil cleanup levels.

(A) For cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile soil concentration shall be used to evaluate compliance with cleanup levels.

(B) For cleanup levels based on chronic or carcinogenic threats, the mean soil concentration shall be used to evaluate compliance with cleanup levels unless there are large variations in hazardous substance concentrations relative to the mean hazardous substance concentration or a large percentage of concentrations are below the detection limit.

(d) Appropriate statistical methods include the following:

(i) A procedure in which a confidence interval for each hazardous substance is established from site sampling data and the soil cleanup level is compared to the upper confidence interval;

(ii) A parametric test for percentiles based on tolerance intervals to test the proportion of soil samples having concentrations less than the soil cleanup level; or

(iii) Other statistical methods approved by the department.

(e) If a confidence interval approach is used to evaluate compliance with a soil cleanup level, the decision rule is a one-tailed test of the null hypothesis that the true soil concentration of a hazardous substance exceeds the soil cleanup level. Compliance with soil cleanup levels shall be determined using the following criteria:

(i) The upper confidence interval on the true soil concentration is less than the soil cleanup level. Statistical tests shall be performed at a Type I error level of 0.05;

(ii) No single sample concentration shall be greater than two times the soil cleanup level; and

(iii) Less than ten percent of the sample concentrations shall exceed the soil cleanup level.

(f) If a method to test the proportion of soil samples is used to evaluate compliance with a soil cleanup level, compliance shall be determined using the following criteria:

(i) No single sample concentrations shall be greater than two times the soil cleanup level; and

(ii) Less than ten percent of the sample concentrations shall exceed the soil cleanup level; and

(iii) The true proportion of samples that do not exceed the soil cleanup level shall not be less than ninety percent. Statistical tests shall be performed with a Type I error level of 0.05.

(g) For purposes of demonstrating compliance with soil cleanup levels, measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit. Detectable levels below the practical quantitation limit shall be assigned a value equal to the method detection limit. The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit. Alternate statistical procedures may include probit analysis and regression analysis.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-740, filed 1/28/91, effective 2/28/91.]

WAC 173-340-745 Soil cleanup standards for industrial sites. (1) General considerations.

(a) This section shall be used to establish soil cleanup levels where the department has determined that industrial site use represents the reasonable maximum exposure.

(b) Cleanup levels shall not be based on industrial site use unless the following can be demonstrated:

(i) The site is zoned or has been otherwise officially designated for industrial use;

(ii) The site is currently used for industrial purposes or has a history of use for industrial purposes;

(iii) Adjacent properties are currently used or designated for use for industrial purposes;

(iv) The site is expected to be used for industrial purposes for the foreseeable future due to site zoning, statutory or regulatory restrictions, comprehensive plans, adjacent land use, and other relevant factors; and

(v) The cleanup action provides for institutional controls implemented in accordance with WAC 173-340-440.

(c) The department expects that only sites located within a limited number of large industrial areas will qualify for industrial soil cleanup levels under this section.

(d) Soil cleanup levels established under this section shall be as close as practicable to cleanup levels established in accordance with WAC 173-340-740, but in no case higher than the concentrations established under subsections (2) through (5) of this section.

(e) Soil cleanup levels for areas beyond the industrial property boundary shall be established in accordance with WAC 173-340-740.

(f) Soil cleanup levels shall be established at concentrations which do not directly or indirectly cause violations of ground water, surface water, or air cleanup standards established under this chapter or under applicable state and federal laws.

(g) See WAC 173-340-740 (1)(c) for establishing cleanup levels at industrial sites not qualifying under this section and at commercial sites.

(2) Method A cleanup levels.

(a) Method A cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in the following table:

**Table 3
Method A Cleanup Levels - Industrial Soil^a**

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	200.0 mg/kg ^b
Benzene	71-43-2	0.5 mg/kg ^c
Cadmium	7440-43-9	10.0 mg/kg ^d
Chromium (Total)	7440-47-3	500.0 mg/kg ^e
DDT	50-29-3	5.0 mg/kg ^f
Ethylbenzene	100-41-4	20.0 mg/kg ^g
Ethylene dibromide	106-93-4	0.001 mg/kg ^h
Lead	7439-92-1	1000.0 mg/kg ⁱ
Lindane	58-89-9	20.0 mg/kg ^j
Methylene chloride	75-09-2	0.5 mg/kg ^k
Mercury (inorganic)	7439-97-6	1.0 mg/kg ^l
PAHs (carcinogenic)		20.0 mg/kg ^m
PCB Mixtures		10.0 mg/kg ⁿ
Tetrachloroethylene	127-18-4	0.5 mg/kg ^o
Toluene	108-88-3	40.0 mg/kg ^p
TPH (gasoline)		100.0 mg/kg ^q
TPH (diesel)		200.0 mg/kg ^r
TPH (other)		200.0 mg/kg ^s
1,1,1 Trichloroethane	71-55-6	20.0 mg/kg ^t
Trichloroethylene	79-01-5	0.5 mg/kg ^u
Xylenes	1330-20-7	20.0 mg/kg ^v

^a Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup actions under this chapter.

^b Arsenic. Cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.

^c Benzene. Cleanup level based on protection of ground water.

^d Cadmium. Cleanup level based on protection of ground water.

^e Chromium. Cleanup level based on inhalation exposure.

^f DDT. Cleanup level based on protection of ground water.

- g Ethylbenzene. Cleanup level based on protection of ground water.
- h Ethylene dibromide. Cleanup level based on protection of ground water.
- i Lead. Cleanup level based on direct contact.
- j Lindane. Cleanup level based on cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.
- k Methylene chloride. Cleanup level based on protection of ground water.
- l Mercury. Cleanup level based on protection of ground water.
- m PAHs (carcinogenic). Cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.
- n PCB Mixtures. Cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.
- o Tetrachloroethylene. Cleanup level based on protection of ground water.
- p Toluene. Cleanup level based on protection of ground water.
- q Total Petroleum Hydrocarbons (gasoline). Cleanup level based on protection of ground water.
- r Total Petroleum Hydrocarbons (diesel). Cleanup level based on protection of ground water.
- s Total Petroleum Hydrocarbons (other). Cleanup level based on protection of ground water.
- t 1,1,1 Trichloroethane. Cleanup level based on protection of ground water.
- u Trichloroethylene. Cleanup level based on protection of ground water.
- v Xylenes. Cleanup level based on protection of ground water; and

(ii) Concentrations established under applicable state and federal laws;

(b) The department may establish method A cleanup levels that are more stringent than those required by (a) of this subsection when, based on site-specific evaluations, the department determines that such levels are necessary to protect human health or environment, including consideration of the factors in WAC 173-340-740 (3)(b).

(3) Method B cleanup levels. This section does not provide procedures for establishing method B cleanup levels. Method C is the standard method for establishing soil cleanup levels at industrial sites and its use is conditioned upon the continued use of the site for industrial purposes.

(4) Method C cleanup levels.

(a) Method C cleanup levels for industrial soils shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws;

(ii) Concentrations which will not cause contamination of ground water to concentrations which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the following procedures:

(A) For individual hazardous substances or mixtures, concentrations that are equal to or less than one hundred times the ground water cleanup level established in accordance with WAC 173-340-720 unless it can be demonstrated that higher soil concentrations are protective of ground water at the site;

(B) For total petroleum hydrocarbons, the person undertaking the cleanup action may elect to make this demonstration on the basis of data on individual hazardous substances that comprise the total petroleum hydrocarbons;

(iii) For those hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Concentrations which are anticipated to result in no acute or chronic toxic effects on human health via direct

contact with contaminated soil and are determined using the following equation and standard exposure assumptions:

$$\text{Soil Cleanup Level} = \frac{\text{RFD} \times \text{ABW} \times \text{UCF2} \times \text{HQ}}{(\text{mg/kg}) \quad \text{SIR} \times \text{AB1} \times \text{FOC}}$$

Where:

RFD = Reference Dose as specified in WAC 173-340-708(7) (mg/kg-day)

ABW = Average body weight over the period of exposure (70 kg)

UCF2 = Unit conversion factor (1,000,000 mg/kg)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption rate (1.0)

FOC = Frequency of contact (0.4)

HQ = Hazard quotient (1);

(B) Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:

$$\text{Soil Cleanup Level} = \frac{\text{RISK} \times \text{ABW} \times \text{LIFE} \times \text{UCF1}}{(\text{mg/kg}) \quad \text{CPF} \times \text{SIR} \times \text{AB1} \times \text{DUR} \times \text{FOC}}$$

Where:

RISK = Acceptable cancer risk level (1 in 100,000)

ABW = Average body weight over the period of exposure (70 kg)

LIFE = Lifetime (75 years)

UCF1 = Units conversion factor (1,000,000 mg/kg)

CPF = Carcinogenic Potency Factor as specified in WAC 173-340-708(8) (kg-day/mg)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption rate (1.0)

DUR = Duration of exposure (20 years)

FOC = Frequency of contact (0.4);

(b) The department may establish method C cleanup levels that are more stringent than those required by (a) of this subsection when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(5) Multiple hazardous substances/multiple pathways of exposure.

(a) Soil cleanup levels for individual hazardous substances developed in accordance with subsection (4) of this section, including cleanup levels based on state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand.

(b) These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.

(6) Point of compliance. The point of compliance shall be established in accordance with WAC 173-340-740(6).

(7) Compliance monitoring. Compliance monitoring shall be performed in accordance with WAC 173-340-410 and 173-340-740(7).

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-745, filed 1/28/91, effective 2/28/91.]

WAC 173-340-750 Cleanup standards to protect air quality. (1) General considerations.

(a) Cleanup levels to protect air quality shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential site use will generally require the most protective ambient air cleanup levels and that exposure to hazardous substances under these conditions represents the reasonable maximum exposure. In the event of a release or potential release of hazardous substances into the ambient air, treatment, removal, or containment measures shall be conducted to reduce the levels of hazardous substances in the ambient air to levels consistent with this use unless all of the following can be demonstrated:

- (i) The site does not serve as a current residential area;
- (ii) The site is not likely to become a residential area in the future based on a review of site zoning, statutory or regulatory restrictions, comprehensive plans, historic site use, adjacent land uses, and other relevant factors;
- (iii) Appropriate institutional controls are implemented at the site to prohibit residential use; and
- (iv) Air emissions from the site will not reduce the air quality in adjacent residential areas; or
- (v) More stringent concentrations are necessary to protect human health and the environment.

(b) Ambient air cleanup levels for nonresidential site uses shall be established on a case-by-case basis. The overall limits on the hazard index and total excess cancer risk specified in subsections (3) through (5) of this section shall apply to these sites. Cleanup levels for these types of sites shall be at least as stringent as method C cleanup levels established under subsection (4) of this section.

(c) Ambient air cleanup levels shall be established at concentrations which do not directly or indirectly cause violations of ground water, surface water, or soil cleanup standards established under this chapter or applicable state and federal laws.

(2) Method A cleanup levels.

(a) Method A cleanup levels for ambient air shall be at least as stringent as concentrations established under applicable state and federal laws;

(b) The department may establish method A cleanup levels that are more stringent than those required by (a) of this subsection when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(3) Method B cleanup levels.

(a) Method B cleanup levels for ambient air shall be at least as stringent as all of the following:

- (i) Concentrations established under applicable state and federal laws; and
- (ii) For hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Concentrations which are estimated to result in no acute or chronic toxic effects on human health and are

determined using the following equation and standard exposure assumptions:

$$\text{Ambient air cleanup level} = \frac{\text{RFD} \times \text{ABW} \times \text{UCF} \times \text{HQ}}{\text{BR} \times \text{ABS}}$$

(ug/m³)

Where:

- RFD = Reference Dose as specified in WAC 173-340-708(7) (mg/kg-day)
- BW = Body weight (16 kg)
- UCF = Units conversion factor (1,000 ug/mg)
- BR = Breathing rate (10 m³/day)
- ABS = Absorption percentage (1.0)
- HQ = Hazard Quotient (1);

(B) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 1,000,000 and are determined using the following equation and standard exposure assumptions:

$$\text{Ambient air cleanup level} = \frac{\text{RISK} \times \text{BW} \times \text{LIFE} \times \text{UCF}}{\text{CPF} \times \text{BR} \times \text{ABS} \times \text{DUR}}$$

(ug/m³)

Where:

- RISK = Acceptable cancer risk level (1 in 1,000,000)
- BW = Body weight (70 kg)
- LIFE = Lifetime (75 years)
- UCF = Units conversion factor (1,000 ug/mg)
- CPF = Carcinogenic potency factor as specified in WAC 173-340-708(8) (kg-day/mg)
- BR = Breathing rate (20 m³/day)
- ABS = Absorption percentage (1.0)
- DUR = Duration of exposure (30 years);

(b) The department may establish method B cleanup levels that are more stringent than those required by (a) of this subsection, when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(4) Method C cleanup levels.

(a) Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that best available control technology has been utilized, and that one or more of the conditions in WAC 173-340-707(1) exist.

(b) Method C cleanup levels for ambient air shall be at least as stringent as all of the following:

- (i) Concentrations established under applicable state and federal laws; and
- (ii) For hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Concentrations which are anticipated to result in no significant acute or chronic effects on human health and are estimated in accordance with WAC 173-340-750 (3)(a)(ii)(A) except that the average body weight shall be 70 kg and the estimated breathing rate shall be 20 m³/day; and

(B) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 and are determined in accordance with WAC 173-340-750 (3)(a)(ii)(B).

(c) The department may establish method C cleanup levels that are more stringent than those required by (b) of this subsection, when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(5) Multiple hazardous substances/multiple pathways of exposure.

(a) Air cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand.

(b) These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including those cleanup levels based on applicable state and federal laws.

(6) Points of compliance. Cleanup levels established under subsections (2), (3), (4), and (5) of this section shall be attained in the ambient air throughout the site. For sites determined to be industrial sites under the criteria in WAC 173-340-745, the department may approve a conditional point of compliance not to exceed the property boundary.

(7) Compliance monitoring.

(a) Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data which are representative of the site.

(b) Data analysis and evaluation procedures used to evaluate compliance with ambient air cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410.

(c) Averaging times specified in applicable state and federal laws shall be used to demonstrate compliance with those requirements.

(d) When cleanup levels are not based on applicable state and federal laws, the following averaging times shall be used:

(i) Compliance with ambient air cleanup levels for noncarcinogens shall be based on twenty-four-hour time weighted averages except where the cleanup level is based upon an inhalation reference dose which specifies an alternate averaging time;

(ii) Compliance with ambient air cleanup levels for carcinogens shall be based on annual average concentrations.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-750, filed 1/28/91, effective 2/28/91.]

WAC 173-340-760 Sediment cleanup standards.
Reserved.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-760, filed 1/28/91, effective 2/28/91.]

PART VIII—GENERAL PROVISIONS

WAC 173-340-800 Property access. (1) Normal entry procedures. Whenever there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents or contractors may, after reasonable notice, enter upon any real property, public or private, to conduct investigations or remedial actions. The notice shall briefly describe the reason for requesting access. For the purpose of this subsection, unless earlier access is granted, reasonable notice shall mean:

(a) Written notice to site owner and operator to the extent known to the department, sent through the United States Postal Service at least three days prior to entry; or

(b) Notice to site owner and operator to the extent known to the department, in person or by telephone at least twenty-four hours prior to entry.

(2) Notification of property owner. The department will ask a resident, occupant, or other persons in custody of the site to identify the name and address of owners of the property. If an owner is identified who has not been previously notified, the department will make a prompt and reasonable effort to notify such owners of remedial actions planned or conducted.

(3) Orders and consent decrees. Whenever investigations or remedial actions are conducted under a consent decree or order, a potentially liable person shall not deny access to the department's authorized employees, agents, or contractors to enter and move freely about the property to oversee and verify investigations and remedial actions being performed.

(4) Ongoing operations. Persons gaining access under this section shall take all reasonable precautions to avoid disrupting the ongoing operations on a site. Such persons shall comply with all state and federal safety and health requirements which the department determines to be applicable.

(5) Access to documents. The department's authorized employees, agents or contractors may, after reasonable notice, enter property for the purpose of inspecting documents relating to a release or threatened release at the facility. Persons maintaining such documents shall:

(a) Provide access during normal business hours and allow the department to copy these documents; or

(b) At the department's request, provide legible copies of the requested documents to the department.

(6) Emergency entry. Notice by the department's authorized employees, agents, or contractors is not required for entry onto property to investigate, mitigate, or abate an emergency posed by the release or threatened release of a hazardous substance. The department will make efforts which are reasonable under the circumstances to promptly notify those owners and operators to the extent known to the department of the actions taken.

(7) Other authorities. Where consent has not been obtained for entry, the department shall secure access in a manner consistent with state and federal law, including compliance with any warrant requirements. Nothing in this chapter shall affect site access authority granted under other state laws and regulations.

(8) Access by potentially liable persons. The department shall make reasonable efforts to facilitate access to real property and documents for persons who are conducting remedial actions under either an order or decree.

(9) Information sharing. The department will provide the documents and factual information on releases or threatened releases obtained through this section to persons who request such in accordance with chapter 42.17 RCW and chapter 173-03 WAC. The department does not intend application of these authorities to limit its sharing of such factual information.

(10) Split samples. Whenever the department intends to perform sampling at a site, it shall indicate in its notification under subsection (1) of this section whether sampling may occur. The person receiving notice may take split samples, provided this does not interfere with the department's sampling.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-800, filed 4/3/90, effective 5/4/90.]

WAC 173-340-810 Worker safety and health. (1) General provisions. Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and regulations promulgated pursuant thereto shall be applicable to remedial actions taken under this chapter. These requirements are subject to enforcement by the designated federal and state agencies. All governmental agencies and private employers are directly responsible for the safety and health of their own employees and compliance with those requirements. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(2) Safety and health plan. Potentially liable persons responsible for undertaking remedial actions under WAC 173-340-520 through 173-340-540, shall submit a safety and health plan for the department's review and comment. The safety and health plan must be consistent with chapter 49.17 RCW and regulations promulgated pursuant thereto.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-810, filed 4/3/90, effective 5/4/90.]

WAC 173-340-820 Sampling and analysis plans. (1) General. A sampling and analysis plan shall be prepared for all sampling activities which are part of investigation and remedial actions unless otherwise directed by the department and except for emergencies. The level of detail required in the sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plans prepared under an order or decree shall be submitted to the department for review and approval.

(2) Contents. The sampling and analysis plan shall specify procedures which ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to insure proper planning and implementation of sampling activities shall be included. References to standard protocols or procedures manuals may be used provided the information referenced is readily

available to the department. The sampling and analysis plan shall contain:

(a) A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;

(b) Organization and responsibilities for the sampling and analysis activities;

(c) Requirements for sampling activities including:

(i) Project schedule;

(ii) Identification and justification of location and frequency of sampling;

(iii) Identification and justification of parameters to be sampled and analyzed;

(iv) Procedures for installation of sampling devices;

(v) Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;

(vi) Procedures for the management of waste materials generated by sampling activities, including installation of monitoring devices, in a manner that is protective of human health and the environment;

(vii) Description and number of quality assurance and quality control samples, including blanks and spikes;

(viii) Protocols for sample labeling and chain of custody; and

(ix) Provisions for splitting samples, where appropriate.

(d) Procedures for analysis of samples and reporting of results, including:

(i) Detection or quantification limits;

(ii) Analytical techniques and procedures;

(iii) Quality assurance and quality control procedures; and

(iv) Data reporting procedures, and where appropriate, validation procedures.

(3) Available guidance. The department shall make available guidance for preparation of sampling and analysis plans.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-820, filed 4/3/90, effective 5/4/90.]

WAC 173-340-830 Analytical procedures. (1) Purpose. This section specifies acceptable analytical methods and other testing requirements for sites where remedial action is being conducted under this chapter.

(2) General requirements.

(a) All hazardous substance analyses shall be conducted by a laboratory accredited under chapter 173-50 WAC, unless otherwise approved by the department.

(b) All analytical procedures used shall be done in accordance with a sampling and analysis plan prepared under WAC 173-340-820.

(c) Tests for which methods have not been specified in this section shall be performed using standard methods or procedures such as those specified by the American Society for Testing of Materials, when available, unless otherwise approved by the department.

(d) Samples shall be analyzed consistent with methods appropriate for the site, the media being analyzed, the hazardous substances being analyzed for, and the anticipated use of the data.

(e) The department may require or approve modifications to the standard analytical methods identified in subsection (4) of this section to provide lower quantitation limits, improved accuracy, greater precision, or to address the factors in (d) of this subsection.

(f) Limits of quantitation. Laboratories shall achieve the lowest practical quantitation limits consistent with the selected method and WAC 173-340-707.

(3) Multiple methods.

(a) Where there is more than one method specified in subsection (4) of this section with a practical quantitation limit less than the cleanup standard, any of the methods may be selected. In these situations, considerations in selecting a particular method may include confidence in the data, analytical costs, and considerations relating to quality assurance or analysis efficiencies.

(b) The department may require an analysis to be conducted by more than one method in order to provide higher data quality. For example, the department may require that different separation and detection techniques be used to verify the presence of a hazardous substance ("qualification") and determine the concentration of the hazardous substance ("quantitation").

(4) Analytical methods.

(a) The methods used for sample collection, sample preservation, transportation, allowable time before analysis, sample preparation, analysis, method detection limits, practical quantitation limits, quality control, quality assurance and other technical requirements and specifications shall comply with the following requirements, as applicable:

(i) Method 1. **Test Methods for Evaluating Solid Waste**, U.S. EPA, SW-846 and any revisions or amendments thereto;

(ii) Method 2. **Methods for Chemical Analysis of Water and Wastes**, U.S. EPA, EPA-600/4-79-020 and any revisions or amendments thereto;

(iii) Method 3. **Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act**, 40 CFR 136, and Appendix A, B, and C, U.S. EPA and any revisions or amendments thereto;

(iv) Method 4. **Standard Methods for the Examination of Water and Wastewater**, American Public Health Association, American Water Works Association, and Water Pollution Control Federation and any revisions or amendments thereto;

(v) Method 5. **Recommended Protocols for Measuring Selected Environmental Variables in Puget Sound**, Puget Sound Estuary Program/Tetra Tech, 1986 and any revisions or amendments thereto;

(vi) Method 6. **Quality Assurance Interim Guidelines for Water Quality Sampling and Analysis**, Groundwater Management Areas Program, Washington Department of Ecology, Water Quality Investigations Section, December 1986 and any revisions or amendments thereto; or

(vii) Equivalent methods subject to approval by the department.

(b) The methods used for a particular hazardous substance at a site shall be selected in consideration of the factors in subsection (2) of this section.

(c) Ground water. Methods 1, 2, 3 and 4, as described in (a) of this subsection, may be used to determine compliance with WAC 173-340-720.

(d) Surface water. Methods 1, 2, 3, 4 and 5 as described in (a) of this subsection, may be used to determine compliance with WAC 173-340-730.

(e) Soil. Method 1, as described in (a) of this subsection, may be used to determine compliance with WAC 173-340-740 and 173-340-745.

(f) Air. Appropriate methods for determining compliance with WAC 173-340-750 shall be selected on a case-by-case basis, in consideration of the factors in subsection (2) of this section.

[Statutory Authority: Chapter 70.105D RCW. 91-04-019, § 173-340-830, filed 1/28/91, effective 2/28/91; 90-08-086, § 173-340-830, filed 4/3/90, effective 5/4/90.]

WAC 173-340-840 General submittal requirements.

Unless otherwise specified by the department, all reports, plans, specifications, and similar information submitted under this chapter shall meet the following requirements:

(1) Cover letter. Include a letter describing the submittal and specifying the desired department action or response.

(2) Number of copies. Three copies of the plan or report shall be submitted to the department's office responsible for the facility. The department may require additional copies to meet public participation and interagency coordination needs.

(3) Certification. All engineering work submitted under this chapter shall be under the seal of a professional engineer registered with the state of Washington.

(4) Visuals. Maps, figures, photographs, and tables to clarify information or conclusions shall be legible. All maps, plan sheets, drawings, and cross-sections shall meet the following requirements:

(a) To facilitate filing and handling, be on paper no larger than 24 x 36 inches and no smaller than 8 1/2 x 11 inches. Photo-reduced copies of plan sheets may be submitted provided at least one full-sized copy of the photo-reduced sheets are included in the submittal.

(b) Identify and use appropriate and consistent scales to show all required details in sufficient clarity.

(c) Be numbered, titled, have a legend of all symbols used, and specify drafting or origination dates.

(d) Contain a north arrow.

(e) Use United States Geological Survey datum as a basis for all elevations.

(f) For planimetric views, show a survey grid based on monuments established in the field and referenced to state plane coordinates. This requirement does not apply to conceptual diagrams or sketches when the exact location of items shown is not needed to convey the necessary information.

(g) Where grades are to be changed, show original topography in addition to showing the changed site topography. This requirement does not apply to conceptual diagrams or sketches where before and after topography is not needed to convey the necessary information.

(h) For cross-sections, identify the location and be cross-referenced to the appropriate planimetric view. A reduced diagram of a cross-section location map shall be included on the sheets with the cross-sections.

(5) Sampling data. All sampling data shall be submitted consistent with procedures specified by the department.

(6) Appendix. An appendix providing the principal information relied upon in preparation of the submittal. This should include, for example: A complete citation of references; applicable raw data; a description of, or where readily available, reference to testing and sampling procedures used; relevant calculations; and any other information needed to facilitate review.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-840, filed 4/3/90, effective 5/4/90.]

WAC 173-340-850 Recordkeeping requirements.

(1) Any remedial actions at a facility must be documented with adequate records. Such records may include: Factual information or data; relevant decision documents; and any other relevant, site specific documents or information.

(2) Unless otherwise required by the department, records shall be retained for at least ten years from the date of completion of compliance monitoring.

(3) Records shall be retained by the person taking remedial action, unless the department requires that person to submit the records to the department.

(4) The department shall maintain its records in accordance with chapter 42.17 RCW.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-850, filed 4/3/90, effective 5/4/90.]

WAC 173-340-860 Endangerment. In the event that the department determines that any activity being performed at a hazardous waste site is creating or has the potential to create a danger to human health or the environment, the department may direct such activities to cease for such period of time as it deems necessary to abate the danger.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-860, filed 4/3/90, effective 5/4/90.]

WAC 173-340-870 Project coordinator. The potentially liable person shall designate a project coordinator for work performed under an order or decree. The project coordinator shall be the designated representative for the purposes of the order or decree. That person shall coordinate with the department and the public and shall facilitate compliance with requirements of the order or decree.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-870, filed 4/3/90, effective 5/4/90.]

WAC 173-340-880 Emergency actions. Nothing in this chapter shall limit the authority of the department, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-880, filed 4/3/90, effective 5/4/90.]

WAC 173-340-890 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected.

[Statutory Authority: Chapter 70.105D RCW. 90-08-086, § 173-340-890, filed 4/3/90, effective 5/4/90.]

**Chapter 173-342 WAC
ADDITIONAL TAXABLE HAZARDOUS
SUBSTANCE LIST**

WAC

173-342-010	Purpose and authority.
173-342-020	Definitions.
173-342-030	Basis to determine what is a taxable hazardous substance.
173-342-040	Listing.
173-342-050	List.

WAC 173-342-010 Purpose and authority. The purposes of this chapter are to establish requirements for the addition or deletion of materials to the list of hazardous substances which are subject to the state hazardous substance tax pursuant to chapter 2, Laws of 1989, and to list or delete those substances.

It is the intent of this rule to add only materials which are similar to those previously defined by the Model Toxics Control Act as taxable hazardous substances. Those are, in general terms, petroleum products, pesticide products, and chemicals. Manufactured products which may be environmentally detrimental, but not of special hazard, such as plastic containers, solid metals, and wood products or wood fibers are not of this type.

The authority to add or delete additional substances is granted under section 9, chapter 2, Laws of 1989.

[Statutory Authority: 1989 c 2. 90-03-020, § 173-342-010, filed 1/9/90, effective 2/9/90.]

WAC 173-342-020 Definitions. For the purpose of this chapter, the following terms have the meanings given below:

(1) "Director" means the director of the department of ecology or the director's designee.

(2) "Hazardous substance" means anything designated as such by the provisions of this rule, as adopted and thereafter amended. In addition, this term includes:

(a) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by P.L. 99-499. These substances consist of chemicals and elements in their purest form. (Reportable quantities associated with these chemicals under CERCLA are not considered for the purposes of this tax, but are duly noted here to avoid any confusion regarding the intent of the federal regulation. See CERCLA, 42 USCA, Sec. 9601.) A CERCLA substance which contains water, a stabilizer, or a preservative is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology under the provisions of this rule;

(b) Petroleum products;

(c) Pesticide products required to be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(3) "Material" means substance, chemicals, category of chemicals, or mixtures of chemicals including products.

(4) "Persistence" means the tendency of a substance to resist degradation and remain in the atmosphere, soil, and/or water.

(5) "Toxicity" means a measure of the propensity of a chemical to produce injury once it reaches a susceptible receptor in or on a living organism.

(6) Except for terms defined in this section, the definitions in section 9, chapter 2, Laws of 1989 and WAC 458-20-252 apply to this chapter.

[Statutory Authority: 1989 c 2. 90-03-020, § 173-342-020, filed 1/9/90, effective 2/9/90.]

WAC 173-342-030 Basis to determine what is a taxable hazardous substance. Additional materials may be defined as taxable hazardous substances on the basis of a departmental determination of:

(1) Negative environmental factors such as substantial toxicity and persistence of materials being considered for listing or delisting; and

(2) Substantial adverse impact on waste management operations such as the management of hazardous waste, solid waste, wastewater treatment facilities, wastewater from ground or marine septic systems, and contaminated sites.

[Statutory Authority: 1989 c 2. 90-03-020, § 173-342-030, filed 1/9/90, effective 2/9/90.]

WAC 173-342-040 Listing. The director may propose to add (or delete from those materials previously added) materials to the definition of hazardous substance.

(1) Additions or deletions to the list shall be made by amendment of this rule pursuant to the Administrative Procedure Act (chapter 34.05 RCW).

(2) The director of ecology shall add or delete materials no more than twice during each calendar year.

(3) For tax purposes, changes in this definition shall take effect on the first day of the next month that is at least thirty days after the effective date of the rule.

(4) For each material proposed for additional listing, the department shall prepare a "basis for listing" which shall include those factors and data which led the director to propose the listing.

(5) The director shall prepare a "basis for deletion" which shall include those factors and data which led the director to propose deletions from materials previously added.

[Statutory Authority: 1989 c 2. 90-03-020, § 173-342-040, filed 1/9/90, effective 2/9/90.]

WAC 173-342-050 List. (Reserved.)

[Statutory Authority: 1989 c 2. 90-03-020, § 173-342-050, filed 1/9/90, effective 2/9/90.]

**Chapter 173-351 WAC
CRITERIA FOR MUNICIPAL SOLID WASTE
LANDFILLS**

WAC

173-351-010	Purpose, applicability and effective dates.
173-351-100	Definitions.
173-351-120	Consideration of other local, state, and federal laws.

173-351-130	Location restrictions.
173-351-140	Other location restrictions.
173-351-200	Operating criteria.
173-351-210	Plan of operation.
173-351-220	Additional operating criteria.
173-351-300	Design criteria.
173-351-400	Ground water monitoring systems and corrective action.
173-351-405	Performance standards for ground water monitoring system designs.
173-351-410	Ground water sampling and analysis requirements.
173-351-415	Ground water reporting.
173-351-420	Statistical methods for ground water monitoring.
173-351-430	Detection monitoring program.
173-351-440	Assessment monitoring program.
173-351-450	Alternate ground water monitoring programs.
173-351-460	Role of jurisdictional health department in corrective action.
173-351-465	Role of department of ecology in corrective action.
173-351-480	Ground water modeling.
173-351-490	The hydrogeologic report contents.
173-351-500	Closure and post-closure care.
173-351-600	Financial assurance criteria.
173-351-700	Permitting requirements.
173-351-720	Permit application procedures.
173-351-730	Contents of applications.
173-351-740	Permit issuance criteria.
173-351-750	Permit provisions.
173-351-760	Appeals.
173-351-990	Appendices.

WAC 173-351-010 Purpose, applicability and effective dates. (1) Purpose. The purpose of this regulation is to establish minimum state-wide standards for all municipal solid waste landfill (MSWLF) units under the authority of chapter 70.95 RCW as amended in order that jurisdictional health departments can enact ordinances equally as or more stringent than this regulation and to have jurisdictional health departments implement such ordinances through a permit system set forth in Section 700. It is also the purpose of this regulation to implement rule making by the Environmental Protection Agency (EPA) under the authority of subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended in 1984, and under the authority of Section 405(d) of the Clean Water Act as amended. The Clean Water Act required EPA "to establish standards for sewage sludge that is co-disposed with municipal solid waste." EPA satisfied both statutory requirements with the publication of 40 CFR Part 258-Criteria For Municipal Solid Waste Landfills on October 9, 1991. These minimum state-wide criteria ensure the protection of human health and the environment.

(2) Applicability.

(a) These criteria apply to new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in this regulation; all other solid waste disposal facilities and practices that are not regulated under subtitle C of RCRA and chapter 70.105 RCW are subject to the criteria contained in 40 CFR Part 257, Criteria For Classification of Solid Waste Disposal Facilities, and/or chapter 173-304 WAC as amended.

Note: These rules do not apply to facilities that receive only inert and demolition waste, wood waste, industrial solid wastes, or other types of solid waste (other than household waste) disposed of in limited purpose landfills regulated in chapter 173-304 WAC, minimum functional standards for solid waste handling. Co-disposal of any solid waste with household waste is governed by these rules.

(b) These criteria do not apply to MSWLF units that do not receive waste on or after the effective date of this chapter. MSWLF units that stopped receiving waste prior to October 9, 1991, are subject to closure and post-closure rules under chapter 173-304 WAC, the Minimum Functional Standards for Solid Waste Handling. MSWLF units that received waste on and after October 9, 1991, but stop receiving waste prior to the effective date of this rule:

(i) Are also subject to federal closure rules under 40 CFR Part 258.60(a);

(ii) Will be subject to all the requirements of this regulation unless otherwise specified, if such MSWLF units fail to meet the federal closure rules under 40 CFR Part 258.60(a) by April 9, 1994, and the closure standards of chapter 173-304 WAC; except that jurisdictional health departments may grant time extensions to complete closure under 40 CFR Part 258.60(a) by October 9, 1994; and

(iii) Will be subject to the ground water monitoring and corrective action requirements of WAC 173-351-400 and the permitting requirements of WAC 173-351-700 if such MSWLF units are part of a multi-unit ground water monitoring system of WAC 173-351-450(4).

(c) All MSWLF units that receive waste on or after the effective date of this chapter must comply with this chapter by the effective date of this chapter unless:

(i) Later effective dates are specified elsewhere in this chapter, such as WAC 173-351-400 (1)(b), ground water monitoring and WAC 173-351-600 (4)(c); or

(ii) The MSWLF unit is an existing MSWLF unit or an existing lateral expansion of an existing unit that:

(A) Disposed of 100 tons per day or less of solid waste during a representative period prior to the effective date of this chapter;

(B) Does not dispose of more than an average of 100 tons per day of solid waste each month between the effective date of this chapter and April 9, 1994; and

(C) Is not on the National Priorities List (NPL) as found in Appendix B to 40 CFR Part 300.

(d) MSWLF units that meet conditions of (c) of this subsection are exempt from all requirements of this rule but must meet the final cover requirement specified in 40 CFR 258.60(a) and the requirements of chapter 173-304 WAC. The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in (c) and (d) of this section that fail to complete cover installation by October 9, 1994, will be subject to all requirements of this chapter, unless otherwise specified.

(e) MSWLF units failing to satisfy these criteria are considered open dumps for purposes of state solid waste management planning under RCRA.

(f) MSWLF units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.

(g) MSWLF units containing sewage sludge and failing to satisfy these criteria violate Sections 309 and 405(e) of the Federal Clean Water Act.

Note: All state codes standards, rules and regulations cited in this chapter are available by writing to the Department of Ecology, P.O. Box 4-7600, Olympia, Washington 98504-7600, or call 1-800-RECYCLE for the location of the nearest regional office of the department.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-010, filed 10/26/93, effective 11/26/93.]

WAC 173-351-100 Definitions. Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this regulation; additional definitions appear in the specific sections to which they apply.

"Active area" means that part of a facility that includes the active portion and portions of a facility that recycle, store, treat, or dispose of solid (including liquid) wastes. The active area includes leachate treatment facilities and runoff ponds. It excludes run-on ponds and on-site roads which are used for any purpose; on-site roads are considered part of the buffer zone. See active portion and buffer zone definition below.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with WAC 173-351-500, Closure and post-closure care.

"Active portion" means that part of a facility or MSWLF unit that has received or is receiving wastes and that has not been closed in accordance with WAC 173-351-500, Closure and post-closure care.

"Airport." See WAC 173-351-130 (2)(d)(i).

"Areas susceptible to mass movement." See WAC 173-351-130 (7)(b)(iv).

"Arid" means locations in the state of Washington having less than twelve inches (30 centimeters) of precipitation annually.

"Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under chapter 70.95J RCW. Biosolids includes septic tank sludge, also known as septage, that can be beneficially recycled and meets all requirements of chapter 70.95J RCW.

"Bird hazard." See WAC 173-351-130 (2)(d)(ii).

"Buffer zone" means that part of a facility which lies between the active area and the property boundary.

"Closure" means those actions taken by the owner or operator of a MSWLF unit or facility to cease disposal operations and to ensure that a MSWLF unit or facility is closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period. Closure is considered part of operation. See definition of operation.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Composite layer." See WAC 173-351-500 (1)(i)(B).

"Composite liner." See WAC 173-351-300 (2)(a)(ii).

"Construction quality assurance" means a planned system of activities that provide assurance that a facility is constructed as specified in the design and that the materials used in construction are manufactured according to specifications. Construction quality assurance includes inspections, verifications, audits, and evaluations of materials and workmanship necessary to determine and document the quality of the constructed facility.

"Construction quality control" means a planned system of activities that is used to directly monitor and control the quality of a construction project. Construction quality controls are the measures under taken by the contractor or installer to determine compliance with requirements for workmanship and materials put forth in the plans and specification for the construction project.

"Contaminate" means to allow to discharge a substance into ground water that would cause:

The concentration of that substance in the ground water to exceed the maximum contamination level specified in chapter 173-200 WAC; or

A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contaminant level specified in chapter 173-200 WAC; or

A statistically significant increase above background in the concentration of a substance which:

Is not specified in chapter 173-200 WAC; and

Is present in the solid waste; and

Has been determined to present a substantial risk to human health or the environment in the concentrations found at the point of compliance by the jurisdictional health department in consultation with the department and the department of health.

"Dangerous wastes" means any solid waste designated as dangerous waste under chapter 173-303 WAC, the Dangerous waste regulations.

"Demolition waste" means solid waste, largely inert waste resulting from the demolition or razing of buildings, roads and other man-made structures.

"Demonstration" means a showing by the owner or operator that human health and the environment can be protected as equally as a given requirement in the regulation. A demonstration is made in the application for a permit under WAC 173-351-700. A successful demonstration allows or authorizes an activity authorized for the life of the facility unless an alternative time period is approved by the jurisdictional health department.

"Department" means the department of ecology.

"Disease vectors." See WAC 173-351-200 (3)(b).

"Displacement." See WAC 173-351-130 (5)(b)(ii).

"Disposal" or "deposition" means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

"Establish" means to construct a new or laterally expanded MSWLF unit.

"Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in WAC 173-351-010 (2)(c). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good waste management practices, including operating plans approved under chapter 173-304 WAC. For the purposes of this rule, any existing horizontal expansion approved by the jurisdictional health department for which as-built plans documenting construction prior to the effective date of this chapter, have been prepared and submitted to the jurisdictional health department shall be considered an existing MSWLF unit.

"Fault." See WAC 173-351-130 (5)(b)(i).

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Floodplain." See WAC 173-351-130 (3)(b)(i).

"Free liquids." See WAC 173-351-200(9).

"Gas condensate." See WAC 173-351-200 (9)(c)(ii).

"Ground water" means water below the land surface in a zone of saturation.

"Holocene." See WAC 173-351-130 (5)(b)(iii).

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including household hazardous waste) (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). This term does not include commercial, industrial, inert and demolition waste, or wood waste.

Note: Sanitary waste in septic tanks that is not disposed of in a MSWLF unit is subject to other state and federal rules.

"Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

Note: 'Hydraulically connected' denotes water-bearing units which can transmit water to other transmissive units.

"Inert waste" means noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack and chemical attack from acidic rain water.

"Industrial solid wastes" means solid waste or waste by-products generated by manufacturing or industrial processes such as scraps, trimmings, packing, pallets, and other discarded materials not otherwise designated as dangerous waste under chapter 173-303 WAC, the Dangerous waste regulations. This term does not include commercial, inert, demolition, construction, woodwaste, mining waste, or oil and gas waste but does include lunch room, office, or other similar waste generated by employees at the industrial facility.

"Jurisdictional health department" means city, county, city-county, or district public health department as defined in chapters 70.05, 70.08, and 70.46 RCW.

"Landfill." See "Facility."

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit that is not an existing horizontal expansion. (See also definition of "existing MSWLF unit.")

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Lithified earth material." See WAC 173-351-200 (6)(b)(iii).

"Liquid waste." See WAC 173-351-200 (9)(c)(i).

"Lower explosive limit." See WAC 173-351-200 (4)(d).

"Maximum horizontal acceleration in lithified earth material." See WAC 173-351-200 (6)(b)(ii).

"Modification" means a substantial change in the design or operational plans including removal of a design element of a MSWLF unit previously set forth in a permit application or a disposal or processing activity that is not approved in the permit. To be considered a substantial change, a modification must be reasonably related to a specific requirement of this rule. Lateral expansions, a fifty percent increase or greater in design volume capacity or changes resulting in significant adverse environmental impacts that have lead a responsible official to issue a declaration of significance under WAC 197-11-736 shall not be considered a modification but would require permit reissuance under these rules.

"Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. For the purposes of this rule sewage sludge generated from publicly owned leachate waste treatment works that receive sewage from on-site sanitary facilities shall not be considered to be municipal sewage sludge.

"Municipal solid waste landfill unit (MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under chapter 173-304 WAC, the Minimum functional standards for solid waste handling or chapter 173-218 WAC, Underground injection control program. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally-exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to the effective date of this regulation.

"Nonarid" means locations in the state of Washington having equal to or more than twelve inches (30 centimeters) of precipitation annually.

"Nuisance" means unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures, or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

"100-year flood." See WAC 173-351-130 (3)(b)(ii).

"Open burning" means the combustion of solid waste without:

Control of combustion air to maintain adequate temperature for efficient combustion;

Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and

Control of the emission of the combustion products.

"Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

"Operation" means those actions taken by an owner or operator of a facility or MSWLF unit beginning with waste

acceptance at a facility or MSWLF unit up to and including closure of the facility or MSWLF unit.

"Owner" means the person(s) who owns a facility or part of a facility.

"Point of compliance" means the point located on land owned by the owner of the MSWLF unit, and is no more than one hundred fifty meters (four hundred ninety-two feet) from the waste management unit boundary; see also WAC 173-351-300 (2)(c).

"Poor foundation conditions." See WAC 173-351-130 (7)(b)(ii).

"Post-closure" means those actions taken by an owner or operator of a facility or MSWLF unit after closure.

"Purchase" means execution of a long term lease, securing of options to purchase or execution of agreements to purchase.

"Qualified ground-water scientist." See WAC 173-351-400(2).

"Random inspection." See WAC 173-351-200 (1)(b)(ii).

"Regulated dangerous waste." See WAC 173-351-200 (1)(b)(i).

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Seismic impact zone." See WAC 173-351-130 (6)(b)(i).

"Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sole source aquifer." See WAC 173-351-140 (1)(b)(vii).

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to garbage, rubbish, ashes, industrial wastes, commercial waste, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, discarded commodities and recyclable materials.

"Structural components." See WAC 173-351-130 (7)(b)(ii).

"Unstable area." See WAC 173-351-130 (7)(b)(i).

"Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric, and the formation occurs above the zone of saturation.

"Vulnerability." See WAC 173-351-140 (1)(b).

"Waste management unit" means a MSWLF unit.

"Waste management unit boundary" means a vertical surface located at the hydraulically down gradient limit of the unit. This vertical surface extends down into the hydrostratigraphic unit(s) identified in the hydrogeologic report.

"Waters of the state" means lakes, rivers, ponds, streams, inland waters, underground waters, salt water, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

"Wetlands." See WAC 173-351-130 (4)(b).

"Woodwaste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258.93-22-016, § 173-351-100, filed 10/26/93, effective 11/26/93.]

WAC 173-351-120 Consideration of other local, state, and federal laws. The owner or operator of a municipal solid waste landfill unit must comply with any other applicable federal, state, and local rules, laws, regulations, or other requirements.

Note: Except for 40 CFR Part 258.60(f) and 258.60(g) set forth in WAC 173-351-010 (2)(b)(ii), 40 CFR Part 258 is not an applicable federal rule for purposes of this section.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258.93-22-016, § 173-351-120, filed 10/26/93, effective 11/26/93.]

WAC 173-351-130 Location restrictions. (1) Applicability.

(a) On and after the effective date of this chapter, all MSWLF units shall meet the locational restrictions of this section unless otherwise specified.

(b) Existing MSWLF units that cannot make the demonstration specified in subsection (2)(a) of this section, pertaining to airports, subsection (3)(a) of this section, pertaining to floodplains, subsection (7)(a) of this section, pertaining to unstable areas, must close by October 9, 1996, and conduct post-closure in accordance with WAC 173-351-500, Closure and post-closure care.

(c) The deadline for closure required by (b) of this subsection may be extended up to two years if the owner or operator demonstrates to the jurisdictional health department during the permitting process of WAC 173-351-700 that:

- (i) There is no available alternative disposal capacity; and
- (ii) There is no immediate threat to human health and the environment.

Note: Owners or operators of MSWLFs should be aware that the state department of health has adopted a state wellhead protection program in accordance with section 1428 of the Safe Drinking Water Act. Owners and operators should also be aware of locational restrictions which may exist through the process of designating and implementing Ground Water Management Areas, under chapter 173-100 WAC, and through the Special Protection Areas of chapter 173-200 WAC.

(2) Airport safety.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and/or lateral expansions that are located within ten thousand feet (three thousand forty-eight meters) of any airport runway end used by turbojet aircraft or within five thousand feet (one thousand twenty-four meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new MSWLF units and/or lateral expansions within a five-mile (eight

kilometer) radius of any airport runway end used by turbojet or piston-type aircraft must notify the effected airport and the Federal Aviation Administration (FAA).

(c) The owner or operator must place the demonstration required by (a) of this subsection in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.

(d) For purposes of this subsection:

(i) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(ii) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(3) Floodplains.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.

(b) For purposes of this subsection:

(i) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(ii) "100-year flood" or "base flood" means a flood that has a one-percent or less chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in one hundred years on the average over a significantly long period.

(iii) "Washout" means the carrying away of solid waste by waters of the base flood.

(4) Wetlands.

(a) New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations during the permit process of WAC 173-351-700:

(i) The construction and operation of the MSWLF unit will not:

(A) Cause or contribute to violations of chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington and chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington;

(B) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Federal Clean Water Act or chapter 173-220 WAC, the National Pollutant discharge elimination system permit program;

(C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973; and

(D) Violate any requirement under the Federal Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(ii) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator

must demonstrate during the permit process of WAC 173-351-700 the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(A) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the MSWLF unit;

(B) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(C) The volume and chemical nature of the waste managed in the MSWLF unit;

(D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) The potential effects of catastrophic release of solid waste to the wetland and the resulting impacts on the environment; and

(F) Any additional factors, as necessary, to demonstrate during the permit process of WAC 173-351-700 that ecological resources in the wetland are sufficiently protected.

(iii) Where applicable under Section 404 of the Federal Clean Water Act or applicable state wetlands laws and regulations (e.g. chapter 173-22 WAC, Adoption of designations of wetlands associated with shorelines of the state), the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(iv) To the extent required under Section 404 of the Federal Clean Water Act steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by:

(A) Avoiding impacts to wetlands to the maximum extent practicable as required by (a)(iii) of this subsection;

(B) Minimizing unavoidable impacts to the maximum extent practicable; and

(C) Finally offsetting remaining unavoidable wetlands impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration and maintenance of existing degraded wetlands or creation of man-made wetlands);

(v) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this subsection, "wetlands" means those areas that are defined in 40 CFR 232.2(r): Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

(5) Fault areas.

(a) New MSWLF units and lateral expansions shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates during the permit process of WAC 173-351-700 that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(b) For the purposes of this subsection:

(i) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

(6) Seismic impact zones.

(a) New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates during the permit process of WAC 173-351-700 to the jurisdictional health department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.

(b) For the purposes of this subsection:

(i) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

(ii) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(iii) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(7) Unstable areas.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF units will not be disrupted. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(i) On-site or local soil conditions that may result in significant differential settling;

(ii) On-site or local geologic or geomorphologic features; and

(iii) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this subsection:

(i) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, and areas susceptible to mass movements.

(ii) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(iii) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a MSWLF unit.

(iv) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-130, filed 10/26/93, effective 11/26/93.]

WAC 173-351-140 Other location restrictions. (1) Ground water.

(a) Liner separation. No new MSWLF unit or lateral expansion shall be located at a site where the bottom of the lowest liner is any less than ten feet (three meters) above the seasonal high level of ground water in any water bearing unit which is horizontally and vertically extensive, hydraulically recharged and volumetrically significant as to harm or endanger the integrity of the liner at any time, unless a demonstration during the permit process of WAC 173-351-700 can be made that a hydraulic gradient control system or the equivalent can be installed to control ground water fluctuations and maintain a five foot (1.5 meter) separation between the controlled seasonal high level of ground water in the identified water-bearing unit and the bottom of the lowest liner. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.

This demonstration must include:

(i) A hydrogeologic report required in WAC 173-351-490 including a discussion showing the effects from subsoil settlement, changes in surrounding land uses affecting ground water levels, liner leakage or other impacts will not bring any hydrostratigraphic unit to within five feet (1.5 meters) of the bottom of the lowest liner during the active life, closure and post-closure of the MSWLF unit;

(ii) Any currently available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;

(iii) A showing that any gradient-control discharges to ground water will not adversely impact existing ground water/surface water users or the instream flow of surface waters in direct hydrologic contact or continuity with the landfill's hydraulic gradient control system;

(iv) Conceptual engineering drawings of the proposed MSWLF unit and discussion as to how the hydraulic gradient control system will not affect the structural integrity nor performance of the liner;

(v) Design specifications for the proposed ground and surface water monitoring systems; and

(vi) Preliminary engineering drawings of the hydraulic gradient control system (if applicable).

(b) Sole source aquifers. No new MSWLF unit or lateral expansion shall be located over a designated sole source aquifer unless the owner or operator can demonstrate during the permit process of WAC 173-351-700 that the sole source aquifer is not vulnerable to potential ground water contamination from the active area. Vulnerability is defined as the propensity or likelihood of a sole source aquifer to become contaminated should the integrity of the engineering control (including liners) fail; it is a measure of the propensity to deteriorate the water quality of a sole source aquifer, and takes into account an assessment of the physical barriers, the physical movement of contaminants, the hydraulic properties of the subsurface lithology; the rate of a contaminant plume movement; the physical and chemical characteristics of contaminants; and it also includes an assessment of the likelihood and ease for contaminant removal or clean-up, or the arrest of contamination, so as to not impact any further portion of the designated sole source aquifer. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department. Such a vulnerability demonstration must include the submission of a hydrogeologic report as required in WAC 173-351-490 and additionally must meet the following performance criteria:

(i) Demonstrates the presence of confining units or other lithology that will prevent the migration of ground water contamination;

(ii) Addresses the fate and transport of contaminants, including interactions in the lithologic framework, hydrogeochemical facies, contaminant travel times;

(iii) Defines and summarizes the ground water budgets for the active area and the sole source aquifer including recharge and discharge areas and includes flow net diagrams;

(iv) Provides a contingency and ground water assessment plan for the immediate arrest of any ground water contamination and steps to assess the extent of contamination;

(v) Design specifications for the proposed ground and surface water monitoring systems;

(vi) Is prepared by a hydrogeologist or other professional ground water scientist in accordance with WAC 173-351-400(2); and

(vii) "Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to Section 1424e of the Safe Drinking Water Act (PL 93-523).

(c) Drinking water supply wells. No new MSWLF unit or lateral expansion active area shall be located closer than one thousand feet (three hundred meters) to any drinking water supply well, in use and existing at the time of the purchase of the property containing the active area unless the owner or operator can demonstrate during the permit process of WAC 173-351-700 that the active area is no less than a ninety-day hydraulic travel time to the nearest down-gradient drinking water supply well in the first useable aquifer. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be

issued a solid waste permit by the jurisdictional health department. Such a demonstration must include:

(i) A hydrogeologic report required in WAC 173-351-490; and the necessary calculations for showing compliance with the ninety-day travel time; the ninety-day travel time shall be based on the peak or full pumping capacity of installed nearby wells and include potentiometric surface maps showing well capture zones and radius of influence;

(ii) Any currently available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;

(iii) The waste management unit boundaries at facility closure;

(iv) Design specifications for the proposed ground and surface water monitoring systems; and

(v) A statement that the demonstration has been prepared by a hydrogeologist or qualified ground water scientist in accordance with 173-351-400(2).

(2) Surface water. No new MSWLF unit or lateral expansion active area shall be located within two hundred feet (sixty-one meters) measured horizontally from the ordinary high water mark, of a shoreline of the state as defined in RCW 90.58.030 (which includes some wetlands associated with waters of the state), nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 246-290-450.

See also wetlands in WAC 173-351-130(4). Local wetlands protection ordinances should be consulted to determine if greater setbacks are required.

(3) Land use. No new MSWLF unit or lateral expansion shall be located:

(a) In areas designated by the United States Fish and Wildlife Service or the department of wildlife as critical habitat for endangered or threatened species of plants, fish, or wildlife;

(b) So that the active area is any closer than one hundred feet (thirty meters) to the facility property line for land zoned as nonresidential or for unzoned lands, except that the active area shall be no closer than two hundred fifty feet (seventy-six meters) to the property line of adjacent land zoned as residential, existing at the time of the purchase of the property containing the active area.

(c) So as to be at variance with any locally-adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance; and

(d) So that the active area is any closer than one thousand feet (three hundred meters) to any state or national park.

(4) Toxic air emissions. See WAC 173-351-200 (5)(a).

(5) Cover material. See WAC 173-351-200 (2)(a).

(6) Capacity. See WAC 173-351-010 (2)(c).

(7) Climatic factors. See WAC 173-351-300 (2)(b) for climatic factors.

(8) Natural soils. See WAC 173-351-300(2) for soil liner standards.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-140, filed 10/26/93, effective 11/26/93.]

WAC 173-351-200 Operating criteria. (1) Procedures for excluding the receipt of dangerous waste.

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated dangerous wastes including polychlorinated biphenyls (PCB) waste as defined in chapter 173-303 WAC, the Dangerous waste regulations. This program must include, at a minimum:

(i) Random inspections of incoming loads unless the owner or operator takes other steps (for example, instituting source controls and restricting the type of waste received) to ensure that incoming loads do not contain regulated dangerous waste or PCB wastes;

(ii) Records of any inspections;

(iii) Training of facility personnel to recognize regulated dangerous waste and PCB wastes; and

(iv) Immediate notification of the department and the jurisdictional health department if a regulated dangerous waste or PCB waste is discovered at the facility.

(b) For purposes of this subsection:

(i) "Regulated dangerous waste" means a solid waste that is a dangerous waste as defined in WAC 173-303-070, Designation of dangerous waste, including asbestos not managed in accordance to 40 CFR Part 61, that is not excluded from regulation as a dangerous waste under WAC 173-303-071 or was not generated by an exempted small quantity generator as defined in WAC 173-303-070; and

(ii) "Random inspection" means:

(A) Discharging a random waste load onto a suitable surface. A suitable surface shall be chosen to avoid interference with operations so that sorted waste can be distinguished from other loads of uninspected waste, so as to avoid litter and to contain runoff;

(B) Viewing the contents prior to actual disposal of the waste; and

(C) Allowing the facility owner or operator to return excluded wastes to the hauler, arrange for disposal of excluded wastes at a facility permitted to manage dangerous waste, or take other measures to prevent disposal of the excluded wastes at the facility.

(2) Cover material requirements.

(a) Except as provided in (b) of this subsection, the owners or operators of all MSWLF units must cover disposed solid waste with six inches (fifteen centimeters) of earthen material, i.e., soils, at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness other than at least six inches (15 centimeters) of earthen material may be approved by the jurisdictional health department if the owner or operator demonstrates during the permit process of WAC 173-351-700 that the alternative material and thickness control disease vectors, fires, odors, blowing litter, provides adequate access for heavy vehicles, will not adversely affect gas or leachate composition and controls and scavenging without presenting a threat to human health and the environment.

(c) The jurisdictional health department may grant a temporary waiver not to exceed three months from the requirement of (a) and (b) of this subsection if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(3) Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this subsection, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(4) Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that:

(i) The concentration of methane gas generated by the facility does not exceed twenty-five percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components);

(ii) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary or beyond; and

(iii) The concentration of methane gases does not exceed one hundred parts per million by volume of methane in off-site structures.

(b) Owners or operators of all MSWLF units must implement a routine methane monitoring program to ensure that the standards of (a)(i) and (ii) of this subsection are met.

(i) The type and frequency of monitoring must be determined based on the following factors:

(A) Soil conditions;

(B) The hydrogeologic conditions surrounding the facility;

(C) The hydraulic conditions surrounding the facility; and

(D) The location of facility structures and property boundaries.

(ii) The minimum frequency of monitoring shall be quarterly.

Note: All gas monitoring wells shall be constructed and decommissioned to ensure protection of the ground water and to prevent ground water contamination and follow the requirements of chapter 173-160 WAC, Minimum standards for construction and maintenance of wells, unless otherwise approved by the jurisdictional health department.

(c) If methane gas levels exceeding the limits specified in subsection (4)(a)(i) or (ii) of this section are detected, the owner or operator must:

(i) Immediately take all necessary steps to ensure protection of human health including:

(A) Notifying the jurisdictional health department;

(B) Where subsection (4)(a)(ii) of this section is exceeded, monitoring of off-site structures for compliance with subsection (4)(a)(iii) of this section;

(C) Daily monitoring of methane gas levels unless otherwise authorized by the jurisdictional health department; and

(D) Evacuation of buildings affected by landfill gas shall be determined by the jurisdictional health department and fire department.

(ii) Within seven calendar days of detection, place in the operating record, the methane gas levels detected and a description of the steps taken to protect human health; and

(iii) Within sixty days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the jurisdictional health department that the plan has been implemented.

The plan shall describe the nature and extent of the problem and the remedy.

(iv) The jurisdictional health department may establish alternative schedules for demonstrating compliance with (c)(ii) and (iii) of this subsection.

(d) For purposes of this subsection, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees C and atmospheric pressure.

(5) Air criteria.

(a) Owners or operators of all MSWLF units must ensure that the units not violate any applicable requirements developed under the Washington state implementation plan approved or promulgated by the Federal Environmental Protection Agency pursuant to Section 110 of the Federal Clean Air Act, as amended.

(b) Open burning of solid waste is prohibited at all MSWLF units, except: For the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees or debris from emergency cleanup operations, provided that such open burning is not inconsistent with policies, regulations, and permits administered by the jurisdictional air pollution control agency or the department under the Washington Clean Air Act, chapter 70.94 RCW. Household waste shall not be open burned.

(6) Access requirements. Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic, illegal dumping of wastes, and controls to keep animals out by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate shall be required at each entry to the facility.

(7) Run-on/run-off control systems.

(a) Owners or operators of all MSWLF units must design, construct, and maintain:

(i) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five year storm;

(ii) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm.

(b) Run-off from the active portion of the landfill unit must be handled in accordance with WAC 173-351-200(8).

(8) Surface water requirements. MSWLF units shall not:

(a) Cause a discharge of pollutants into waters of the state, including wetlands, that violates any requirements of chapter 90.48 RCW, Water pollution control, including, but not limited to, chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington, chapter 173-220 RCW, the National pollutant discharge elimination system permit program and chapter 173-216 WAC, State waste discharge permit program.

(b) Cause the discharge of a nonpoint source of pollution to waters of the state, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under Section 208 or 319 of the Federal Clean Water Act, as amended.

(9) Liquids restrictions.

(a) Bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

(i) The waste is household waste other than septic waste; or

(ii) The waste is leachate or gas condensate derived from the MSWLF unit, or water added in a controlled fashion and necessary for enhancing decomposition of solid waste, as approved during the permitting process of WAC 173-351-700, whether it is a new or existing MSWLF, or lateral expansion and the MSWLF unit:

(A) Is designed with a leachate collection system and composite liner as described in WAC 173-351-300 (2)(a)(i) and (ii) or (iii); and

(B) Is accepting leachate, condensate or water resulting from an emergency in disposing of such liquids.

The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.

Note: Condensate and leachate are subject to designation to determine whether either is a dangerous waste under chapter 173-303 WAC.

(b) Containers holding liquid waste may not be placed in a MSWLF unit unless:

(i) The container is a small container similar in size to that normally found in household waste;

(ii) The container is designed to hold liquids for use other than storage; or

(iii) The waste is household waste.

(c) For purposes of this subsection:

(i) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846.

(ii) "Gas condensate" means the liquid generated as a result of gas recovery processes at the MSWLF unit.

(10) Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain the required information as it becomes available. The operating record must be retained at or near the facility in an operating record or in an alternative location approved by the jurisdictional health department during the permitting process of WAC 173-351-700. The required information includes:

(i) Copies of all initial, renewal, reissued and modified permit applications including all demonstrations, and issued permits;

(ii) Inspection records, training procedures, and notification procedures required in subsection (1) of this section, Procedures for excluding the receipt of hazardous waste, and inspection documents associated with the plan of operation, WAC 173-351-210 (1)(b).

(iii) Gas monitoring results from monitoring and any remediation plans required by WAC 173-351-200(4);

(iv) Any demonstration, certification, declaration of construction, finding, monitoring, testing, or analytical data as required by WAC 173-351-400 (Ground water monitoring systems and corrective action);

(v) Major deviations from the plan of operation required in WAC 173-351-210; and

(vi) Daily records of weights or volumes of solid waste and, if available, types of waste received at the facility.

(b) The owner or operator must notify the jurisdictional health department when the documents from (a) of this subsection have been placed in or added to the operating record, unless:

(i) Such documents have been made a part of a permit application under this regulation;

(ii) Notification occurs under the renewal application requirements of WAC 173-351-730 (3)(b)(iv); or

(iii) The documents are daily records of weights or volumes specified in WAC 173-351-200 (10)(a)(vi).

(c) The jurisdictional health department can set alternative schedules during the permitting process of WAC 173-351-700 for recordkeeping and notification requirements as specified in (a) and (b) of this subsection, except for the notification requirements in WAC 173-351-130 (2)(b), the Federal Aviation Administration and in WAC 173-351-440 (6)(c), notification of land owners under assessment monitoring.

(d) All information contained in the operating record must be furnished upon request to the jurisdictional health department or be made available at all reasonable times for inspection by the jurisdictional health department and the department.

(11) Annual reports. Each owner or operator shall prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1 of each year. The annual report shall:

(a) Include information on facility activities during the previous year;

(b) Be on forms supplied by the department; and

(c) Include the following information:

(i) Facility location;

(ii) Facility contact;

(iii) Operational and/or post-closure information;

(iv) Permit status;

(v) Compliance information;

(vi) Facility capacity information;

(vii) Information on ground water monitoring as required in WAC 173-351-415(1) except, prior to the effective date of the ground water monitoring requirements of WAC 173-351-400, ground water monitoring information and existing summaries collected under ground water monitoring systems installed according to chapter 173-304 WAC.

(viii) Information on violation of ambient standards for surface water and explosive gases whose monitoring is required by chapter 173-351 WAC or performed as part of the permit issued under WAC 173-351-700; and

(ix) Other information as required.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-200, filed 10/26/93, effective 11/26/93.]

WAC 173-351-210 Plan of operation. Each owner or operator shall develop, keep, and abide by a plan of operation approved as part of the permitting process in WAC 173-351-700. The plan of operation shall describe the facilities' operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health officer. The facility must be operated in accordance with the plan of operation or the

plan must be so modified with the approval of the jurisdictional health department.

Each plan of operation shall include:

- (1) How solid wastes are to be handled on-site during its active life including transportation, routine filling, grading, cover, and housekeeping;
- (2) How inspections are conducted and their frequency;
- (3) Actions to take if there is a fire or explosion;
- (4) Actions to take for sudden releases (e.g., failure of run-off containment system);
- (5) How equipment such as leachate collection and gas collection equipment are to be operated and maintained;
- (6) A safety plan or procedure; and
- (7) Other such details as required by the jurisdictional health department.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-210, filed 10/26/93, effective 11/26/93.]

WAC 173-351-220 Additional operating criteria.

All owners or operators of MSWLF units shall operate the facility so as to:

- (1) Control road dust;

Note: Operators should carefully select dust suppressants approved by the jurisdictional health departments that do not pose a threat to surface or ground water quality.

(2) Collect scattered litter as necessary to prevent vector harborage, a fire hazard, an aesthetic nuisance, or adversely affect wildlife or its habitat;

- (3) Prohibit scavenging;

- (4) Landfill personnel. All landfills shall:

(a) Ensure that at least two landfill personnel are on-site with one person at the active portion when the site is open to the public for landfills with a permitted capacity of greater than fifty thousand cubic yards per year; and

(b) Comply with the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities.

Note: The definition of operators in chapter 173-300 WAC is not the same as the definition of operator in this rule.

(5) Ensure that reserve operational equipment shall be available to maintain and meet these standards;

(6) Clearly mark the active area boundaries authorized in the permit, with permanent posts or using equivalent method clearly visible for inspection purposes;

(7) Thoroughly compact the solid waste before succeeding layers are added except for the first lift over a liner;

(8) Maintain the monitoring system required in WAC 173-351-400, Ground water monitoring systems and corrective action, WAC 173-351-200(4), explosive gas monitoring of this regulation and any other monitoring specified in the permit issued in WAC 173-351-700.

- (9) Require recycling.

(a) All owners and operators shall provide the opportunity for the general public to conveniently recycle cans, bottles, paper, and other material brought to the landfill site and for which a market exists or as required according to the most recently adopted county comprehensive solid waste management plan:

- (i) During the normal hours of operation; and

(ii) In facilities convenient to the public (i.e., near entrance to the gate).

(b) Owners or operators shall conduct recycling activities in an orderly, sanitary manner and in a way that does not interfere with MSWLF operations.

(c) Owners or operators may demonstrate during the permit process of WAC 173-351-700 alternative means to providing an opportunity to the general public to recycle household solid waste including other conveniently located facilities which offer recycling opportunities.

(10) Prohibiting disposal of municipal sewage sludge or biosolids in MSWLF units.

(a) The disposal of municipal sewage sludge or biosolids or any material containing municipal sewage sludge or biosolids in a MSWLF unit is prohibited unless the municipal sewage sludge or biosolids or material containing municipal sewage sludge or biosolids is not a liquid as defined in this rule, and such disposal is specifically approved as part of a valid NPDES permit, or a valid permit issued in accordance with chapter 70.95J RCW and rules promulgated under that authority.

(b) Notwithstanding WAC 173-351-220 (10)(a), the jurisdictional health department may allow disposal of municipal sewage sludge or biosolids, or any material containing municipal sewage sludge or biosolids in a landfill on a temporary basis if the jurisdictional health department determines that a potentially unhealthful circumstance exists and other management options are unavailable or would pose a threat to human health or the environment.

(c) In accordance with (b) of this subsection upon determination that a potentially unhealthful circumstance exists, the jurisdictional health department shall notify the department in writing, of its findings and basis for its determination. In its notification, the jurisdictional health department shall state the date on which disposal is approved to commence, any conditions and the date after which continued disposal shall be prohibited.

(d) For the purposes of this regulation, the use of sewage sludge or biosolids or any material containing sewage sludge or biosolids, which is subject to regulation under 40 CFR Part 503 and or chapter 70.95J RCW, as daily cover or as an amendment to daily cover shall be considered disposal.

(11) Disposal of dangerous waste prohibited. Owners or operators of landfills shall not knowingly dispose, treat, store, or otherwise handle dangerous waste unless the requirements of the Dangerous waste regulation, chapter 173-303 WAC are met.

(12) Jurisdictional health department inspection of activities. In accordance with RCW 70.95.190, employees of the jurisdictional health department or their agents may enter upon, inspect, sample, and move freely about the premises of any MSWLF, after presentation of credentials.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-220, filed 10/26/93, effective 11/26/93.]

WAC 173-351-300 Design criteria. (1) Applicability. Existing MSWLF units are not subject to this section. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good

management, including operating plans approved under chapter 173-304 WAC.

(2) New MSWLF units and lateral expansions shall be constructed:

(a) For nonarid landfills, in accordance with a standard design as follows:

(i) A composite liner as defined in (a)(ii) of this subsection and a leachate collection system that is designed and constructed to maintain less than a 1 foot (30 cm) depth of leachate over the liner.

Note: Leachate head in leachate pump sump areas, only, shall not be allowed to exceed two feet (60 cm).

(ii) For purpose of this section, "composite liner" means a system consisting of two components; the upper component must consist of a minimum of 60 mil thickness high density polyethylene (HDPE) geomembrane. The lower component must consist of at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The geomembrane must be installed in direct and uniform contact with the compacted soil component. Thinner geomembranes of other than high density polyethylene may be used provided that a demonstration can be made that the alternative has equivalent mechanical strength, permeability, chemical resistance and other factors under conditions of construction and use. Minimum thickness of geomembranes other than high density polyethylene shall be 30 mils.

(iii) Equivalent liner designs and liner materials may be used provided a demonstration during the permitting process of WAC 173-351-700 can be made that the liner is equivalent to the composite liner design:

(A) With respect to hydraulic effectiveness as shown by the use of the hydraulic evaluation of landfill performance (HELP) model or other approved models or methods;

(B) With respect to mechanical strength;

(C) With respect to chemical resistance;

(D) With respect to potential physical damage during construction and operation;

(E) With respect to attenuative capacity; and

(F) And other factors identified by the jurisdictional health department and the department on a case-by-case basis.

(b) For arid landfills, in accordance with a design that ensures that the maximum contaminant levels listed in Table 1 of this section will not be exceeded in the hydrostratigraphic unit(s) identified in the hydrogeologic characterization/report at the relevant point of compliance as specified during the permitting process in WAC 173-351-700. When approving a design that complies with the arid landfill design of (b) of this subsection, the jurisdictional health department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the facility and surrounding land;

(ii) The climatic factors of the area; and

(iii) The volume, physical and chemical characteristics of the leachate.

Note: When determining the need for a liner in arid settings and its ability to meet the performance standard of this section, considering (b)(i), (ii), and (iii) of this subsection, the owner or operator may use:

(A) Existing information such as vadose zone, ground water monitoring, or leachate characterization that has previously been conducted at the facility;

(B) Contaminant transport modeling in accordance with the requirements of WAC 173-351-480; and/or

(C) Other information determined as appropriate and relevant by the jurisdictional health department.

(c) The relevant point of compliance approved during the permitting process in WAC 173-351-700, shall be no more than one hundred fifty meters (four hundred ninety-two feet) from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In approving the relevant point of compliance the jurisdictional health department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the facility and surrounding land;

(ii) The volume, and physical/chemical characteristics of the leachate;

(iii) The quantity and quality, and direction, of flow of ground water;

(iv) The proximity and withdrawal rate of the ground water users;

(v) The availability of alternative drinking water supplies;

(vi) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

(vii) Public health, safety, and welfare effects; and

(viii) Practical capability of the owner or operator.

TABLE 1

CHEMICAL	Maximum Contaminant Levels (MCL (mg/l))
ARSENIC	0.00005
BARIUM	1.0
BENZENE	0.001
CADMIUM	0.01
CARBON TETRACHLORIDE	0.0003
CHROMIUM (HEXA VALENT)	0.05
2,4-DICHLOROPHENOXY ACETIC ACID	0.1
1,4-DICHLORO BENZENE	0.004
1,2-DICHLOROETHANE	0.0005
1,1 DICHLOROETHYLENE	0.007
ENDRIN	0.0002
FLUORIDE	4
LINDANE	0.00006
LEAD	0.05
MERCURY	0.002
METHOXYCHLOR	0.1
NITRATE	10
SELENIUM	0.01
SILVER	0.05
TOXAPHENE	0.00008
1,1,1-TRICHLOROETHANE	0.20
TRICHLOROETHYLENE	0.003
2,4,5-TRICHLOROPHENOXY ACETIC ACID	0.01
VINYL CHLORIDE	0.00002

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-300, filed 10/26/93, effective 11/26/93.]

WAC 173-351-400 Ground water monitoring systems and corrective action. (1) Applicability.

(a) The requirements of WAC 173-351-400 through WAC 173-351-490 apply to MSWLF units whose owners and operators are required to perform ground water monitoring under chapter 173-351 WAC.

(b) Owners and operators of MSWLF units must comply with the ground water monitoring requirements of this regulation according to the following schedule:

(i) Existing MSWLF units and lateral expansions less than one mile (1.6 kilometers) from a drinking water intake (surface or subsurface) must be in compliance with the ground water monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 by October 9, 1994;

Note: A drinking water intake is any surface water or ground water intake that is used for the purposes of drinking water i.e., water supply wells.

(ii) Existing MSWLF units and lateral expansions greater than one mile (1.6 kilometers) from a drinking water intake (surface or subsurface) must be in compliance with the ground water monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 by October 9, 1995;

(iii) New MSWLF and lateral expansions units must be in compliance with the ground water monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 before waste can be placed in the MSWLF unit.

(c) Existing MSWLF units and lateral expansions with ground water contamination as defined under WAC 173-304-100 and chapter 173-200 WAC must begin an assessment ground water monitoring program under WAC 173-351-440 by October 9, 1994.

(d) Interim ground water monitoring programs. Prior to the compliance schedules in (b) of this subsection, all existing MSWLF units and lateral expansions must either:

- (i) Continue to monitor under WAC 173-304-490; or
- (ii) Begin to monitor under this section.

(e) All MSWLF units closed in accordance with chapter 173-304 WAC must continue to monitor ground water in accordance with chapter 173-304 WAC.

(2) Personnel qualifications. For the purposes of this regulation, a "qualified ground water scientist" must be a hydrogeologist, geologist, engineer, or other scientist who meets all of the following criteria:

(a) Has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and

(b) Has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action.

(3) A qualified ground water scientist is required to prepare the following reports, demonstrations and information:

(a) The hydrogeologic report(s) of WAC 173-351-490;

(b) The ground water monitoring program(s) including the ground water monitoring system design and well place-

ment of WAC 173-351-405; the ground water sampling and analysis plan of WAC 173-351-410; the detection monitoring program(s) of WAC 173-351-430; and the assessment monitoring program(s) of WAC 173-351-440;

(c) Any demonstration(s) under WAC 173-351-430 (4)(c) or 173-351-440 (6)(e), or 173-351-140(1);

(d) Any modification(s) proposals/requests to the approved ground water monitoring program in accordance with WAC 173-351-450; and

(e) Any ground water modeling demonstrations made under WAC 173-351-480.

Note: A hydrogeologist or other qualified ground water scientist is NOT required for the actual ground water sampling.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-400, filed 10/26/93, effective 11/26/93.]

WAC 173-351-405 Performance standards for ground water monitoring system designs. Ground water monitoring well placement.

The ground water monitoring system design shall meet the following performance criteria:

(1) A sufficient number of wells must be installed at appropriate locations and depths to yield representative ground water samples from those hydrostratigraphic units which have been identified as the earliest target hydraulic pathways and conduits of flow for ground water and contaminant movement, and storage.

(2) The number, spacing, and depths of monitoring wells must be based on the site characteristics including the area of the MSWLF unit and the hydrogeological characterization of WAC 173-351-490, and requires a demonstration based on all of the following information:

(a) A ground water flow path analysis which supports why the chosen hydrostratigraphic unit best serves the installation of a detection or assessment ground water monitoring well system capable of providing early warning detection of any ground water contamination.

(b) Documentation and calculations of all of the following information:

(i) Hydrostratigraphic unit thicknesses including confining units and transmissive units;

(ii) Vertical and horizontal ground water flow directions including seasonal, man-made, or other short term fluctuations in ground water flow;

(iii) Stratigraphy and lithology;

(iv) Hydraulic conductivity; and

(v) Porosity and effective porosity.

(3) Hydraulically placed upgradient wells (background wells) must meet the following performance criteria:

(a) Must be installed in ground water that has not been affected by leakage from a MSWLF unit; or

(b) If hydrogeologic conditions do not allow for the determination of a hydraulically placed upgradient well then sampling at other monitoring wells which provide representative background ground water quality may be allowed; and

(4) Hydraulically placed down-gradient wells (compliance wells) must meet the following performance criteria:

(a) Represent the quality of ground water passing the relevant point of compliance specified by the jurisdictional health department. The downgradient monitoring system must be installed at the relevant point of compliance speci-

fied by the jurisdictional health department during the permitting process of WAC 173-351-700. Additional wells may be required by the jurisdictional health department based upon areal extent of the MSWLF unit, complex hydrogeologic settings or to define the extent of contamination under WAC 173-351-440 and 173-351-450.

(b) When physical obstacles preclude installation of ground water monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance hydraulically down gradient from the relevant point of compliance that ensures detection of ground water contamination in the chosen hydrostratigraphic unit.

(5) All monitoring wells must be cased in a manner that maintains the integrity of the bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of samples. The annular space between the bore hole and well casing above the sampling depth must be sealed to prevent contamination of samples and ground water. All wells must be constructed in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of water wells and chapter 173-162 WAC, Regulation and licensing of well contractors and operators. All wells must be clearly labeled, capped, and locked.

(6) The owner or operator must apply for a permit modification under WAC 173-351-720(5) or must apply during the renewal process of WAC 173-351-720 (1)(i), for any proposed changes to the design, installation, development, and decommission of any monitoring wells, piezometers, and other measurement, sampling, and analytical devices. Upon completing changes, all documentation, including date of change, new well location maps, boring logs, and well diagrams must be submitted to the jurisdictional health department and must be placed in the operating record of WAC 173-351-200(10).

(7) All monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(8) The ground water monitoring system and hydrogeologic report including any changes to the ground water monitoring system shall be prepared by a hydrogeologist or other qualified ground water scientist and include a statement of personnel qualifications.

(9) The prepared ground water monitoring system design and hydrogeologic report must be made a part of the permit application in accordance with WAC 173-351-730 (1)(b)(iii).

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-405, filed 10/26/93, effective 11/26/93.]

WAC 173-351-410 Ground water sampling and analysis requirements. (1) The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the background and downgradient wells installed in compliance with WAC 173-351-400 and with this section. The owner or operator must submit the sampling and analysis program documentation as a part of the permit application in

accordance with WAC 173-351-730 (1)(b)(iii). The program must include procedures and techniques for:

- (a) Sample collection and handling;
- (b) Sample preservation and shipment;
- (c) Analytical procedures;
- (d) Chain-of-custody control;
- (e) Quality assurance and quality control;
- (f) Decontamination of drilling and sampling equipment;
- (g) Procedures to ensure employee health and safety during well installation and monitoring; and
- (h) Well operation and maintenance procedures.

(2) The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground water samples or reflect an acceptable practical quantitation limit (PQL). Ground water samples shall not be field-filtered for organic constituents prior to laboratory analysis. All analyses must be sent to an accredited laboratory in accordance with chapter 173-50 WAC, Accreditation of environmental laboratories.

(3) Ground water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground water flow each time ground water is sampled. Ground water elevations in wells which monitor the same MSWLF unit must be measured within a period of time short enough to avoid any ground water fluctuations which could preclude the accurate determination of ground water flow rate and direction. All ground water elevations must be determined:

(a) By a method that ensures measurement to the 0.01 (one/one hundredth) of a foot (3mm) relative to the top of the well casing; and

(b) The orthometric elevation of the top of the well casing is related to a vertical benchmark based on the national geodetic vertical datum of 1929 (NGVD 29) and be established to 3rd order classification standards per federal geodetic control committee, or its successor, as specified in WAC 332-130-060.

(4) The owner or operator must establish background groundwater quality in hydraulically placed upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground water monitoring program that applies to the MSWLF unit, as determined under this section. Background ground water quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of WAC 173-351-400 through 173-351-490.

(5) The number of samples collected to establish water quality data must be consistent with the appropriate statistical procedures determined pursuant to WAC 173-351-420. The sampling procedures shall be those specified under WAC 173-351-430 for detection monitoring, WAC 173-351-440 for assessment monitoring, and WAC 173-351-440(6) of corrective action.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-410, filed 10/26/93, effective 11/26/93.]

WAC 173-351-415 Ground water reporting. (1) The annual report shall be included with the facility annual

report as required in WAC 173-351-200(11) and shall be on forms developed by the department which will request the following information:

(a) A brief summary of statistical results and/or any statistical trends including any findings of any statistical increases for the year;

(b) A brief summary of ground water flow rate and direction for the year, noting any trends or changes;

(c) A xerox copy of all potentiometric surface maps developed for each quarter or approved semi-annual period; and

(d) A summary geochemical evaluation noting any changes or trends in the cation-anion balances, Trilinear diagrams and general water chemistry for each well.

(2) A quarterly ground water report shall be submitted to the jurisdictional health department and the department no later than sixty days after the receipt of the quarterly analytical data and shall include all of the following:

(a) All ground water monitoring data for the sampling period;

(b) All statistical calculations and summaries;

(c) Notification of any statistical increase and concentrations above MCL's;

(d) Static water level readings for each monitoring well for each sampling event;

(e) Potentiometric surface elevation maps depicting ground water flow rate and direction;

(f) Cation-anion balances and Trilinear diagrams; and

(g) Leachate analyses.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-415, filed 10/26/93, effective 11/26/93.]

WAC 173-351-420 Statistical methods for ground water monitoring. (1) The owner or operator must calculate and evaluate all of the following statistics using background ground water quality data:

(a) The background mean;

(b) The background variance;

(c) The standard deviation of the background data;

(d) The coefficient of variation of the background data;

(e) The standard error of the background data; and

(f) Other statistics testing for homogeneity of variance and the normality of the background data.

(2) The owner or operator must specify in the permit application in accordance with WAC 173-351-730 (1)(b)(iii) one of the following statistical methods to be used in evaluating ground water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. The statistical methods to be used are:

(a) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(b) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(c) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(d) A control chart approach that gives control limits for each constituent; or

(e) Another statistical test method that meets the performance standards of this section. The owner or operator must place a justification for this alternative in the permit application in accordance with WAC 173-351-730 (1)(b)(iii). The justification must demonstrate that the alternative method meets the performance standards of this section.

(3) Any statistical method chosen under this section shall comply with the following performance standards, as appropriate:

(a) The statistical method used to evaluate ground water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data must be evaluated to determine if nonnormal conditions are due to laboratory or sampling error, poor well construction, seasonal or spatial variability, or actual site conditions. Transformed or a distribution-free theory test may be used, upon a determination of why nonnormal conditions exist. If the distributions for the constituents differ, more than one statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(d) If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (PQL) that is used in the

statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(f) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(4) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground water monitoring program that applies to the MSWLF unit after each sampling event and as determined under this section.

(a) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground water quality of each parameter or constituent at each monitoring well designated pursuant to WAC 173-351-430 or 173-351-440 to the background value of that constituent, according to the statistical procedures and performance standards specified under this section.

(b) Within thirty days after receipt of the analytical data, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well (at all hydraulically placed upgradient and downgradient wells).

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-420, filed 10/26/93, effective 11/26/93.]

WAC 173-351-430 Detection monitoring program.

(1) Detection monitoring is required at MSWLF units at all ground water monitoring wells defined under WAC 173-351-405. At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I and II of this regulation.

(2) Background data development.

(a) A minimum of eight independent samples shall be collected for each well (background and downgradient) and must be collected and analyzed for the Appendix I constituents for the first year of ground water monitoring.

(b) Each independent sampling event shall be no less than one month apart from the previous independent sampling event.

(c) Sampling for Appendix II parameters shall be done quarterly.

(d) MSWLF units which have previously developed background for those constituents listed in Appendix I will be waived from (a) of this subsection on a parameter by parameter basis providing all performance criteria of WAC 173-351-400 are met.

(3) Foreground data development. The monitoring frequency for all constituents listed in Appendix I and II shall be quarterly during the active life of the MSWLF unit including closure and the post-closure period and begins after the first year of background data development, for all monitoring wells (upgradient and downgradient).

Note: Foreground denotes the period of time following the development of the background data set, for all monitoring wells (upgradient and downgradient).

(4) If the owner or operator determines, pursuant to WAC 173-351-420, that there is a statistically significant increase over background for one or more of the constituents

listed in Appendix I, at any monitoring well at the boundary specified under WAC 173-351-405, the owner or operator:

(a) Must, within fourteen days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and send the same notice to the jurisdictional health department and the department;

(b) Must establish an assessment monitoring program meeting the requirements of WAC-173-351-440 within ninety days except as provided for in (c) of this subsection;

(c) May demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be prepared by a hydrogeologist or other qualified ground water scientist and approved by the jurisdictional health department and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after ninety days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in WAC 173-351-440; and

(d) Must submit the assessment monitoring program to the jurisdictional health department at the end of ninety days as provided in (b) of this subsection.

(5) A geochemical evaluation of Appendix II parameters shall be conducted at each well on a quarterly basis and include all of the following methods:

(a) A cation-anion balance evaluating the difference between the cation and anion sums expressed in milliequivalents per liter; if a greater than a five to ten percent difference occurs then the owner or operator shall provide a summary explanation and examine whether the difference is due to a laboratory error, poor well conditions, or other ions not accounted for in natural or impacted ground water conditions; if the total cation-anion sums are less than 5.0 meq/liter then a ten percent difference threshold, may be used.

(b) A plot of cations and anions for each well on a trilinear diagram, as recommended in hydrogeologic texts and/or the department guidance documents.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-430, filed 10/26/93, effective 11/26/93.]

WAC 173-351-440 Assessment monitoring program.

(1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the Appendix I or in the alternative list approved in accordance with WAC 173-351-450, Alternative ground water monitoring programs.

(2) Within ninety days of triggering into an assessment monitoring program, and quarterly thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in Appendix III of this part. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete Appendix III analysis, a minimum of four independent samples from each well (background and

downgradient) must be collected within a time period of one hundred eighty days, and analyzed to establish background for the constituents. Each independent sample shall be collected no less than one month apart from the previous sampling event.

(3) After obtaining the results from the initial or subsequent sampling events required in subsection (2) of this section, the owner or operator must:

(a) Within fourteen days, notify the jurisdictional health department of the increase, identifying the Appendix III constituent(s) that have been detected and place this notice in the operating record;

(b) Within ninety days, and on a quarterly basis thereafter, resample all wells, conduct analyses for all constituents in Appendix I and II, and, for those constituents in Appendix III that are detected in response to subsection (2) of this section, record their concentrations in the facility operating record and notify the jurisdictional health department. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events;

(c) Establish background concentrations for any constituents detected pursuant to subsection (2) of this section;

(d) Establish ground water protection standards for all constituents detected pursuant to subsection (2) or (3) of this section. The ground water protection standards shall be established in accordance with subsection (7) of this section; and

(e) Continue performing geochemical evaluations in accordance with WAC 173-351-430(5) on a quarterly basis.

(4) If the concentrations of all Appendix III constituents are shown to be at or below background values, using the statistical procedures in WAC 173-351-420, for two consecutive sampling events, and before returning to detection monitoring the owner or operator must:

(a) Notify the jurisdictional health department of this finding;

(b) Receive approval in writing from the jurisdictional health department; and

(c) Place the notice and the approval in (a) and (b) of this subsection in the operating record of WAC 173-351-200(10).

(5) If the concentrations of any Appendix III constituents are above background values, but all concentrations are below the ground water protection standard established under subsection (7) of this section, using the statistical procedures in WAC 173-351-420, the owner or operator must continue assessment monitoring in accordance with this section.

(6) If one or more Appendix III constituents are detected at statistically significant levels above the ground water protection standard established under subsection (7) of this section in any sampling event, the owner or operator must, within fourteen days of this finding, notify the jurisdictional health department, the department and all appropriate local government officials of the increase and place a notice in the operating record identifying the Appendix III constituents that have exceeded the ground water protection standard. The owner or operator also:

(a) Must characterize the chemical composition of the release, the contaminant fate and transport characteristics; the rate and extent of contamination in all ground water flow paths by installing additional monitoring wells;

(b) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subsection (2) of this section;

(c) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with subsection (6) of this section; and

(d) Must initiate an assessment, selection, and implementation of corrective measures as required by chapter 173-340 WAC, the Model Toxics Control Act regulation; or

(e) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be prepared by a hydrogeologist or other qualified ground water scientist and approved by the jurisdictional health department and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the Appendix III constituents are at or below background as specified in subsection (4) of this section. Until a successful demonstration is made, the owner or operator must comply with this subsection (6) including initiating an assessment of corrective measures.

(7) The owner or operator:

(a) Must establish a ground water protection standard using the ground water quality criteria of chapter 173-200 WAC; and

(b) For constituents for which the background level is higher than the protection standard identified under (a) of this subsection, must use the background concentration for the constituents established from wells in accordance with WAC 173-351-405 through 173-351-430.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-440, filed 10/26/93, effective 11/26/93.]

WAC 173-351-450 Alternate ground water monitoring programs. (1) The owner or operator may propose changes and/or alternate ground water monitoring programs for detection after the second year of ground water monitoring under WAC 173-351-430, or the assessment monitoring program of WAC 173-351-440 as follows:

(a) An alternate ground water monitoring frequency for sampling and analysis of Appendix I and II constituents of no less than semiannual monitoring;

(b) A deletion or alternate ground water monitoring constituents for Appendix I, II and III;

(c) An appropriate subset of wells to be sampled and analyzed for Appendix III under WAC 173-351-440(2).

(2) All proposed changes in ground water monitoring frequency must be no less than semiannually for detection ground water monitoring and no less than quarterly for assessment monitoring. The owner or operator must apply for a permit modification under WAC 173-351-720(5) or must apply during the renewal process of WAC 173-351-720 (1)(i) for changes in ground water monitoring frequency making a demonstration based on the following information:

(a) A characterization of the hydrostratigraphic unit(s) including the unsaturated zone, transmissive and confining units and include all of the following:

- (i) Hydraulic conductivity; and
- (ii) Ground water flow rates.

(b) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring wells (minimum distance of travel); and

(c) Contaminant fate and transport characteristics.

(3) The owner or operator must apply for a permit modification under WAC 173-351-720(5) or must apply during the renewal process of WAC 173-351-720 (1)(i) for all proposed deletions or changes to ground water monitoring constituents of Appendix I, II, and III based on all of the following information:

Verification that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit, by:

(a) Leachate monitoring results consisting of those parameters listed in Appendix IV; all leachate monitoring shall be quarterly unless otherwise approved by the jurisdictional health department and the department;

(b) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;

(c) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

(d) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(e) The concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water background.

(4) Multi-unit ground water monitoring systems.

An owner or operator may propose during the permitting process of WAC 173-351-700 a multi-unit ground water monitoring system instead of separate ground water monitoring systems for each MSWLF unit, including MSWLF units which were closed in accordance with chapter 173-351, 173-304, or 173-301 WAC when the facility has several MSWLF units, provided the multi-unit system meets all of the requirements of WAC 173-351-400 through WAC 173-351-490 and will be as protective of human health and environment as individual ground water monitoring systems for each MSWLF unit. Permit approval for multi-unit ground water monitoring systems and programs will be based on the ability to provide early warning detection of any contaminant releases including:

- (a) Number, spacing, and orientation of units;
- (b) Hydrogeologic setting;
- (c) Site history;
- (d) Engineering design of the MSWLF units;
- (e) Type of waste accepted at the MSWLF units; and
- (f) Leachate analysis as referenced in subsection (3)(a) of this section.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-450, filed 10/26/93, effective 11/26/93.]

WAC 173-351-460 Role of jurisdictional health department in corrective action. The jurisdictional health department:

(1) May participate in all negotiations, meetings, and correspondence between the owner and operator and the department in implementing the model toxics control action;

(2) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a corrective action program;

(3) Shall require the owner or operator to continue closure and post-closure activities as appropriate under these rules, after corrective action measures are completed; and

(4) Shall continue to regulate all MSWLF units during construction, operation, closure and post-closure, that are not directly impacted by Model Toxics Control Act.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-460, filed 10/26/93, effective 11/26/93.]

WAC 173-351-465 Role of department of ecology in corrective action. The department shall carry out all the responsibilities assigned to it under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, during the corrective action process.

Note: Ecology encourages and will support owners or operators who perform independent corrective action(s) consistent with MTCA.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-465, filed 10/26/93, effective 11/26/93.]

WAC 173-351-480 Ground water modeling. All ground water and contaminant fate and transport modeling must meet the following performance standards:

(1) The model shall have supporting documentation that establishes its ability to represent ground water flow and contaminant transport and any history of previous applications;

(2) The set of equations representing ground water movement and contaminant transport must be theoretically sound and well documented;

(3) The numerical solution methods must be based upon sound mathematical principles and be supported by verification and checking techniques;

(4) The model must be calibrated against site-specific field data;

(5) A sensitivity analysis shall be conducted to measure the model's responses to changes in the values assigned to major parameters, specified tolerances, and numerically assigned space and time discretizations;

(6) Mass balance calculations on selected elements in the model shall be performed to verify physical validity. Where the model does not prescribe the amount of mass entering the system as a boundary condition, this step may be ignored;

(7) The values of the model's parameters requiring site specific data shall be based upon actual field or laboratory measurements; and

(8) The values of the model's parameters which do not require site specific data shall be supported by laboratory test results or equivalent methods documenting the validity of the chosen parameter values.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-480, filed 10/26/93, effective 11/26/93.]

WAC 173-351-490 The hydrogeologic report contents. (1) The hydrogeologic report shall meet all of the following performance standards as follows:

(a) Examine existing site conditions for compliance with ground water and surface water location restrictions under WAC 173-351-130 and 173-351-140;

(b) Determine existing or background ground water quality conditions, including any ground water contamination; and

(c) Define a detection ground water monitoring program capable of immediate and early warning detection for potential contamination as required in WAC 173-351-400 and the information required in subsection (2) of this section.

(2) The hydrogeologic report contents shall include the following information:

(a) A summary of local and regional geology and hydrology, including faults, zones of joint concentrations, unstable slopes and subsidence areas on site; areas of ground water recharge and discharge; stratigraphy; erosional and depositional environments and facies interpretation(s);

(b) A borehole program which identifies all performance criteria of WAC 173-351-405 including lithology, soil/bedrock types and properties, preferential ground water flow paths or zones of higher hydraulic conductivity, the presence of confining unit(s) and geologic features such as fault zones, cross-cutting structures etc., and the target hydrostratigraphic unit(s) to be monitored.

(i) A minimum of twenty subsurface borings is required for MSWLF sites which are 50 acres or less in aerial extent. For sites greater than fifty acres, twenty borings, plus three borings for each additional ten acres thereafter, is required. Soil borings shall be established in a grid pattern with a boring in each major geomorphic feature such as topographic divides and lowlands;

(ii) Each boring will be of sufficient depth below the proposed grade of the bottom liner as to identify soil, bedrock and hydrostratigraphic unit(s) conditions as required in WAC 173-351-405.

(iii) The jurisdictional health department and the department may approve alternate methods including geophysical techniques, either surface or downhole including electric logging, some sonic logging, nuclear logging, seismic profiling, electromagnetic profiling and resistivity profiling in lieu of some of the number of borings required in the subsurface borehole program of (b)(i) of this subsection, provided sufficient hydrogeological site characterization can be accomplished and prior approval is obtained.

(iv) At each boring samples shall be collected from each lithologic unit and tested for all of the following:

(A) Particle size distribution by both sieve and hydrometer analyses in accordance with approved ASTM methods (D422 and D1120);

(B) Atterburg limits following approved ASTM methods (D4318); and

(C) Classification under the unified soil classification system, following ASTM standard D2487-85.

(iv) Each lithologic unit on site will be analyzed for:

(A) Moisture content, following approved ASTM methods (D2216); and

(B) Hydraulic conductivity by an in-situ field method or laboratory method approved by the jurisdictional health department and the department. All samples collected for

the determination of permeability shall be collected by standard ASTM procedures.

(v) All boring logs shall be submitted with the following information:

(A) Soil and rock descriptions and classifications;

(B) Method of sampling;

(C) Sample depth;

(D) Date of boring;

(E) Water level measurements;

(F) Soil test data;

(G) Boring location; and

(H) Standard penetration number of ASTM standard D1586-67.

(vi) All borings not converted to monitoring wells or piezometers shall be carefully backfilled, plugged and recorded in accordance with WAC 173-160-420.

(vii) During the borehole drilling program, any on-site drilling and lithologic unit identification must be performed by a hydrogeologist, geologist or other qualified ground water scientist who is trained to sample and identify soils and bedrock lithology.

(c) Depths to ground water and hydrostratigraphic unit(s) including transmissive and confining units;

(d) Potentiometric surface elevations and contour maps; direction and rate of horizontal and vertical ground water flow;

(e) A description of regional ground water trends including vertical and horizontal flow directions and rates;

(f) All elevations and top of well casings shall be related to the national geodetic vertical datum of 1929 (NGVD 29) and the horizontal datum shall be in accordance with chapter 58.20 RCW, Washington Coordinate System and as amended per chapter 332-130 WAC.

(g) Quantity, location, and construction (where available) of private and public wells within a two thousand foot (six hundred ten meter) radius of site;

(h) Tabulation of all water rights for ground water and surface water within a two thousand foot (six hundred ten meter) radius of the site;

(i) Identification and description of all surface waters within a one-mile (1.6 kilometer) radius of the site;

(j) A summary of all previously collected ground water and surface water analytical data, and for expanded facilities, identification of impacts of existing facility of the applicant to date upon ground and surface waters from landfill leachate discharges;

(k) Calculation of a site water balance;

(l) Conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable a vadose zone monitoring plan, including well construction diagrams;

(m) Land use in the area, including nearby residences; and

(n) A topographic map of the site and drainage patterns; an outline of the waste management area and MSWLF units, property boundary, the proposed location of ground water monitoring wells;

(o) Geologic cross-sections.

(3) Ground water flow path analysis. The hydrogeologic report shall include a summary ground water flow path analysis which includes all supportive documentation, and

calculations of the performance criteria of WAC 173-351-405.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-490, filed 10/26/93, effective 11/26/93.]

WAC 173-351-500 Closure and post-closure care.

(1) Closure criteria.

(a) Nonarid areas. Owners or operators of all MSWLF units located in areas having mean annual precipitation of equal to or greater than twelve inches, must install a final cover system that is designed to minimize infiltration and erosion.

(i) The final cover system must be designed and constructed to:

(A) Minimize infiltration through the closed MSWLF by the use of an anti-infiltration layer that contains a composite layer as defined in (a)(i)(B) of this subsection;

(B) For the purpose of this section, "composite layer" means a system consisting of two components; the upper component must consist of a minimum of 30 mil (0.76 mm) thickness of geomembrane (60 mils (1.5 mm) for high density polyethylene geomembranes). The lower component must consist of at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-5} cm/sec. The geomembrane must be installed in direct and uniform contact with the compacted soil component;

(C) Minimize erosion of the final cover by use of an anti-erosion layer that contains a minimum of a one-foot (30 cm) layer of earthen material of which at least six inches (15 cm) of the uppermost layer is capable of sustaining native plant growth; and

(D) Address anticipated settlement (with a goal of achieving no less than two to five percent slopes after settlement), drainage and/or the need for drainage layers, gas generation and/or the need for gas layers, freeze-thaw, desiccation and stability and mechanical strength of the design.

(ii) The jurisdictional health department may approve an alternative final cover design equivalent to that specified in (a)(i) of this subsection that includes:

(A) An anti-infiltration layer that achieves an equivalent reduction in infiltration as the anti-infiltration layer specified in (a)(i)(A) and (B) of this subsection;

(B) An anti-erosion layer that provides equivalent protection from wind and water erosion as the anti-erosion layer specified in (a)(i)(C) of this subsection; and

(C) The additional design features of (a)(i)(D) of this subsection.

(b) Arid areas. Owners or operators of all MSWLF units located in arid areas must install a final cover system that is designed to minimize infiltration and erosion.

(i) The final cover system must be designed and constructed to:

(A) Minimize infiltration through the closed MSWLF by the use of an anti-infiltration layer that contains at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-5} cm/sec;

(B) Minimize erosion of the final cover by use of an anti-erosion layer that contains a minimum of one-foot (30 cm) layer of earthen material of which at least six inches (15

cm) of the uppermost layer is capable of sustaining native plant growth; and

(C) Address anticipated settlement (with a goal of reaching two to five percent slopes after settlement), drainage and/or the need for drainage layers, gas generation and/or the need for gas layers, freeze-thaw, desiccation and stability and mechanical strength of the design.

(ii) The jurisdictional health department may approve an alternative final cover design to that specified in (b)(i) of this subsection that includes:

(A) An anti-infiltration layer that achieves an equivalent reduction in infiltration as the anti-infiltration layer specified in (b)(i)(A) of this subsection;

(B) An anti-erosion layer that provides equivalent protection from wind and water erosion as the anti-erosion layer specified in (b)(i)(B) of this subsection; and

(C) The additional design features of (b)(i)(C) of this subsection.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during its active life. The closure plan must be approved by the jurisdictional health department during the permit process of Section 700 and, at a minimum, must include the following information:

(i) A description of the final cover, designed in accordance with (a) or (b) of this subsection and the methods and procedures to be used to install the cover;

(ii) An estimate of the largest area of the MSWLF unit or all MSWLF units ever requiring a final cover as required under (a) or (b) of this subsection at any time during the active life;

(iii) An estimate of the maximum inventory of wastes ever on-site over the active life of the facility; and

(iv) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection (1), Closure criteria including sequencing of each MSWLF unit and the use of intermediate cover.

(d) The owner or operator of existing MSWLF units must no later than the effective date of this chapter:

(i) Prepare a closure plan;

(ii) Place the closure plan in the operating record; and

(iii) Notify the jurisdictional health department that (d)(i) and (ii) of this subsection have occurred.

(e) One hundred eighty days (but no sooner than the effective date of this chapter) prior to beginning closure activities of each MSWLF unit or all MSWLF units as specified in (f) of this subsection, the owner or operator must:

(i) Notify the jurisdictional health department and the financial assurance trustee and/or insurer of the intent to close the MSWLF unit or all MSWLF units according to the approved closure plan; and

(ii) Submit final engineering closure plans for review, comment, and approval by the jurisdictional health department.

(f) The owner or operator must begin closure activities of each MSWLF unit or all MSWLF units no later than thirty days after the date on which the MSWLF unit or all MSWLF units receives the known final receipt of wastes or, if the MSWLF unit or all MSWLF units has remaining capacity and there is a reasonable likelihood that the MSWLF unit or all MSWLF units will receive additional

wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the jurisdictional health department if the owner or operator demonstrates during the permit process of WAC 173-351-700 that the MSWLF unit or all MSWLF units has the capacity to receive additional waste and the owner or operator has taken and will continue to take all steps including the application of intermediate cover necessary to prevent threats to human health and the environment from the unclosed MSWLF unit or all MSWLF units.

(g) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit or all MSWLF units in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in (f) of this subsection. Extensions of the closure period may be granted by the jurisdictional health department if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and he/she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

(h) Following closure of each MSWLF unit or all MSWLF units, the owner or operator must submit to the jurisdictional health department a certification or declaration of construction signed by an independent registered professional engineer verifying that closure has been completed in accordance with the approved final engineering plans and the closure plan.

(i) Notation on the deed.

(i) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the facility property, and send a copy of the notation as recorded to the jurisdictional health department.

(ii) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(A) The land has been used as a landfill facility; and

(B) Its use is restricted under subsection (2)(c)(iii) of this section.

(j) The owner or operator may request permission from the jurisdictional health department to remove the notation from the deed if all wastes (including any contaminated ground water and soils) are removed from the facility.

(2) Post-closure care requirements.

(a) Following closure of each MSWLF unit or all MSWLF units, the owner or operator must conduct post-closure care. Post-closure care must be conducted for thirty years, except as provided under (b) of this subsection and consist of at least the following:

(i) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, maintaining the vegetative cover (including cutting of vegetation when needed) or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(ii) Maintaining and operating the leachate collection system in accordance with the requirements in WAC 173-351-300 if applicable. The jurisdictional health department may recommend to the department and the department under its authority in chapter 90.48 RCW, the Water Pollution Control Act, may allow the owner or operator to stop

managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iii) Monitoring the ground water in accordance with the requirements of WAC 173-351-400, Ground water monitoring systems and corrective action and maintaining the ground water monitoring system, if applicable; and

(iv) Maintaining and operating the gas monitoring system in accordance with the requirements of WAC 173-351-200(4).

(b) The length of the post-closure care period may be:

(i) Decreased by the jurisdictional health department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the jurisdictional health department; or

(ii) Increased by the jurisdictional health department if the jurisdictional health department determines that the lengthened period is necessary to protect human health and the environment.

(c) The owner or operator of all MSWLF units must prepare a written post-closure plan that is approved by the jurisdictional health department during the permit process of Section 700 and that includes, at a minimum, the following information:

(i) A description of the monitoring and maintenance activities required in (a) of this subsection for each MSWLF unit or all MSWLF units, and the frequency at which these activities will be performed;

(ii) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this regulation. The jurisdictional health department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) The owner or operator of existing MSWLF units must notify the jurisdictional health department that a post-closure plan has been prepared and placed in the operating record no later than the effective date of this regulation.

(e) Following completion of the post-closure care period for each MSWLF unit or all MSWLF units, the owner or operator must submit to the jurisdictional health department and the financial assurance trustee and/or insurer a certification or declaration of construction signed by an independent registered professional engineer verifying that post-closure has been completed in accordance with the post-closure plan.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-500, filed 10/26/93, effective 11/26/93.]

WAC 173-351-600 Financial assurance criteria. (1) Applicability and effective date.

(a) The requirements of this section apply to owners and operators of all MSWLF units.

(b) The requirements of this section are effective on the effective date of this rule, except as provided herein.

(2) Financial assurance for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover as required under WAC 173-351-500(1), Closure criteria, at any time during the active life in accordance with the closure plan. The owner or operator must place the detailed written estimate in the application for a permit under WAC 173-351-700 in order for the jurisdictional health department to determine whether a solid waste permit should be issued.

(i) The cost estimate must equal the cost of closing the largest area of the MSWLF unit or MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan see WAC 173-351-500 (1)(c)(ii).

(ii) During the active life of the MSWLF unit or MSWLF units, the owner or operator must annually adjust the closure cost estimate for inflation.

(iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (b) of this subsection if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(iv) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit or all MSWLF units. The owner or operator must submit justification for the reduction of the closure cost estimate and the amount of financial assurance to the jurisdictional health department for approval as a condition of the solid waste permit.

(b) The owner or operator of each MSWLF unit or all MSWLF units must establish financial assurance for closure of the MSWLF unit or all MSWLF units in compliance with WAC 173-351-600(5), Allowable mechanisms. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with WAC 173-351-500 (1)(h) and (i).

(3) Financial assurance for post-closure care.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit or all MSWLF units in compliance with the post-closure plan developed under WAC 173-351-500(2). The post-closure cost estimate used to demonstrate, during the permit process of WAC 173-351-700, financial assurance in (b) of this subsection must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must place the detailed written estimate in the application for a permit under WAC 173-351-700 in order for the jurisdictional health department to determine whether a solid waste permit should be issued.

(i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(ii) During the active life of the MSWLF unit or all MSWLF units and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (b) of this subsection if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit justification for the reduction of the post-closure cost estimate and the amount of financial assurance to the jurisdictional health department for approval as a condition of the solid waste permit.

(b) The owner or operator of each MSWLF unit or all MSWLF units must establish, in a manner in accordance with subsection (5) of this section, financial assurance for the costs of post-closure care as required under WAC 173-351-500(2). The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with WAC 173-351-500 (2)(e).

(4) Financial assurance for corrective action.

(a) An owner or operator of a MSWLF unit or all MSWLF units required to undertake a corrective action program under WAC 173-351-440(6) must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under WAC 173-351-440(6). The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must submit the corrective action cost estimate to the jurisdictional health department for approval.

(i) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with WAC 173-351-440(6).

(ii) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under (b) of this subsection if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

(iii) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must submit justification for the reduction of the corrective action cost estimate and the amount of financial assurance to the jurisdictional health department for approval.

(b) The owner or operator of each MSWLF unit or all MSWLF units required to undertake a corrective action program under WAC 173-351-440(6), must establish, in a manner in accordance with subsection (5) of this section, financial assurance for the most recent corrective action

program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action under the Model Toxics Control Act regulation, chapter 173-340 WAC.

(c) The requirements of this subsection become effective April 9, 1994.

(5) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under WAC 173-351-600 must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Except as otherwise provided herein, owners and operators of MSWLF units must use the financial mechanisms specified in (a) or (b) of this subsection.

(a) For MSWLF units owned or operated by municipal corporations, the closure, post-closure, and corrective action reserve account shall be handled in one of the following ways:

(i) Reserve account. Cash and investments accumulated and restricted for closure, post-closure, and corrective action for known releases with an equivalent amount of fund balance reserved in the fund accounting for solid waste activity; or

(ii) The cash and investments held in a nonexpendable trust fund as specified in (c) of this subsection.

(b) For MSWLF units owned by private disposal companies, the closure, post-closure, and corrective action for known releases financial assurance account shall be a trust account as spelled out in (c) of this subsection, except that established financial assurance accounts shall not constitute an asset of the facility owner or operator.

(c) Trust fund.

An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of (c)(i) through (xi) of this subsection.

(i) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The owner or operator must place a copy of the trust agreement in the application for a permit under WAC 173-351-700 in order for the jurisdictional health department to determine whether a solid waste permit should be issued.

(ii) Payments into the trust fund must be made annually by the owner or operator over the duration (as defined in WAC 173-351-750) of the initial permit or over the remaining life of the MSWLF unit or all MSWLF units, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into each fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in (d) of this subsection, divided by the number of years in the pay-in period as defined in (c) of this subsection. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in (d) of this subsection, divided by the number of years in the corrective action pay-in period as defined in (c)(ii) of this subsection. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(v) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure and post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of WAC 173-351-480 (6) and (7).

(vi) If a municipal corporation owning or operating MSWLF units establishes a trust fund after having used cash and investments held in a nonexpendable reserve account specified in (a)(i) of this subsection, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and (c) of this subsection as applicable.

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if:

(A) Sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action;

(B) If justification and documentation of the cost is submitted to the jurisdictional health department for review and approval; and

(C) The owner or operator has a post-closure permit in effect according to WAC 173-351-730 (4)(c).

(viii) The trust fund may be terminated by the owner or operator only if:

(ix) In the case of a municipal corporation owning or operating MSWLF units, the municipal corporation substitutes a reserve account as specified in (a)(i) of this subsection; or

(x) Any owner or operator is no longer required to demonstrate financial responsibility in accordance with the

requirements of subsection (2)(b), (3)(b), or (4)(b) of this section.

(d) Use of multiple financial mechanisms. A municipal corporation owning or operating MSWLF units may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (a) and (b) of this subsection, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable.

(e) For MSWLF units undergoing corrective action, allowable financial assurance mechanisms include:

(i) Any method approved by EPA under 40 CFR 258.74(f);

(ii) An interlocal agreement entered into under the Interlocal Cooperation Act, chapter 39.34 RCW, obligating the participating local governments to pay for the corrective action.

(f) The language of the mechanisms listed in (a) and (b) of this subsection must ensure that the instruments satisfy the following criteria:

(i) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(ii) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(iii) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of WAC 173-351-460, until the owner or operator is released from the financial assurance requirements under subsection (2)(b), (3)(b), or (4)(b) of this section.

(g) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-600, filed 10/26/93, effective 11/26/93.]

WAC 173-351-700 Permitting requirements. (1)

WAC 173-351-700 through 173-351-750 shall constitute the permitting requirements of chapter 173-351 WAC, Criteria for municipal solid waste landfills. Except as provided for in subsection (5) of this section, no owner or operator shall construct, operate, close, or perform post-closure activity with respect to a facility except in conformance with a valid MSWLF permit issued pursuant to this chapter.

(2) Transition rules for existing MSWLF units. The following constitute the transition rules for this section:

(a) Existing MSWLF units with valid chapter 173-304 WAC permits expiring before the effective date of this chapter. Owners or operators of existing MSWLF units having valid permits expiring before the effective date of this chapter, must apply for a valid MSWLF permit no later than ninety days after promulgation of this regulation, to continue operation under the terms of this regulation. Each valid

chapter 173-304 WAC permit expiring before the effective date of this chapter, is hereby continued until the valid MSWLF permit is issued under these rules. For these transition rules, the owner or operator shall prepare applications according to WAC 173-351-730(4), Reissuance/transition applications. Upon issuance of a valid MSWLF permit, the owner or operator must comply with the requirements of this regulation.

Note: MSWLF units that do not accept waste on or after the effective date of this chapter, and close under chapter 173-304 WAC, Minimum functional standards for solid waste handling, and the federal rules for closure under 40 CFR Part 258.60 would continue to be permitted under chapter 173-304 WAC unless such MSWLF units are part of a multi-unit ground water monitoring system according to WAC 173-351-450(4).

(b) Existing MSWLF units with valid chapter 173-304 WAC permits expiring on or after the effective date of this chapter. Each valid chapter 173-304 WAC permit (for existing MSWLF units) expiring on or after the effective date of this rule, is hereby continued until the expiration date set forth in the permit. Owners and operators must comply with the conditions of the permit and the regulations of chapter 173-304 WAC, in effect on October 8, 1993, for the duration of that permit. Owners or operators of existing MSWLF units with valid chapter 173-304 WAC permits expiring on or after the effective date of this chapter, must apply for a valid MSWLF permit no later than ninety days after promulgation of this regulation. For these transition rules, the owner or operator shall prepare applications according to WAC 173-351-730(4), Reissuance/transition applications. Upon issuance of a valid MSWLF permit, the owner or operator must comply with the requirements of this regulation.

Note: See also WAC 173-351-720 (6)(a), filing for reissuance.

(3) New and laterally expanded MSWLF units. New and laterally expanded MSWLF units receiving waste after the effective date of this chapter, shall meet the requirements of this section before construction has begun and before waste is accepted to the MSWLF unit or lateral expansion.

Note: Any owner or operator planning to incorporate a 50 percent increase or greater in design volume capacity not previously authorized in permit, or unpermitted changes resulting in significant adverse environmental impacts that have lead a responsible official to issue a declaration of significance under WAC 197-11-736 shall meet the requirements of this section before construction has begun and before waste is accepted to the MSWLF unit, or lateral expansion.

(4) Exemptions. The MSWLF units identified in this subsection are exempt from this section:

(a) MSWLF units that are excluded under WAC 173-351-010 (2)(b);

(b) Single family residences and single family farms dumping or depositing solid waste resulting from their own domestic, on-site activities onto or under the surface of land owned or leased by them when such action does not create a nuisance, violate any other statutes, ordinances, regulations, or this regulation, provided that such facilities:

(i) Are fenced or otherwise protected by natural barriers from unauthorized entry by the general public and large animal scavengers; and

(ii) Have placed a monthly soil cover to allow no visible solid waste.

(c) Corrective actions at a MSWLF unit performed by the state and/or in conjunction with the United States Environmental Protection Agency to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), the Model Toxics Control Act or corrective actions taken by others to comply with a state and/or federal cleanup order provided that:

- (i) The action results in an overall improvement of the environmental impact of the site;
- (ii) The action does not require or result in additional waste being delivered to the facility or increase the amount of waste or contamination present at the facility;
- (iii) The facility standards of WAC 173-351-300, 173-351-320, and 173-351-500 are met; and
- (iv) The jurisdictional health department is informed of the actions to be taken and is given the opportunity to review and comment upon the proposed corrective action plans.

Note: MSWLF units not covered under corrective action are not exempted from permitting under this section.

(5) **Renewal required.** The owner or operator of a facility shall apply for renewal of the facility's permit annually, except for that year that a permit has been or will be reissued under WAC 173-351-720(6).

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-700, filed 10/26/93, effective 11/26/93.]

WAC 173-351-720 Permit application procedures.

(1) Initial procedures.

(a) **Forms and complete application.** An application for any permit under this regulation must be submitted on a form prescribed by the department. In order to be determined complete:

- (i) Two or more copies (as determined by the jurisdictional health department) of the application must have been signed by the owner and operator and received by the jurisdictional health department;
- (ii) The application must include evidence of compliance with the State Environmental Policy Act (SEPA) rules, chapter 197-11 WAC; and
- (iii) The application must include the plans, reports, and other supporting information required by this regulation.

(b) **Notice.** Once the jurisdictional health department determines that an application for a permit is factually complete, it shall:

- (i) Refer one copy to the appropriate regional office of the department for review and comment;
- (ii) For all permits except renewal, modified and transition permits give notice of its receipt of a proposed complete permit application to the public and to interested persons for public comment for thirty days after the publication date of the notice;
- (iii) For all permits except renewal, modified and transition permits perform the following additional public notification requirements:

- (A) Mail the notice to persons who have requested notice in writing;
- (B) Mail the notice to state agencies and local governments with a regulatory interest in the proposal;
- (C) Include in the public notice a statement that any person may express their views in writing to the jurisdiction-

al health department within thirty days of the last date of publication;

(D) Mail a copy of the MSWLF permit decision to any person who has made written request for such decision; and

(E) Add the name of any person, upon request, to a mailing list to receive copies of notices for all applications, within the state or within a geographical area.

(c) **Standards for approval.** The jurisdictional health department shall investigate every application to determine whether the facility meets all applicable laws and regulations, conforms with the most recently adopted comprehensive solid waste management plan in effect at the time of application and complies with all zoning requirements. A land use permit or letter from the jurisdictional zoning authority shall be sufficient demonstration of compliance with zoning requirements.

(d) **Fees.** The jurisdictional health department may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the account from which the jurisdictional health department's operating expenses are paid.

(e) **Department's findings.** The department shall report to the jurisdictional health department its findings on each permit application within forty-five days of receipt of a complete application or inform the jurisdictional health department as to the status of the application and when it expects its findings will be transmitted to the jurisdictional health department. Additionally, the department shall recommend for or against the issuance of each permit by the jurisdictional health department.

(f) **Permit approval.** When the jurisdictional health department has evaluated all information in the public record, it shall issue or deny a permit. Every completed solid waste permit application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department or the owner or operator shall be informed as to the status of the application with a schedule for final determination.

(g) **Permit format.** Every permit issued by a jurisdictional health department shall be on a format prescribed by the department and shall contain specific requirements necessary for the proper operation of the facility including the requirement that final engineering plans and specifications be submitted for approval to the jurisdictional health department.

(h) **Filing permits with the department.** The jurisdictional health department shall mail all issued permits to the department no more than seven days after the date of issuance. The department shall review and may appeal the permit as set forth in RCW 70.95.185 and 70.95.190.

(i) **Renewal procedures.** The owner or operator of a facility shall apply for renewal of the MSWLF permit annually, except for that year that a permit has been or will be reissued under subsection (6) of this section. The owner or operator is authorized to continue all activities authorized under the currently expired permit, if the jurisdictional health department has not rendered a decision on renewal by the yearly renewal date of the current permit. The jurisdictional health department shall annually:

(A) Review the original application and such additional information as required in WAC 173-351-730 (3)(b) for compliance with these regulations;

(B) Collect the renewal fee if the jurisdictional health department so chooses;

(C) If the requirements of (b)(i)(A) of this subsection are met, renew the permit; and

(D) File the renewed permit with the department no more than seven days after the date of renewal. The department shall review and may appeal the renewal as set forth in RCW 70.95.185 and 70.95.190. See also reissuance under subsection (6) of this section.

(2) SEPA review. The State Environmental Policy Act (SEPA), the SEPA rules and the local SEPA rules apply to permit decisions made pursuant to this chapter.

(3) Preapplication meetings. Preapplication meetings between the jurisdictional health department and the owner or operator are encouraged to address, among other things, the development of a complete application pertaining to the owner's or operator's prospective project.

(4) Activities authorized in permits, generally.

(a) Construction. Issuance of a valid MSWLF permit entitles the permittee to construct the MSWLF unit or MSWLF units, subject to any appropriate conditions the jurisdictional health department may impose. If the facility is to be constructed in several or more MSWLF units, the initial application must contain the conceptual design for the entire facility and the information of WAC 173-351-730 (1)(b) for the initial MSWLF unit. In addition, information of WAC 173-351-730 (1)(b) may be submitted covering all other MSWLF units that will be constructed up to the first ten years of facility operation. The permit will identify the extent of each permitted MSWLF unit and the specific time frames for the first MSWLF unit and estimated time frames for subsequent MSWLF units within which construction activities must begin and end for each MSWLF unit. Authorization to construct each subsequent MSWLF unit must, as to that MSWLF unit, contain the detailed construction plans as specified in this regulation, and those plans and the construction of that MSWLF unit must comply with all requirements of the SEPA and of this regulation and other regulations applicable at the time jurisdictional health department approval is granted.

(b) Operation. Except for MSWLF units governed by the transition rules of WAC 173-351-700(2), the jurisdictional health department's approval to accept solid waste will not be given until the permittee has demonstrated to the jurisdictional health department's satisfaction that the MSWLF unit has been constructed in accordance with the approved plans and specifications for that MSWLF unit. If a facility is to be constructed in several or more MSWLF units, the jurisdictional health department must determine that each specific MSWLF unit has been constructed in accordance with the approved permit before operation will be permitted in that specific MSWLF unit.

(c) Post-closure activities. The jurisdictional health department's approval for post-closure activities will not be given until the permittee has demonstrated to the jurisdictional health department's satisfaction that the MSWLF unit or all the MSWLF units have been closed in accordance with the final engineering plans WAC 173-351-500 (1)(e)(ii) and the approved closure plan.

Note: Failure to obtain approval for post-closure activities may prevent reimbursement under post-closure financial assurance in WAC 173-351-600.

(5) Permit modifications.

(a) Any owner or operator intending to modify a valid MSWLF permit must file a modification application at least thirty days before the intended modification. A modification application must be made on forms authorized by the jurisdictional health department and the department, and the forms must include information identified in WAC 173-351-730 (3)(a).

(b) The jurisdictional health department shall follow the procedures of subsection (1) of this section in issuing a permit modification except for the following:

(i) Subsection (1)(b)(ii) and (iii) of this section, public notice; and

(ii) Subsection (1)(i) of this section, renewal procedures.

(c) In order to allow for permit modifications to be authorized at the time of permit renewal, any owner or operator may combine the application required for a permit modification in WAC 173-351-730 (3)(a) with the application required for a renewal permit in WAC 173-351-730 (3)(b), at the time of permit renewal.

(6) Permit reissuance. Except for permits during transition under subsection (2) of this section, any owner or operator intending to continue construction, operation or post-closure beyond the permitted duration of a valid MSWLF permit must file a reissuance application at least ninety days before the existing permit expires. Reissuance applications are subject to the public notification process of subsection (1)(b) of this section. A reissuance application must be made on forms authorized by the jurisdictional health department and the department, and must include information identified in WAC 173-351-730(4).

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-720, filed 10/26/93, effective 11/26/93.]

WAC 173-351-730 Contents of applications. (1) Applications for MSWLF permits and level of detail, generally.

(a) General requirements for MSWLF permit applications and level of detail.

(i) An application for an MSWLF permit to construct, operate, and conduct post-closure activities at a facility must include all applicable information identified in this section pertaining to the facility for which the permit is being sought.

(ii) The information in every application submitted under this regulation must be of sufficient detail so as to allow the jurisdictional health department to fulfill its responsibilities under SEPA and this regulation by:

(A) Having detail sufficient to be readily understood by the persons using the documents contained in the application to enable them to determine how the facility will be constructed, operated, and closed and how it will be monitored and maintained after closure;

(B) Providing the jurisdictional health department with sufficient detail to ascertain the environmental impact of the proposed project; and

(C) Providing sufficient detail to demonstrate that the location, design, construction, operation, closure, and post-closure monitoring and maintenance of the MSWLF will be capable of compliance with the applicable requirements of this regulation.

(b) Specific requirements for permit applications. In addition to other requirements set forth in this section, complete applications for MSWLF permits must contain the following:

(i) Engineering plans that set forth the proposed facility's location, property boundaries, adjacent land uses, and detailed construction plans pursuant to subsection (5)(a) of this section;

(ii) How the facility will meet the location standards of WAC 173-351-130 and 173-351-140 including demonstrations;

(iii) A hydrogeologic report and water quality monitoring plan prepared in accordance with the provisions of WAC 173-351-400 (including all demonstrations);

(iv) The plan of operation that prescribes how the facility will fulfill the operating requirements set forth in WAC 173-351-200, 173-351-210, and 173-351-220, including the demonstrations of this regulation;

(v) An engineering report comprehensively describing the existing site conditions and an analysis of the facility, including closure, post-closure criteria, and any necessary demonstrations with subsection (5)(b) of this section;

(vi) A construction quality assurance and quality control plan prepared in accordance with subsection (6) of this section;

(vii) The closure and post-closure plans required by WAC 173-351-500, including the schedule of WAC 173-351-500 (1)(c)(iv) and for the submission of final engineering plans for closure six months prior to closure of the facility or the MSWLF unit. See WAC 173-351-500 (1)(e)(ii);

(viii) Either a legal document (contract, local permit, a signed permit application etc.) certifying acceptance of leachate by the operator of a wastewater treatment facility for the discharge of leachate to that facility, or an application for a National Discharge Elimination System (NPDES) permit pursuant to chapter 173-220 WAC or a state discharge permit (for solar evaporation ponds having no surface water discharge) pursuant to chapter 173-216 WAC or other necessary environmental permit applications (including air quality permit applications) for otherwise managing leachate;

(ix) For small landfills, the demonstration of WAC 173-351-010 (2)(c);

(x) A demonstration of how the MSWLF conforms with the approved local comprehensive solid waste management plan in place at the time of application.

(2) Combined applications. Owners or operators may file a combined application for MSWLF units and other solid waste handling facilities, such as surface impoundments, composting facilities, storage piles, and MSWLF units closed under and/or regulated by chapter 173-304 WAC, Minimum functional standards for solid waste handling or other rules promulgated under the authority of chapter 70.95 RCW, including this regulation. The combined application must contain information required by each applicable regulation.

(3) Modification and renewal applications.

(a) Modification applications. An application on forms specified by the jurisdictional health department and the department to modify a valid MSWLF permit issued pursuant to WAC 173-351-700 must include, and address, the following at a minimum:

(i) A description of the proposed modification;

(ii) The reasons for the proposed modification;

(iii) A description of the impacts from the proposed modification upon the MSWLF unit or the facility as presently permitted; and

(iv) A showing that, as modified, the MSWLF unit will be capable of compliance with the applicable requirements of this regulation.

(b) Renewal applications. An application on forms specified by the jurisdictional health department and the department to renew a permit issued pursuant to WAC 173-351-700 must include and address the following at a minimum:

(i) Any changes in operating methods, closure cost or post-closure costs or other changes not falling under the definition of a permit modification;

(ii) Any changes as revealed by inspections, or complaints;

(iii) Evidence that the annual report of WAC 173-351-200(11) has been submitted;

(iv) A list of documents added to the operating record according to WAC 173-351-200(10); and

(v) Evidence that all MSWLF unit operators have continued to comply with the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities.

(4) Reissuance/transition applications. An application to reissue a permit previously issued pursuant to this regulation or to convert a chapter 173-304 WAC permit to a valid MSWLF permit under the transition permit rules of WAC 173-351-700(2) must, at a minimum, include and address the following:

(a) Review the original application and permit for compliance with these regulations and submit such additional information as follows:

(i) A compliance summary showing how the facility's construction, operation, closure and post-closure activities, as applicable, have been undertaken either in compliance or not in compliance with the terms and conditions of the expiring permit;

(ii) Specifying any changes proposed by the owner or operator to, and detailing any changes in circumstance that may affect, the design, construction, operation, closure, or post-closure care of the facility and describing how compliance with the applicable requirements of this regulation will be assured.

(b) Review of information collected from inspections, complaints, or known changes in the operations including:

(i) Results of ground water monitoring taken during the operation (including closure/post-closure) of the facility according to WAC 173-351-400 or 173-304-490 as appropriate; and

(ii) Results of surface water and methane monitoring taken during the operation (including closure/post-closure) of the facility.

(5) Engineering plans, reports, and specifications. Unless otherwise specified in chapter 173-351 WAC, all engineering plans, reports, and specifications must comply with the requirements of this subsection. Engineering plans, reports, specifications, programs, and manuals submitted to the jurisdictional health department must be prepared and certified by an individual licensed in engineering disciplines associated with landfill design and construction or with

experience in landfill design and construction and to practice engineering in the state of Washington.

(a) Engineering plans. Unless otherwise specified in this chapter, the engineering plans for all MSWLF units must be submitted using the following format:

(i) The sheet size with title blocks must be twenty-two inches by thirty-four inches or twenty-four inches by thirty-six inches.

(ii) The cover sheet must include the project title, owner's and operator's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal.

(iii) The preliminary engineering plans relating the project to its environmental setting must include:

(A) A regional plan or map (having a minimum scale of 1:62,500) and indicate directions and distances to airports within five miles (eight kilometers) of the facility;

(B) A vicinity plan or map (having a minimum scale of 1:24,000) that must show the area within one mile (1.6 kilometers) of the property boundaries of the facility in terms of, the existing and proposed zoning and land uses within that area; and residences, public and private water supply wells, known private water supply aquifers, sole source aquifers, ground water management areas, well-head protection zones, special protection areas and surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the facility; and

(C) An overall site plan (having a minimum scale of 1:2,400 with five foot (or one meter) minimum contour intervals) that must show the landfill's property boundaries (as certified by an individual licensed to practice land surveying in the state of Washington), offsite and onsite utilities (such as electric, gas, water, storm, and sanitary sewer systems) and right-of-way easements; the 100-year floodplain, wetlands, Holocene faults, unstable areas; the names and addresses of contiguous property owners; the location of soil borings, excavations, test pits, gas venting structures, wells (including down-gradient drinking water supply wells within two thousand feet (six hundred ten meters) of the property boundary), lysimeters, piezometers, environmental and facility monitoring points and devices (with each identified in accordance with a numbering system acceptable to the jurisdictional health department and whose horizontal location are accurate to the nearest 0.5 foot (0.15 meter) and all orthometric evaluations should be related to a vertical benchmark based on the national geodetic vertical datum of 1929 (NGVD29) and be established to 3rd order classification standards per federal geodetic control committee, or its successor, as specified in WAC 332-130-060 as measured from the ground surface and top of well casing), benchmarks and permanent survey markers, and onsite buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total landfill area including planned staged development of the landfill's construction and operation, and the lateral and vertical limits of previously filled areas; the location and identification of the sources of cover materials; the location and identification of special waste handling areas; a wind rose; and site topography with five foot (or one meter) minimum contour intervals.

Note: All horizontal locations shall be based upon a control station related to a horizontal datum specified in chapter 58.20 RCW and chapter 332-130 WAC (NAD.83 (1991)).

(D) Detailed plans of the landfill must clearly show in plan and cross-sectional views, the original, undeveloped site topography before excavation or placement of solid waste; the existing site topography (if different from the original, undeveloped site topography) including the location and approximate thickness and nature of any existing solid waste; the seasonal high ground water table; generalized geologic units; known and interpolated bedrock elevations; the proposed limits of excavation and waste placement; the location and placement of each liner system and of each leachate collection system, locating and showing all critical grades and elevations of the collection pipe inverts and drainage envelopes, manholes, cleanouts, valves, sumps, and drainage blanket thicknesses; all berms, dikes, ditches, swales and other devices as needed to divert or collect surface water runoff or runoff; the final elevations and grades of the landfill cover system including the grading and gas venting layer, low permeability barrier, topsoil layers; the system used for monitoring and venting the decomposition gases generated within the landfill; ground water monitoring wells; geophysical and geochemical monitoring devices or structures; leachate storage, treatment and disposal systems including the collection network, sedimentation ponds and any treatment, pretreatment, or storage facilities; typical roadway sections, indicating the pavement type, dimensions, slopes and profiles; the building floor plans, elevations, appurtenances; and plans detailing the landfill entrance area including gates, fences, and signs.

(b) Engineering reports. The engineering reports for a facility must:

(i) Contain a cover sheet, stating the project title and location, the owner's or operator's name, and the engineer's name, address, signature, date of signature, and seal.

(ii) Have its text printed on 8 1/2" by 11" pages (paginated consecutively);

(iii) Contain a table of contents or index describing the body of the report and the appendices;

(iv) Include a body of report whose content is described by (c) of this subsection; and

(v) Include all appendices.

(c) An engineering report containing a description of the existing site conditions and, at a minimum, an analysis of the proposed facility that must:

(i) Describe current operating practices, expected life and any pending litigation or corrective actions relating to the existing or past facilities;

(ii) Specify the proposed design capacity of the MSWLF unit for which approval is being sought, describing the number, types, and the minimum specifications of all the necessary machinery and equipment needed to effectively operate the landfill at the proposed design capacity;

(iii) Contain a site analysis of the proposed action including:

(A) The location of the closest population centers;

(B) A comprehensive description of the primary transportation systems and routes in the facility service area (i.e., highways, airports, railways, etc.);

(C) An analysis of the existing topography, surface water and subsurface geological conditions in accordance

with the hydrogeologic report requirements of WAC 173-351-490;

(D) A description of the materials and construction methods used for the placement of each monitoring well pursuant to the requirements of WAC 173-351-400; all gas venting systems; each liner and leachate collection and removal system; leachate storage, treatment, and disposal systems; and cover systems to demonstrate conformance with the design requirements found in WAC 173-351-300, 173-351-320, and 173-351-500. This description also must include a discussion of provisions to be taken to prevent frost action upon each liner system in areas where refuse has not been placed;

(E) An estimate of the expected quantity of leachate to be generated, including:

(I) An annual water budget that estimates leachate generation quantities during initial operation, upon application of intermediate cover, and following MSWLF unit or all MSWLF units closure. At a minimum, the following factors must be considered in the preparation of the water budget to determine the amount of leachate generated as a result of precipitation infiltration into the MSWLF unit or all the MSWLF units: Average monthly temperature, average monthly precipitation, evaporation, evapotranspiration which considers the vegetation type and root zone depth, surface/cover soil conditions and their relation to precipitation runoff which must account for the surface conditions and soil moisture holding capacity and all other sources of moisture contribution to the landfill;

(II) Liner and leachate collection system efficiencies that must be calculated using an appropriate analytical or numerical assessment. The factors to be considered in the calculation of collection system efficiency must include, at a minimum, the saturated hydraulic conductivity of the liner, the liner thickness, the saturated hydraulic conductivity of the leachate collection system, the leachate collection system porosity, the base slope of the liner and leachate collection and removal system interface, the maximum flow distance across the liner and leachate collection and removal system interface to the nearest leachate collection pipe, the estimated leachate generation quantity as computed in accordance with the requirements of (c)(iii)(E)(I) of this subsection; and

(III) Predictions of the static head of leachate on the liners, volume of leachate to be collected, and the volume of leachate that may permeate through the entire liner system, all on a monthly basis. Information gained from the collection efficiency calculations required in (c)(iii)(E)(I) and (II) of this subsection must be used to make these predictions. This assessment also must address the amount of leachate expected to pass through the liner system in gallons per acre per day (liters per square meter per day).

(d) Discuss the closure and post-closure maintenance and operation of the facility which must include, but not be limited to:

(i) A closure design consistent with the requirements of WAC 173-351-500;

(ii) A post-closure water quality monitoring program consistent with the requirements of WAC 173-351-400 and 173-351-500;

(iii) An operation and closure plan for the leachate collection, treatment, and storage facilities consistent with

the requirements of this regulation and WAC 173-304-430; and

(iv) A discussion of the future use of the facility, including the specific proposed or alternative uses during the post-closure period. Future uses must not adversely affect the final cover system. See WAC 173-351-500 (2)(c)(iii).

(e) Appendices submitted as part of an engineering report submitted with an application to construct a new or laterally expanded MSWLF unit must contain:

(i) Appropriate charts and graphs;

(ii) Copies of record forms used at the MSWLF unit;

(iii) Test pit logs, soil boring logs, and geological information (such as stratigraphic sections, geophysical and geochemical surveys, and water quality analyses);

(iv) Engineering calculations (including the raw data from which they were made);

(v) Other supporting data, including literature citations.

(6) Construction quality assurance and construction quality control plans.

The construction quality assurance (QA) and construction quality control (QC) plan must address the construction of the MSWLF unit according to the designs set forth in chapter 173-351 WAC. (Construction QA and construction QC are defined in WAC 173-351-100.) The owner or operator may submit separate construction QA plans and construction QC plans. For each specified phase of construction, these plans must include, but not be limited to:

(a) A delineation of the responsibilities for the QA management organization and the QC management organization, including the chain of command of the QA inspectors and contractors and the QC inspectors and contractors; quality assurance shall be performed by a third party organization that is independent of the landfill owner/operator/contractor.

(b) A description of the required level of experience and training for the contractor, his/her crew, and QA and QC inspectors for every major phase of construction in sufficient detail to demonstrate that the approved installation methods and procedures will be properly implemented; and

(c) A description of the QA and QC testing protocols for every major phase of construction, which must include, at a minimum, the frequency of inspection, field testing, sampling for laboratory testing, the sampling and field testing procedures and equipment to be utilized, the calibration of field testing equipment, the frequency of performance audits, the sampling size, the laboratory procedures to be utilized, the calibration of laboratory equipment and QA/QC of laboratory procedures, the limits for test failure, and a description of the corrective procedures to be used upon test failure.

Note: It is intended that owners or operators will select and pay for the independent third party construction quality assurance firm, who will report to the owner or operator.

(7) Signature and verification of applications.

(a) All applications for permits must be accompanied by evidence of authority to sign the application and must be signed by the owner or operator as follows:

(i) In the case of corporations, by a duly authorized principal executive officer of at least the level of vice-president; in the case of a partnership or limited partnership, by:

- (ii) A general partner;
- (iii) Proprietor; or
- (iv) In the case of a sole proprietorship, by the proprietor;
- (v) In the case of a municipal, state, or other governmental entity, by a duly authorized principal executive officer or elected official.

(b) Applications must be sworn to by, or on behalf of, the owner or operator, in respect to the veracity all statements therein; or must bear an executed statement by, or on behalf of, the owner or operator to the effect that false statements made therein are made under penalty of perjury.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-730, filed 10/26/93, effective 11/26/93.]

WAC 173-351-740 Permit issuance criteria. The jurisdictional health department may issue, reissue, or modify a MSWLF permit to a facility, only if:

(1) The application's engineering and hydrogeological data and construction plans and specifications required by this regulation pertaining to such a MSWLF unit or MSWLF units substantiate that the proposed MSWLF unit or MSWLF units meets the requirements of this regulation;

(2) The application demonstrates the facility's ability to operate and close in accordance with the requirements of this regulation;

(3) The application demonstrates the facility's ability to conduct post-closure activities in accordance with the requirements of this regulation; and a form of surety or financial responsibility for post-closure activities has been filed with the jurisdictional health department; and

(4) The application demonstrates the facility's consistency with the local solid waste management plan in effect at the time of application.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-740, filed 10/26/93, effective 11/26/93.]

WAC 173-351-750 Permit provisions. (1) Mitigation of adverse impacts. The jurisdictional health department may impose conditions in each permit, to assure mitigation of adverse environmental impacts pursuant to SEPA, chapter 43.21C RCW and to insure compliance with the requirements identified in WAC 173-351-130 through 173-351-600, with the applicable sections pertaining to such a MSWLF unit or all MSWLF units, and with other applicable laws and regulations.

(2) Transferability.

(a) All permits issued pursuant to this regulation are transferable only upon prior written approval of the jurisdictional health department and a demonstration that the prospective transferee will be able to comply with applicable laws and regulations, permit conditions, and other requirements to which the prospective transferor is subject.

(b) Upon transfer of ownership of all or part of a facility, a provision must be included in the property deed indicating the period of time during which the facility has been disposing of solid waste, a description of the solid waste contained within, and the fact that the records for the facility have been filed with the jurisdictional health department. The deed also must reference a map, which must be

filed with the county clerk, showing the limits of the active areas as defined in WAC 173-351-100.

(3) Duration of permits. The jurisdictional health department must specify the duration of the MSWLF permit not to exceed ten years. Permits must be renewed annually according to WAC 173-351-730(3), and reissued according to WAC 173-351-720(6).

(4) Preconstruction review condition. The jurisdictional health department shall include in each permit for a new MSWLF unit or lateral expansion a condition requiring the owner or operator, to submit the following documents sixty days prior to beginning construction, and to obtain the jurisdictional health department's approval that the following documents conform with the engineering report and with the requirements of this chapter:

(a) Final design drawings;

(b) Construction specifications; and

(c) A construction quality assurance manual for the following MSWLF components:

(i) Bottom liner;

(ii) Leachate collection and removal system;

(iii) Landfill gas control system;

(iv) Leachate and landfill gas condensate treatment and disposal system; and

(v) Final cover system.

(5) Supervision and certification or declaration of construction. The construction of a MSWLF unit must be undertaken:

(a) Under the supervision of an individual licensed to practice engineering in the state of Washington; and

(b) In conformance with the construction quality assurance plan of WAC 173-351-730(6).

(6) Preoperation review conditions. Each permit issued under this chapter for a new MSWLF unit or lateral expansion shall contain a condition requiring that upon completion of construction, the licensed engineer who supervised construction shall certify or declare in writing that the construction is in accordance with the terms of the applicable permit and tested in accordance with construction quality assurance plans of WAC 173-351-730(6). Except as specified elsewhere in this regulation, this certification or declaration must be submitted to the jurisdictional health department within three months after completion of construction and must include recorded construction drawings and specifications. The operator must notify the jurisdictional health department, in writing, of the date when solid waste will be first received at the MSWLF unit.

(7) Cessation of construction or operation activities. If construction or operation activities started under a permit issued pursuant to this chapter cease for a period of twelve consecutive months, the jurisdictional health department may in its discretion revoke the permit. The jurisdictional health department shall provide notice to the owner or operator in writing explaining the reasons for revocation. The jurisdictional health department shall not revoke a permit where the cessation of construction or operation is caused by factors beyond the reasonable control of the permittee or when such cessation is in accordance with the provisions of the permit.

(8) Design volume capacity. Every MSWLF permit must set forth the facility's approved design volume capacity.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-750, filed 10/26/93, effective 11/26/93.]

WAC 173-351-760 Appeals. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the application or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given to all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing the health officer shall notify the applicant or the holder of the permit in writing of his determination thereof. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended.

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258. 93-22-016, § 173-351-760, filed 10/26/93, effective 11/26/93.]

WAC 173-351-990 Appendices.

APPENDIX I¹

Appendix I - Constituents for Detection Monitoring

COMMON NAME ²	CAS RN ³
Inorganic Constituents	
1) Antimony	(Dissolved)
2) Arsenic	(Dissolved)
3) Barium	(Dissolved)
4) Beryllium	(Dissolved)
5) Cadmium	(Dissolved)
6) Chromium	(Dissolved)
7) Cobalt	(Dissolved)
8) Copper	(Dissolved)
9) Lead	(Dissolved)
10) Nickel	(Dissolved)
11) Selenium	(Dissolved)
12) Silver	(Dissolved)
13) Thallium	(Dissolved)
14) Vanadium	(Dissolved)
15) Zinc	(Dissolved)
16) Nitrate	
Organic Constituents	
17) Acetone	67-64-1
18) Acrylonitrile	107-13-1
19) Benzene	71-43-2
20) Bromochloromethane	74-97-5
21) Bromodichloromethane	75-27-4
22) Bromoform; Tribromomethane	75-25-2
23) Carbon disulfide	75-15-0
24) Carbon tetrachloride	56-23-5
25) Chlorobenzene	108-90-7
26) Chloroethane; Ethyl chloride	75-00-3
27) Chloroform; Trichloromethane	67-66-3
28) Dibromochloromethane; Chlorodibromomethane	124-48-1

29)	1,2-Dibromo-3-chloropropane; DBCP	96-12-8
30)	1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
31)	o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
32)	p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
33)	trans-1,4-Dichloro-2-butene	110-57-6
34)	1,1-Dichloroethane; Ethylidene chloride	75-34-3
35)	1,2-Dichloroethane; Ethylene dichloride	107-06-2
36)	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
37)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
38)	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
39)	1,2-Dichloropropane; Propylene dichloride	78-87-5
40)	cis-1,3-Dichloropropene	10061-01-5
41)	trans-1,3-Dichloropropene	10061-02-6
42)	Ethylbenzene	100-41-4
43)	2-Hexanone; Methyl butyl ketone	591-73-6
44)	Methyl bromide; Bromomethane	74-83-9
45)	Methyl chloride; Chloromethane	74-87-3
46)	Methylene bromide; Dibromomethane	74-95-3
47)	Methylene chloride; Dichloromethane	75-09-2
48)	Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
49)	Methyl iodide; Iodomethane	74-88-4
50)	4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
51)	Styrene	100-42-5
52)	1,1,1,2-Tetrachloroethane	630-20-6
53)	1,1,2,2-Tetrachloroethane	79-34-5
54)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
55)	Toluene	108-88-3
56)	1,1,1-Trichloroethane; Methyl chloroform	71-55-6
57)	1,1,2-Trichloroethane	79-00-5
58)	Trichloroethylene; Trichloroethene	79-01-6
59)	Trichlorofluoromethane; CFC-11	75-69-4
60)	1,2,3-Trichloropropane	96-18-4
61)	Vinyl acetate	108-05-4
62)	vinyl chloride	75-01-4
63)	Xylenes	1330-20-7

¹ This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

² Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

³ Chemical Abstracts Service registry number.

APPENDIX II
GROUND WATER QUALITY PARAMETERS

Field Parameters

pH
specific conductance
temperature
static water level

Geochemical Indicator Parameters

Calcium (Ca)	Sodium (Na)
Bicarbonate (HCO ₃)	Chloride (Cl)
Magnesium (Mg)	Potassium (K)
Sulfate (SO ₄)	Alkalinity (as Ca CO ₃)
	Iron (Fe)
	Manganese (Mn)

Leachate Indicators

Ammonia (NH₃-N)
Total Organic Carbon (TOC)
Total Dissolved Solids (TDS)

APPENDIX III

List of Hazardous Inorganic and Organic Constituents.¹

Common Name ² (mg/L) ⁶	CAS RN ³	Chemical abstracts service index name ⁴	Suggested methods ⁵	PQL
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100 8270	200 10
Acenaphthylene	208-96-8	Acenaphthylene	8100 8270	200 10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20
Acrolein	107-02-8	2-Propenal	8030 8260	5 100
Acrylonitrile	107-13-1	2-Propenenitrile	8030 8260	5 200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a-hexahydro- (1 α ,4 α , 4a β ,5 α ,8 α ,8a β)-	8080 8270	0.05 10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010 8260	5 10
4-Aminobiphenyl	92-67-1	[1,1' -Biphenyl]-4-amine	8270	20
Anthracene	120-12-7	Anthracene	8100 8270	200 10
Antimony	(Dissolved)	Antimony	6010 7040 7041	300 2000 30
Arsenic	(Dissolved)	Arsenic	6010 7060 7061	500 10 20
Barium	(Dissolved)	Barium	6010 7080	20 1000
Benzene	71-43-2	Benzene	8020 8021 8260	2 0.1 5

Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100 8270	200 10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100 8270	200 10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100 8270	200 10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100 8270	200 10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100 8270	200 10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Dissolved)	Beryllium	6010 7090 7091	3 50 2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6- hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 β , 6 β)-	8080 8270	0.05 10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6- hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α , 6 β)-	8080 8270	0.05 20
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6- hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α , 6 β)-	8080 8270	0.1 20
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6- hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 α , 6 β)-	8080 8270	0.05 20
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1 1 - [methylenebis(oxy)]bis[2- chloro-	8110 8270	5 10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1 1 -oxybis[2-chloro-	8110 8270	3 10
Bis-(2-chloro-1-methylethyl) ether; 2,2 1 -	108-60-1	Propane, 2,2 1 -oxybis[1- chloro-	8110 8270	10 10
Dichlorodiisopropyl ether; DCIP, See note 7				
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021 8260	0.1 5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010 8021 8260	1 0.2 5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010 8021 8260	2 15 5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110 8270	25 10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060 8270	5 10
Cadmium	(Dissolved)	Cadmium	6010 7130 7131	40 50 1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010 8021 8260	1 0.1 10
Chlordane	See Note 8	4,7-Methano-1H-indene, 1,2,4,5, 6,7,8,8-octachloro-2,3,3a,4,7, 7a-hexahydro-	8080 8270	0.1 50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20

Municipal Solid Waste Landfills

173-351-990

Chlorobenzene	108-90-7	Benzene, chloro-	8010	2
			8020	2
			8021	0.1
			8260	5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro- α - (4-chlorophenyl)- α -hydroxy-, ethyl ester	8270	10
p-Chloro-m-cresol; 4-Chloro-3- methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040	5
			8270	20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010	5
			8021	1
			8260	10
			8010	0.5
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8021	0.2
			8260	5
			8010	0.5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120	10
			8270	10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040	5
			8270	10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110	40
			8270	10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010	50
			8260	20
Chromium	(Dissolved)	Chromium	6010	70
			7190	500
			7191	10
			8100	200
Chrysene	218-01-9	Chrysene	8270	10
Cobalt	(Dissolved)	Cobalt	6010	70
			7200	500
			7201	10
Copper	(Dissolved)	Copper	6010	60
			7210	200
			7211	10
			8270	10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4- Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4- dichlorophenoxy)-	8150	10
4,4 1 -DDD	72-54-8	Benzene 1,1 1 -(2,2- dichloroethylidene)bis[4- chloro-	8080	0.1
			8270	10
4,4 1 -DDE	72-55-9	Benzene, 1,1 1 - (dichloroethenylidene)bis[4- chloro-	8080	0.05
			8270	10
4,4 1 -DDT	50-29-3	Benzene, 1,1 1 -(2,2,2- trichloroethylidene)bis[4- chloro-	8080	0.1
			8270	10
Diallate	2303-16-4	Carbamothioic acid, bis(1- methylene)-,S-(2,3-dichloro- 2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010	1
			8021	0.3
			8260	5
			8011	0.1
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-	8021	30
			8260	25

1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011	0.1
			8021	10
			8260	5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060	5
			8270	10
			8010	2
			8020	5
			8021	0.5
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8120	10
			8260	5
			8270	10
			8010	5
			8020	5
			8021	0.2
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-	8120	10
			8260	5
			8270	10
			8010	2
			8020	5
			8021	0.1
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8120	15
			8260	5
			8270	10
			8010	2
			8020	5
			8021	0.1
3,3 1 -Dichlorobenzidine	91-94-1	[1,1 1 -Biphenyl]-4,4 1 -diamine, 3,3 1 -dichloro-	8270	20
			8260	100
			8021	0.5
			8260	5
			8010	1
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8021	0.5
			8260	5
			8010	1
Dichlorodifluoromethane; CFC 12;	75-71-8	Methane, dichlorodifluoro-	8021	0.5
			8260	5
			8010	1
1,1-Dichloroethane; Ethylidene chloride	75-34-3	Ethane, 1,1-dichloro-	8021	0.5
			8260	5
			8010	0.5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	8021	0.3
			8260	5
			8010	1
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8021	0.5
			8260	5
			8010	1
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021	0.2
			8260	5
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010	1
			8021	0.5
			8260	5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
			8010	0.5
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8021	0.05
			8260	5
			8021	0.3
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8260	5
			8021	0.5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8260	15
			8021	0.2
			8260	5
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021	0.2
			8260	5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010	20
			8260	10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010	5
			8260	10
			8010	0.05
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexa, chloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1α,2β,2α,3β,6β,	8080	0.05
			8270	10

Municipal Solid Waste Landfills

173-351-990

Diethyl phthalate	84-66-2	6 α ,7 β ,7 α)- 1,2-Benzenedicarboxylic acid, diethyl ester	8060 8270	5 10
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin Dimethoate	297-97-2 60-51-5	Phosphorothioic acid, 0,0- diethyl 0-pyrazinyl ester Phosphorodithioic acid, 0,0- dimethyl S-[2-(methylamino)-2- oxoethyl] ester	8141 8270 8141 8270	5 20 3 20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4- (phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12- dimethyl-	8270	10
3,3 1 -Dimethylbenzidine	119-93-7	[1,1 1 -Biphenyl]-4,4 1 - diamine, 3,3 1 -dimethyl-	8270	10
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040 8270	5 10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060 8270	5 10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol 4,6- Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro	8040 8270	150 50
2,4-Dinitrophenol;	51-28-5	Phenol, 2,4-dinitro-	8040 8270	150 50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090 8270	0.2 10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090 8270	0.1 10
Dinoseb; DNBP; 2-sec-Butyl-4,6- dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6- dinitro-	8150 8270	1 20
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060 8270	30 10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0- diethyl S-[2-(ethylthio)ethyl] ester	8140 8141 8270	2 0.5 10
Endosulfan I	959-98-8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10, 10-hexa- chloro-1,5,5a,6,9,9a- hexahydro-, 3-oxide,	8080 8270	0.1 20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10, 10-hexa- chloro-1,5,5a,6,9,9a- hexahydro-, 3-oxide, (3 α ,5 α , 6 β ,9 β ,9 α)-	8080 8270	0.05 20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10, 10-hexa- chloro-1,5,5a,6,9,9a- hexahydro-,3-3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9- hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1 α , 2 β ,2a β ,3 α ,6 α , 6a β ,7 β ,7a α)-	8080 8270	0.1 20
Endrin aldehyde	7421-93-4	1,2,4- Methenocyclopenta[cd]pentalene- 5-carboxaldehyde, 2,2a,3,3,4,7- hexachlorodecahydro-, (1 α ,2 β , 2a β ,4 β ,4a β ,5 β ,6a β ,6b β ,7R*)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8221 8260	2 0.05 5

Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015	5
			8260	10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	10
			8270	20
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100	200
			8270	10
Fluorene	86-73-7	9H-Fluorene	8100	200
			8270	10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	8080	0.05
			8270	10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1 α , 1b β , 2 α , 5 α , 5a β , 6 β , 6a α)	8080	1
			8270	10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120	0.5
			8270	10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8021	0.5
			8120	5
			8260	10
			8270	10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120	5
			8270	10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120	0.5
			8260	10
			8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100	200
			8270	10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015	50
			8240	100
			8270	20
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro- (1 α ,4 α ,4a β ,5 β ,8 β ,8a β)-	8270	20
			8260	10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090	60
			8270	10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-	8270	20
Lead	(Dissolved)	Lead	6010	400
			7420	1000
			7421	10
			7470	2
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015	5
			8260	100
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N 1 -2-pyridinyl-N1/2-thienylmethyl)-	8270	100

Municipal Solid Waste Landfills

173-351-990

Methoxychlor	72-43-5	Benzene,1,1 1 -(2,2,2, trichloroethylidene)bis[4- methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010	20
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8021	1 0.3
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2- dihydro-3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2- Butanone	78-93-3	2-Butanone	8015 8260	10 100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010 8260	40 10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015 8260	2 30
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0- dimethyl	8140 8141 8270	0.5 1 10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015 8260	5 100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8021 8260	15 20 10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8021 8260	5 0.2 10
Naphthalene	91-20-3	Naphthalene	8021 8100 8260 8270	0.5 200 5 10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010 7520	150 400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090 8270	40 10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040 8270	5 10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040 8270	10 50
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N- nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N- nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N- phenyl-	8070	5
N-Nitrosodipropylamine; N- Nitroso-N-dipropylamine; Di-n- propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N- propyl-	8070	10
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10

Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	8141	0.5
			8270	10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040	5
			8270	50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100	200
			8270	10
Phenol	108-95-2	Phenol	8040	1
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl] ester	8140	2
			8141	0.5
			8270	10
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1'-Biphenyl, chloro derivatives	8080	50
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	8270	200
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015	60
			8260	150
Pyrene	129-00-0	Pyrene	8100	200
			8270	10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
Selenium	(Dissolved)	Selenium	6010	750
				20
			7740	20
			7741	
Silver	(Dissolved)	Silver	6010	70
			7760	100
			7761	10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020	1
			8021	0.1
			8260	10
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010	5
				0.05
			8021	5
			8260	
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010	0.5
				0.1
			8021	5
			8260	
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010	0.5
			8021	0.5
			8260	5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Dissolved)	Thallium	6010	400
				1000
			7840	10
			7841	
Tin	(Dissolved)	Tin	6010	40
Toluene	108-88-3	Benzene, methyl-	8020	2
				0.1
			8021	5
			8260	
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10

Municipal Solid Waste Landfills

173-351-990

Toxaphene	See Note 10	Toxaphene	8080	2
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021	0.3
				0.5
			8120	10
			8260	10
			8270	
1,1,1-Trichloroethane;	71-55-6	Ethane, 1,1,1-trichloro-	8010	0.3
Methylchloroform				0.3
			8021	5
			8260	
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010	0.2
			8260	5
Trichloroethylene;	79-01-6	Ethene, trichloro-	8010	1
Trichloroethene			8021	0.2
			8260	5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010	10
			8021	0.3
			8260	5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040	5
			8270	10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010	10
			8021	5
			8260	15
			8270	10
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethylester		
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Dissolved)	Vanadium	6010	80
			7910	2000
			7911	40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010	2
			8021	0.4
			8260	10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020	5
			8021	0.2
			8260	5
Zinc	(Dissolved)	Zinc	6010	20
			7950	50
			7951	0.5

Notes

- The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6. Also, note that the state ground water quality criteria, chapter 173-200 WAC, takes precedence over these recommended PQL's.
- Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
- Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.
- CAS index are those used in the 9th Collective Index.
- Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.
- Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure.

PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

- This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).
- Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.
- Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.
- Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

- ¹¹ Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

APPENDIX IV

PARAMETERS FOR LEACHATE ANALYSIS

Appendix I¹ Parameters

Appendix II Parameters

Nitrite

Total Coliform

COD

BOD

Cyanide

- ¹ All metals analysis should be for total recoverable metals, for the leachate analysis only.

Important Note: All other appendices require dissolved metals (field-filtration for metals).

[Statutory Authority: Chapter 70.95 RCW and 40 CFR 258.93-22-016, § 173-351-990, filed 10/26/93, effective 11/26/93.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

Chapter 173-360 WAC

UNDERGROUND STORAGE TANK REGULATIONS

WAC

PART I

PROGRAM SCOPE, ADMINISTRATION, AND ENFORCEMENT

173-360-100	Purpose and authority.
173-360-105	Intergovernmental agreements.
173-360-110	Applicability, exemptions, and deferrals.
173-360-120	Definitions.
173-360-130	Tank permits and delivery of regulated substances.
173-360-140	Investigation and access.
173-360-150	Compliance monitoring.
173-360-160	Enforcement.
173-360-170	Penalties.
173-360-180	Public participation and information sharing.
173-360-190	Annual tank fees.

PART II

NOTIFICATION, REPORTING, AND RECORDKEEPING REQUIREMENTS

173-360-200	Notification requirements.
173-360-210	Reporting and recordkeeping requirements.

PART III

PERFORMANCE STANDARDS AND OPERATING AND CLOSURE REQUIREMENTS

173-360-300	Performance standards for deferred UST systems.
173-360-305	Performance standards for new UST systems.
173-360-310	Upgrading requirements for existing UST systems.
173-360-315	Spill and overflow control requirements.
173-360-320	Operation and maintenance of corrosion protection.
173-360-323	Compatibility.
173-360-325	Repairs of UST systems.
173-360-330	Release detection compliance schedule.
173-360-335	Release detection for petroleum UST systems.
173-360-340	Release detection for hazardous substance UST systems.
173-360-345	Methods of release detection for tanks.
173-360-350	Methods of release detection for piping.
173-360-355	Release detection recordkeeping.
173-360-360	Reporting of suspected releases.

173-360-365	Investigation due to off-site impacts.
173-360-370	Release investigation and confirmation steps.
173-360-372	Reporting of confirmed releases.
173-360-375	Cleanup and reporting of spills and overfills.
173-360-380	Temporary closure of UST systems.
173-360-385	Permanent closure and change-in-service.
173-360-390	Site assessment at closure or change-in-service.
173-360-395	Applicability to previously closed UST systems.
173-360-398	Closure records.
173-360-399	Corrective action requirements.

PART IV

FINANCIAL RESPONSIBILITY REQUIREMENTS

173-360-400	Applicability.
173-360-403	Compliance dates.
173-360-406	Amount and scope of required financial responsibility.
173-360-410	Allowable mechanisms and combinations of mechanisms.
173-360-413	Financial test of self-insurance.
173-360-416	Guarantee.
173-360-420	Insurance and risk retention group coverage.
173-360-423	Surety bond.
173-360-426	Letter of credit.
173-360-433	Trust fund.
173-360-436	Standby trust fund.
173-360-440	Substitution of financial assurance mechanisms by owner or operator.
173-360-443	Cancellation or nonrenewal by a provider of financial assurance.
173-360-446	Reporting by owner or operator.
173-360-450	Recordkeeping.
173-360-453	Drawing on financial assurance mechanisms.
173-360-456	Release from the requirements.
173-360-460	Bankruptcy or other incapacity of owner or operator.
173-360-463	Replenishment of guarantees, letters of credit, or surety bonds.
173-360-466	Suspension of enforcement.
173-360-470	Appendix A—Letter from chief financial officer.
173-360-473	Appendix B—Guarantee.
173-360-476	Appendix C—Endorsement.
173-360-480	Appendix D—Certificate of insurance.
173-360-483	Appendix E—Performance bond.
173-360-486	Appendix F—Irrevocable standby letter of credit.
173-360-490	Appendix G—Trust agreement.
173-360-493	Appendix H—Certification of acknowledgment.
173-360-496	Appendix I—Certification of financial responsibility.
173-360-499	Appendix J—Certification of valid claim.

PART V

LOCAL PROGRAMS

173-360-500	Local delegation of underground storage tank programs.
173-360-510	Environmentally sensitive areas.
173-360-520	Physical criteria for environmentally sensitive areas.
173-360-530	Application for designation of environmentally sensitive area and approval of local regulations.

PART VI

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS AND SERVICE SUPERVISORS

173-360-600	Purpose of Part VI.
173-360-610	Scope.
173-360-630	Registration and licensing of tank service providers.
173-360-640	Types of licenses.
173-360-650	Examination and licensing of tank services supervisors.
173-360-655	Examination and licensing of persons who perform inspections.
173-360-660	Study guide fees.
173-360-670	Penalties.
173-360-680	Reciprocity with other states.
173-360-690	Appeals.
173-360-695	Inactive license.

**PART I
PROGRAM SCOPE, ADMINISTRATION, AND
ENFORCEMENT**

WAC 173-360-100 Purpose and authority. (1) The purpose of this chapter is to address the serious threat posed to human health and the environment by leaking underground storage systems containing petroleum and other regulated substances.

(2) The department of ecology is directed by chapter 90.76 RCW to establish an underground storage tank program designed, operated and enforced in a manner that, at a minimum, meets the requirements for delegation of the Federal Underground Storage Tank Program of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901, et seq.). The legislative intent is that state-wide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the objectives outlined in the federal regulations. Because certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks, local requirements more stringent than the state-wide requirements may apply in these environmentally sensitive areas.

(Note: All codes, standards, rules, or regulations cited in this chapter are available for inspection at the Department of Ecology, Mailstop PV-11, Olympia, WA 98504-8711.)

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-100, filed 11/28/90, effective 12/29/90.]

WAC 173-360-105 Intergovernmental agreements. In order to fully implement this chapter, and to protect surface and ground water resources that may cross jurisdictional boundaries, the department and delegated agencies may negotiate and enter into cooperative agreements with Indian tribal governments, adjacent states, and Canadian governmental agencies when agencies are delegated responsibility for carrying out all or a portion of the underground storage tank program contiguous with or affecting lands under tribal, state, or Canadian government jurisdiction. Such cooperative agreements shall not affect the regulatory jurisdiction of any party thereto with regard to any civil or criminal matters otherwise exercised by any party. Intergovernmental agreements shall further the purpose of this chapter, and shall serve to establish a framework for intergovernmental coordination and cooperation, and shall serve to minimize duplication and efficiently utilize program resources to manage underground storage tanks and protect surface and ground water resources.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-105, filed 11/28/90, effective 12/29/90.]

WAC 173-360-110 Applicability, exemptions, and deferrals. (1) The requirements of this chapter apply to all owners and operators of an underground storage tank (UST) system as defined in WAC 173-360-120 except as otherwise provided in subsections (2) and (3) of this section. It is the responsibility of owners and operators to ensure that any UST system service providers and supervisors they employ are properly licensed in accordance with WAC 173-360-600 through 173-360-690.

(2) Exemptions. The following UST systems, including any piping connected thereto, are exempt from the requirements of this chapter:

(a) Any UST system holding hazardous wastes subject to Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.

(c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(d) Any UST system whose capacity is one hundred ten gallons or less.

(e) Any UST system that contains a de minimis concentration of regulated substances.

(f) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(g) Farm or residential UST systems of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes (i.e., not for resale);

(h) UST systems used for storing heating oil for consumptive use on the premises where stored; except that such systems which store in excess of one thousand one hundred gallons are subject to the release reporting requirements of WAC 173-360-372;

(i) Septic tanks;

(j) Any pipeline facility (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.); or

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.); or

(iii) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in (j) (i) or (ii) of this subsection;

(k) Surface impoundments, pits, ponds, or lagoons;

(l) Storm water or wastewater collection systems;

(m) Flow-through process tanks;

(n) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(o) Storage tanks situated in an underground area (such as a basement, cellar, vault, mineworking drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(3) Deferrals. The following UST systems are subject only to the requirements of WAC 173-360-130, 173-360-140, 173-360-160, 173-360-170, 173-360-190, 173-360-200, 173-360-372 and 173-360-385. Any new deferred UST systems shall also be subject to the performance standards of WAC 173-360-300:

(a) Wastewater treatment tank systems not regulated under section 307(b) or 402 of the Clean Water Act;

(b) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(c) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50 Appendix A;

(d) Airport hydrant fuel distribution systems;

(e) UST systems with field-constructed tanks.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-110, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-110, filed 11/28/90, effective 12/29/90.]

WAC 173-360-120 Definitions. For the purposes of this chapter, the following definitions shall apply:

"Abandoned" means left unused indefinitely, without being substantially emptied or permanently altered structurally to prevent reuse.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems by passing an examination and obtaining a license for supervision of cathodic protection installation and testing in compliance with WAC 173-360-600 through 173-360-690. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Closure" means to take an underground storage tank out of operation, either temporarily or permanently, in

accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "decommissioning."

"Compatible" means the ability of two or more substances or materials to maintain their respective physical and chemical properties upon contact with one another such that the stored substance will not pass through the wall or lining of the tank and connected piping for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Corrosion expert" means a person who possesses a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Decommissioning" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "closure."

"Deferral" means a category of UST systems which are subject to certain, but not all, of the requirements of this chapter as specified in WAC 173-360-110(3).

"Delegated agency" means the local government agency which has been delegated responsibility by the department for administering any portion of an UST program approved in accordance with WAC 173-360-500.

"Department" means the department of ecology.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the department of ecology.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Emergency power generator" means an engine that uses fuel to produce auxiliary electrical or mechanical energy for use in emergencies.

"Emergency power generator tank" means a tank that stores fuel solely for use by an emergency power generator.

"Excavation zone" means the volume containing the UST system and backfill material bounded by the ground

surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing UST system" means an UST system used to contain an accumulation of regulated substances or for which installation had commenced on or before December 22, 1988. Installation is considered to have commenced if:

The owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

Either a continuous on-site physical construction or installation program had begun; or

The owner or operator had entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"False alarm" means indicating that an UST system is leaking when in fact it is tight.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations. It does not include laboratories where animals are raised, land used to grow timber, pesticide aviation operations, retail stores or garden centers where nursery products are marketed but not grown, cemeteries, golf courses, or other facilities dedicated primarily to recreation or aesthetics, or other non-agricultural activities.

"Field-constructed tank" means an underground storage tank that is constructed in the field rather than factory built because of its large size.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: A 10-K report submitted to the SEC; an annual report of tangible net worth submitted to Dun and Bradstreet; or annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in performing tank services.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Immiscible" means largely incapable of blending or mixing.

"Installation" means the activity of placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: By the United States Environmental Protection Agency (EPA) or a state to require corrective action or to recover the costs of corrective action; by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or by any person to enforce the terms of a financial assurance mechanism.

"Licensed" means a firm or a person which has been issued a license by the department under this chapter.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing a regulated substance.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New UST system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988. (See also "existing tank system.")

"Noncommercial purposes" with respect to motor fuel means not for resale.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of WAC 173-360-400 through 173-360-499 and is not intended either to limit the meaning of "occurrence" in a way that

conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under WAC 173-360-380 through 173-360-398.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means: In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use. In the event that the owner of an UST system cannot be physically located, the owner shall be the person who owns the property where the UST system is located, except any lien holder and any agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to a release or threatened release of a regulated substance from the UST system.

"Owner or operator," means, for the purposes of WAC 173-360-400 through 173-360-499, when the owner or operator are separate parties, the party that is obtaining or has obtained financial assurances.

"Party" means a person or group concerned or having or taking part in any affair, matter, transaction, or proceeding.

"Permanently closed" means: (1) In the case of an UST system taken out of operation before December 22, 1988, the UST system was substantially emptied of regulated substances or permanently altered structurally to prevent reuse; (2) in the case of an UST system taken out of operation after December 21, 1988, and before the effective date of this chapter, the UST system was closed in accordance with 40 CFR 280; and (3) in the case of an UST system taken out of operation on or after the effective date of this chapter, the UST system was closed in accordance with WAC 173-360-385.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonferrous materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360-413 through 173-360-436, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Regulated substance" means:

Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and any other regulated substances); and

Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term "regulated substance" does not include propane or asphalt or any other petroleum product which is not liquid at standard conditions of temperature and pressure.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system to ground water, surface water or soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of a regulated substance from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes; such properties do not include dormitories, convents, mobile parks, apartments, hotels and similar facilities, unless the tank is used by the

owner solely for his or her own personal use, rather than to maintain the overall facility.

"Retrofitting" means the repair or upgrading of an existing underground storage tank system including, but not limited to, installation of splash, spill and overflow protection, installing or replacing monitoring systems, adding cathodic protective systems, tank repair, replacement of piping, valves, fill pipes or vents and installing tank liners.

"Septic tank" is a water-tight covered receptacle designed and used to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site assessment" means investigating an UST site for the presence of a release at the time of closure or change-in-service.

"Site check" means investigating an UST site for the presence of a release when evidence indicates that a release may have occurred.

"Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Structural defect" means a hole or crack in the tank portion of the UST system, which has either caused a release from the system or is being repaired to prevent a release from the system.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Supervisor" means a licensed person operating independently or employed by a contractor, who is responsible for directing and overseeing the performance of tank services at a facility.

"Surface impoundment" is a natural topographic depression, excavation, or diked area formed primarily of earthen materials (although it may be lined with synthetic materials) that is not an injection well.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Tank permit" means a tank tag, as required by RCW 90.76.020(4).

"Tank services" include underground storage tank installation, decommissioning, retrofitting, and testing.

"Tank services provider" is a person or firm licensed to perform tank services on regulated underground storage tanks in Washington.

"Termination" under WAC 173-360-476 and 173-360-480 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Testing" means applying a method to determine the integrity of an underground storage tank.

"Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment or, in the case of an underground storage tank system, intrusion of ground water into a tank system.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any of the exempt UST systems specified in WAC 173-360-110(2), or any piping connected thereto.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of regulated substances.

"UST site" or "site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property within a contiguous ownership that is associated with the use of the tanks.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-120, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-120, filed 11/28/90, effective 12/29/90.]

WAC 173-360-130 Tank permits and delivery of regulated substances. (1) Requirement for a permit. After July 1, 1991, no underground storage tank system, as defined in this chapter, shall be operated without a valid permit from the department. However, possession of a valid permit does not preclude enforcement against the owner or operator of the underground storage tank under this or other laws.

(2) Application for a permit. Permits for UST systems shall be obtained as follows:

(a) To apply for a permit for an UST system which is to be newly installed, the owner or operator shall complete a notice of intent to install an UST system, as specified in WAC 173-360-200(1), and submit it to the department at least thirty days prior to installation of the system. An initial permit, valid for ninety days, will be provided by the department so the UST system can be tested and operation of the system can begin. If necessary, and if circumstances warrant, an additional permit valid for ninety days will be provided by the department. Upon receipt of the following items, a permit valid until the following June 30, if the UST system remains in compliance, will be provided by the department for the newly installed UST system:

(i) A properly completed UST notification form, as specified in WAC 173-360-200(2); and

(ii) A properly completed installation checklist, as specified in WAC 173-360-200(3).

(b) To apply for a permit for an existing UST system not previously reported to the department, the owner or operator shall complete a Washington state underground storage tank notification form, as specified in WAC 173-360-200(2), and submit it to the department with a payment of the applicable annual fee, as specified in WAC 173-360-190, including any fees which should have been paid for earlier fiscal years if the UST system had been properly registered, but which were not paid.

(c) To apply for a permit for a tank which has been temporarily out of service, the owner or operator shall notify the department of the change in status and follow the provisions of WAC 173-360-380.

(d) Each year the department will request owners and operators of reported UST systems to certify compliance with the requirements of this chapter. UST systems which are in the department's notification data base when the department requests this certification will receive permits by July 1 of each year if:

(i) Adequate documentation of compliance, as specified by the department, is submitted to the department; and

(ii) The documentation of compliance is submitted by the deadline for submittal established by the department in its request.

(3) Eligibility for a permit. Tanks which are temporarily closed under WAC 173-360-380 are not eligible to receive permits. Underground storage tank systems are eligible for a permit if the following conditions are met:

(a) The owner or operator is in compliance with all requirements of this chapter, including the financial responsibility requirements, and chapter 173-340 WAC, if applicable, or the owner or operator is in conformance with a compliance schedule negotiated with and agreed to by the department;

(b) The storage tank system is not known by the owner or operator to be leaking; and

(c) All annual state tank fees and local environmentally sensitive area tank fees have been remitted.

(4) Delivery of regulated substances. Regulated substances shall not be delivered to any underground storage tank requiring a permit under this section unless a valid permit is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. This subsection applies only to suppliers who directly

transfer regulated substances into underground storage tank systems.

(5) Waste oil tanks. Tanks used to collect and store used or waste oil regulated under this chapter shall not be pumped by a used or waste oil collector unless a valid permit is displayed on such tank itself or a device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. This prohibition does not apply to a one-time removal of substances from tanks which will not be used again for the storage of used or waste oil once the substances are removed; such tanks must be properly closed or undergo the procedures for a change-in-service in accordance with WAC 173-360-385. This subsection applies only to used or waste oil collectors who directly transfer regulated substances from underground storage tanks.

(6) Delivery prohibited to leaking tanks. Except as specified in subsection (10) of this section, suppliers shall not deliver regulated substances to any underground storage tank which is known by the supplier to be leaking, or to have leaked and not been properly repaired, regardless of the permit status of the tank.

(7) Delivery of regulated substances. If a confirmed release occurs from a permitted tank, in addition to meeting the reporting requirements of WAC 173-360-372, within twenty-four hours of having knowledge of the release the owner or operator shall lock the fill pipe and remove from display the permit for the tank from which the release has occurred. At no time can the owner or operator receive regulated substances, except as specified in subsection (10) of this section, until all the applicable requirements of this chapter and chapter 173-340 WAC have been met. If the department determines that reasonable progress is not being made in meeting these requirements it may request that the owner or operator surrender the permit, as specified in subsection (8) of this section, for the tank from which the release occurred.

(8) Permit revocation. The department may request the surrender of a permit for any tank which does not remain in compliance with the requirements of this chapter, including financial responsibility requirements and payment of fees, or for any violation of the chapter by an underground storage tank owner or operator, including refusal of access to property under WAC 173-360-140. Upon request of a representative of the department or delegated agency or upon receipt of a letter from the department or delegated agency requesting surrender of the permit, the owner or operator must return the permit to the department or delegated agency within seven days.

(9) When a tank is closed, any active permit must be returned to ecology within thirty days of the completion of the closure procedures.

(10) Appeals. The revocation of a permit may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

(11) Display of permits for tightness testing. A permit which has been removed from display in accordance with subsection (7) of this section may be redisplayed for the purpose of receiving regulated substances in order to conduct a volumetric tightness test on the storage system. If a leak is determined to exist in the uppermost level of the system, the regulated substance shall be immediately removed to a

point below the source of the leak. If a leak is determined to exist below the uppermost level of the system, all regulated substances shall be immediately removed from the system. The requirements of subsection (7) of this section and the requirement for reporting of confirmed releases specified in WAC 173-360-372 shall be followed, regardless of the location of the source of the release in the storage tank system.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-130, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-130, filed 11/28/90, effective 12/29/90.]

WAC 173-360-140 Investigation and access. (1) If necessary to determine compliance with the requirements of this chapter, an authorized representative of the state engaged in compliance inspections, monitoring and testing may, by request, require an owner or operator to submit relevant information or documents. The department may subpoena witnesses, documents, and other relevant information that the department deems necessary. In the case of any refusal to obey the subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department and give testimony or produce documents. Any failure to obey the order of the court may be punished by the court as contempt.

(2) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.

(3) Upon reasonable notice, an authorized representative of the state may enter a premises or site subject to regulation under this chapter or in which records relevant to the operation of an underground storage tank system are kept. In the event of an emergency or in circumstances where notice would undermine the effectiveness of an inspection, notice is not required. The authorized representative may copy records, obtain samples of regulated substances, and inspect or conduct monitoring or testing of an underground storage tank system.

(4) For purposes of this section, the term "authorized representative" or "authorized representative of the state" means an enforcement officer, employee, or representative of the department or a local government that has obtained authority under RCW 90.76.030.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-140, filed 11/28/90, effective 12/29/90.]

WAC 173-360-150 Compliance monitoring. The department's compliance monitoring procedures, including procedures for recordkeeping and a program for systematic inspections, shall be consistent with and no less stringent than those required by 40 CFR 281.40 and amendments thereto.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-150, filed 11/28/90, effective 12/29/90.]

WAC 173-360-160 Enforcement. (1) The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston County Superior Court or issuing such order as the director deems appropriate to:

(a) Enjoin any threatened or continuing violation of this chapter;

(b) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter and is endangering or causing damage to public health or the environment;

(c) Require compliance with requests for information, access, testing, or monitoring under WAC 173-360-140; or

(d) Assess and recover civil penalties authorized under RCW 90.76.080.

(2) The department's enforcement procedures shall be consistent with and no less stringent than those required by 40 CFR 281.41 and amendments thereto.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-160, filed 11/28/90, effective 12/29/90.]

WAC 173-360-170 Penalties. (1) Any person who fails to notify the department pursuant to the notification requirements of this chapter, or who submits false information, is subject to a civil penalty not to exceed five thousand dollars per violation.

(2) Any person who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation.

(3) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-170, filed 11/28/90, effective 12/29/90.]

WAC 173-360-180 Public participation and information sharing. The department's procedures for public participation and information sharing shall be consistent with and no less stringent than those required by 40 CFR 281.42 and 281.43 and amendments thereto.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-180, filed 11/28/90, effective 12/29/90.]

WAC 173-360-190 Annual tank fees. An annual state tank fee of seventy-five dollars per tank for the fiscal year ending June 30, 1992, and each fiscal year thereafter shall be paid within thirty days of the billing date and no later than the December 31st of each fiscal year by every person who owns an underground storage tank which:

(1) Is located in this state;

(2) Was required to be reported to the department under the Federal Underground Storage Tank Program of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901, et seq.);

(3) Is not permanently closed according to the requirements of this chapter on June 30 of the fiscal year preceding the fiscal year for which the fee is assessed; and

(4) If required, for which corrective action has not been completed in accordance with this chapter.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-190, filed 11/28/90, effective 12/29/90.]

PART II
NOTIFICATION, REPORTING, AND
RECORDKEEPING REQUIREMENTS

Note: Tank owners and operators may be subject to certain local requirements in addition to the state UST regulations. Permits or approval for construction activities may be required by local jurisdictions. These may include, but are not limited to, requirements to obtain grading, building or demolition permits, and requirements for compliance with local ordinances pertaining to environmental review under the state Environmental Policy Act (chapter 43.21C RCW).

WAC 173-360-200 Notification requirements. (1) Notice of intent to install a new UST system. Except in the circumstances defined in subsection (5) of this section, any owner who intends to install a new UST system shall submit a notice of such intent to the department or delegated agency at least thirty days prior to installing the UST system. Such notice shall meet the following requirements:

- (a) The notice of intent shall be provided on the appropriate Washington state form, which is available from the department;
- (b) Each UST system to be installed which is regulated under this chapter shall be reported;
- (c) Owners may provide notice for more than one UST system using a single form, but UST systems to be installed at separate sites shall be reported on separate forms; and
- (d) The completed form shall include all of the information required on the form.

(2) Notification of new UST systems in use. Within thirty days of bringing any newly installed UST system regulated under this chapter into use, the owner shall submit notice of such UST system to the department. This notice shall meet the following requirements:

- (a) The notice shall be provided on the appropriate Washington state underground storage tank notification form, which is available from the department;
- (b) Each tank regulated under this chapter shall be reported;
- (c) Owners may provide notice for more than one tank using a single notification form, but owners who own tanks located at more than one site shall file a separate notification form for each site;
- (d) Notification required under this section shall include all of the information required on the form for each tank for which notice must be given; and
- (e) Notification for tanks installed after December 22, 1988, shall also certify compliance with the following requirements:

- (i) Corrosion protection of steel tanks and piping under WAC 173-360-305 (1) and (2);
- (ii) Financial responsibility under WAC 173-360-400 through 173-360-499; and
- (iii) Release detection under WAC 173-360-335 and 173-360-340.

(3) Installation checklist. All owners and operators of new UST systems shall ensure that a licensed installation supervisor certifies that the methods used to install the tanks and piping comply with the requirements in WAC 173-360-305(4). Such certification shall be accomplished by completing an installation checklist, which is available from the department, as specified in WAC 173-360-305(5).

(4) Notification of existing UST systems. Owners of any existing UST system regulated under this chapter which has not previously been reported to the department shall provide notification regarding such UST system immediately, following the requirements of subsection (2) (a) through (e) of this section.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the department in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by Washington state unless notice was given pursuant to section 103(c) of CERCLA.

(5) Emergency replacement of UST systems.

(a) An exception to the thirty-day notice requirement for new installations in subsection (1) of this section is allowed when an UST system is being replaced on an emergency basis due to a release from the system being replaced. An emergency shall be regarded as a newly discovered release from an UST system which is:

- (i) In operation at the time of the release;
- (ii) Located at an operating facility; and
- (iii) Necessary for the normal operation of the facility.

(b) Under the circumstances described in (a) of this subsection, the notice of intent to install an UST system may be provided after the installation of the new system but no more than seven days after the installation is completed. The information which must be included in the notice of intent form is the same as in subsection (1) of this section. A site assessment meeting the requirements of WAC 173-360-390 shall be completed prior to installing a tank in the excavation pit of a tank being replaced and prior to installing new piping in the piping trench of piping being replaced.

(6) Changes to UST systems. Any changes in the information initially reported in the notification form submitted under subsection (2), (4) or (5) of this section, including temporary closure of an UST system that was initially reported as being in use, shall be reported to the department or delegated agency by submitting a new notification form within thirty days after such changes occur.

(7) Beginning October 24, 1988, any person who sells a new tank which is intended to be used as an underground storage tank, or an existing UST system or property including an existing UST system which is intended to be used as an UST system, shall notify the purchaser of such tank or UST system of the owner's notification obligations under this section.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-200, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-200, filed 11/28/90, effective 12/29/90.]

WAC 173-360-210 Reporting and recordkeeping requirements. Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department or delegated agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to RCW 90.76.060.

(1) Reporting. Owners and operators shall submit the information specified in (a) through (e) of this subsection to the department or delegated agency:

(a) Notification for all UST systems (WAC 173-360-200), which includes certification of installation for new UST systems (WAC 173-360-305(5));

(b) Reports of all suspected releases (WAC 173-360-360), confirmed releases (WAC 173-360-372), and spills and overfills (WAC 173-360-375);

(c) Reports required for corrective actions under chapter 173-340 WAC;

(d) A notification before permanent closure or change-in-service (WAC 173-360-385); and

(e) The appropriate forms, certificates of compliance, and evidence of financial responsibility (WAC 173-360-446).

(f) Checklists required for tank service activities, site checks, and site assessments shall be submitted by tank service providers or persons registered to perform site checks and site assessments, as applicable (WAC 173-360-630(12)).

(2) Recordkeeping. Owners and operators shall maintain the following information:

(a) Documentation of operation of corrosion protection equipment (WAC 173-360-320);

(b) Documentation of UST system repairs (WAC 173-360-325(7));

(c) Recent compliance with release detection requirements (WAC 173-360-355);

(d) Results of the site assessment conducted at permanent closure (WAC 173-360-398);

(e) Corrective action records in accordance with chapter 173-340 WAC; and

(f) Evidence of financial assurance mechanisms used to demonstrate financial responsibility (WAC 173-360-450).

(3) Availability and maintenance of records. Owners and operators shall keep the records required either:

(a) At the UST site and immediately available for inspection by the department or delegated agency; or

(b) At a readily available alternative site and be provided for inspection to the department or delegated agency upon request.

(c) In the case of permanent closure records required under WAC 173-360-398, owners and operators are also provided with the additional alternative of mailing closure records to the department or delegated agency if they cannot be kept at the site or an alternative site as indicated above.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-210, filed 11/28/90, effective 12/29/90.]

PART III

PERFORMANCE STANDARDS AND OPERATING AND CLOSURE REQUIREMENTS

WAC 173-360-300 Performance standards for deferred UST systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, no person may install a deferred UST system listed in WAC 173-360-110(3) for the purpose of storing regulated substances unless the UST system (whether of single-wall or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

Note: The provisions of WAC 173-360-305 and EPA's publication *The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks* may be used to satisfy the requirements of this section.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-300, filed 11/28/90, effective 12/29/90.]

WAC 173-360-305 Performance standards for new UST systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(1) Tanks. Each tank shall be properly designed and constructed with material that is compatible with and impermeable to the stored substance, and any portion underground that routinely contains regulated substances shall be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified under (a) through (d) below:

(a) The tank is constructed of fiberglass-reinforced plastic; or

Note: The following industry codes may be used to comply with subsection (1)(a) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(b) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) The tank is equipped with a factory-installed or field-installed cathodic protection system designed by a corrosion expert;

(iii) Cathodic protection systems are designed and installed to include provisions for testing to allow a determination of current operating status as required in WAC 173-360-320(2) and to facilitate testing by the department or delegated agency in accordance with WAC 173-360-325 (5) and (6); and

(iv) Cathodic protection systems are operated and maintained in accordance with WAC 173-360-320 or according to guidelines established by the department or delegated agency; or

Note: The following codes and standards may be used to comply with subsection (1)(b) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP- 02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(c) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

Note: The following industry codes may be used to comply with subsection (1)(c) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(d) The tank construction and corrosion protection are determined by the department or delegated agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subsection (1)(a) through (c) of this section.

(2) Piping. The piping that routinely contains regulated substances and is in contact with the ground shall be properly designed and constructed with material that is compatible with and impermeable to the stored substance, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(a) The piping is constructed of fiberglass-reinforced plastic; or

Note: The following codes and standards may be used to comply with subsection (2)(a) of this section:

(i) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(ii) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(iii) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(iv) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(b) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Cathodic protection systems are designed and installed to include provisions for testing to allow a determination of current operating status as required in WAC 173-360-320(2) and to facilitate testing by the department or delegated agency in accordance with WAC 173-360-325 (5) and (6); and

(iv) Cathodic protection systems are operated and maintained in accordance with WAC 173-360-320 or

guidelines established by the department or delegated agency; or

Note: The following codes and standards may be used to comply with subsection (2)(b) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP- 01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(c) The piping construction and corrosion protection are determined by the department or delegated agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subsection (2)(a) and (b) of this section.

(d) Metal flexible underground hose connectors shall be cathodically protected or covered with sleeves or jackets that will provide corrosion protection over the operating life of the UST system.

(3) Spill and overflow prevention equipment.

(a) Except as provided in subsection (3)(b) of this section, to prevent spilling and overflowing associated with transfer of regulated substances to the UST system, owners and operators shall use the following spill and overflow prevention equipment:

(i) Spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overflow prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;

(B) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow thirty minutes prior to overflowing, alert the operator with a high level alarm one minute before overflowing, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to regulated substances due to overflowing.

Note: Overflow prevention equipment that will automatically shut off or restrict flow into the tank should not be used where a pressurized fuel transfer system may be employed since an overflow may occur when the flow is suddenly shut off or restricted.

(b) Owners and operators are not required to use the spill and overflow prevention equipment specified in subsection (3)(a) of this section if:

(i) Alternative equipment is used that is determined by the department or delegated agency to be no less protective of human health and the environment than the equipment specified in subsection (3)(a)(i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than twenty-five gallons at one time.

(4) Installation. All tanks and piping shall be properly installed by a licensed tank services provider in accordance

with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subsection (4) of this section:

- (a) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or
- (b) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
- (c) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

(5) Certification of installation. All owners and operators shall ensure that a licensed tank services provider certifies compliance with subsection (4) of this section by submitting a properly completed installation checklist to the department on a form provided by the department as required in WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-305, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-305, filed 11/28/90, effective 12/29/90.]

WAC 173-360-310 Upgrading requirements for existing UST systems. (1) Alternatives allowed. Not later than December 22, 1998, all existing UST systems shall comply with one of the following requirements:

- (a) New UST system performance standards under WAC 173-360-305;
- (b) The upgrading requirements in subsections (2) through (4) of this section; or
- (c) Closure requirements under WAC 173-360-380 through 173-360-398, including applicable requirements for corrective action under WAC 173-360-399.

(2) Tank upgrading requirements. Steel tanks shall be upgraded by a licensed tank services provider to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(a) Interior lining. A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of WAC 173-360-325; and

(ii) Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications, unless cathodic protection is also installed within ten years of lining the tank, as specified in WAC 173-360-310 (2)(c).

(b) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of WAC 173-360-305 (1)(b)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed or internally lined for less than ten years and is monitored monthly for releases in accordance with WAC 173-360-345 (6)(e) through (6)(i); or

(iii) The tank has been installed or internally lined for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of WAC 173-360-345 (6)(d). The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between three and six months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the department or delegated agency to prevent releases in a manner that is no less protective of human health and the environment than subsection (2)(b)(i) through (iii) of this section.

(c) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of WAC 173-360-325; and

(ii) The cathodic protection system is installed within ten years of the tank being lined and meets the requirements of WAC 173-360-305 (1)(b)(ii), (iii), and (iv).

Note: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP- 02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems";

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(E) Steel Tank Institute Publication STI F894-91 "Specifications for External Corrosion Protection FRP Composite Underground Steel Storage Tanks."

(3) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground shall be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and shall meet the requirements of WAC 173-360-305 (2)(b)(ii), (iii), and (iv).

Note: The codes and standards listed in the note following WAC 173-360-305 (2)(b) may be used to comply with this requirement.

(4) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with transfer of regulated substances to the UST system, all existing UST systems shall comply with new UST system spill and overfill prevention equipment requirements specified in WAC 173-360-305(3), except that an UST system that is filled by transfers of no more than twenty-five gallons at a time is not required to use spill and overfill prevention equipment.

(5) Tank services providers who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by

submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-310, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-310, filed 11/28/90, effective 12/29/90.]

WAC 173-360-315 Spill and overfill control requirements. (1) Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall ensure that the volume available in the tank is greater than the volume of regulated substances to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator shall report, investigate, and clean up any spills and overfills in accordance with WAC 173-360-375.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-315, filed 11/28/90, effective 12/29/90.]

WAC 173-360-320 Operation and maintenance of corrosion protection. All owners and operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(1) All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a licensed supervisor of cathodic protection installation and testing in accordance with the following requirements:

(a) Frequency. All cathodic protection systems shall be tested when they are installed, and again between one and six months after installation, and at least every three years thereafter or according to another reasonable time frame established by the department or delegated agency; and

(b) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section shall be in accordance with a code of practice developed by a nationally recognized association.

Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with subsection (2)(b) of this section.

(3) UST systems with impressed current cathodic protection systems shall also be inspected every 60 days to ensure the equipment is running properly.

(4) For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained to demonstrate compliance with the performance

standards in this section. These records shall provide the following:

(a) The results of the last three inspections required in subsection (3) of this section; and

(b) The results of testing from the last two inspections required in subsection (2) of this section.

(5) Tank services providers who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-320, filed 11/28/90, effective 12/29/90.]

WAC 173-360-323 Compatibility. Owners and operators shall use an UST system made of or lined with materials that are compatible with and impermeable to the substance stored in the UST system.

Note: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(1) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(2) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-323, filed 11/28/90, effective 12/29/90.]

WAC 173-360-325 Repairs of UST systems. Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. Any UST system which is repaired to correct a structural defect must also be upgraded at the time of the repair to meet the requirements specified in WAC 173-360-310 (1)(a) or (b), and must employ a method of release detection for the tank as specified in WAC 183-360-335, 173-360-340 or 173-360-345, as applicable, and a method of release detection for the piping as specified in WAC 173-360-350. The repairs shall meet the following requirements:

(1) Repairs to UST systems shall be properly conducted by a licensed tank services provider in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

Note: The following codes and standards may be used to comply with subsection (1) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(2) Repairs to fiberglass-reinforced plastic tanks shall be made in accordance with the manufacturer's specifications or a code of practice developed by a nationally recognized association or an independent testing laboratory.

(3) Metal pipe sections and fittings that have released regulated substances as a result of corrosion or other damage

shall be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(4) Repaired tanks and piping shall be tightness tested in accordance with WAC 173-360-345 (6)(d) and 173-360-350 (3)(b) within thirty days following the date of the completion of the repair except as provided in subsection (4) (a) through (c), of this section:

(a) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(b) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in WAC 173-360-345 (6)(e) through (6)(i); or

(c) Another test method is used that is determined by the department or delegated agency to be no less protective of human health and the environment than those listed above.

(5) Except as specified in subsection (6) of this section, within six months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with WAC 173-360-320 (2) and (3) to ensure that it is operating properly.

(6) Any repair to a cathodic protection system shall be tested in accordance with WAC 173-360-320 (2) and (3), at the time of the repair and again between one and six months following the repair.

(7) UST system owners and operators shall maintain records of each repair for the remaining operating life of the UST site that demonstrate compliance with the requirements of this section.

(8) Tank services providers who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-325, filed 11/28/90, effective 12/29/90.]

WAC 173-360-330 Release detection compliance schedule. Owners and operators of all UST systems shall comply with the release detection requirements of WAC 173-360-330 through 173-360-355 by December 22 of the year listed in the following table:

TABLE: SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year System was installed	Year when release detection is required (by December 22 of the year indicated)						
	1989	1990	1991	1992	1993	1994	1995
Before 1965 or date unknown.	RD	P	E				
1965-69..		P/RD		E			
1970-74..		P	RD		E		
1975-79..		P		RD		E	
1980-88..		P			RD		E

New tanks (after December 22, 1988,) immediately upon installation, except that emergency generator tanks installed between 1989 and 1990 must have release detection by 1996 and emergency generator tanks installed after December 29,

1990, must have release detection immediately upon installation.

P- Except for pressurized piping associated with emergency power generator tanks, must begin release detection by December 22, 1992.

RD- Except for emergency power generator tanks, must begin release detection for tanks and suction piping in accordance with WAC 173-360-335 (2)(a), 173-360-350 (2)(b), and 173-360-340.

E- Must begin release detection for emergency power generator tanks and piping in accordance with WAC 173-360-335 (2)(a) and 173-360-350 (2)(a) or (b).

Note: Dates preceding the effective date of this rule correspond to federal requirements under 40 CFR 280 and are included here to reflect conformity to the federal rule.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-330, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-330, filed 11/28/90, effective 12/29/90.]

WAC 173-360-335 Release detection for petroleum UST systems. (1) Owners and operators of new and existing petroleum UST systems shall provide a method, or combination of methods, of release detection that:

(a) Can detect a release from any portion of the tank and the connected underground piping that routinely contains a regulated substance;

(b) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) Meets the performance requirements in WAC 173-360-345 or 173-360-350.

(2) Owners and operators of petroleum UST systems shall monitor tanks and piping for releases as follows:

(a) Tanks. Tanks shall be monitored at least every thirty days for releases using one of the methods listed in WAC 173-360-345 (6)(e) through (6)(i) except as provided in WAC 173-360-345 (2) through (5).

(b) Piping. Underground piping that routinely contains regulated substances shall be monitored for releases as required under WAC 173-360-350.

(3) Owners and operators of any existing UST system that cannot apply a method of release detection that complies with the applicable requirements of WAC 173-360-330 through 173-360-355 shall complete the closure procedures in WAC 173-360-380 through 173-360-398 by the date on which release detection is required for that UST system under WAC 173-360-330.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-335, filed 11/28/90, effective 12/29/90.]

WAC 173-360-340 Release detection for hazardous substance UST systems. Owners and operators of hazardous substance UST systems shall provide release detection that meets the following requirements:

(1) Release detection at existing hazardous substance UST systems shall meet the requirements for petroleum UST systems in WAC 173-360-335. By December 22, 1998, all existing hazardous substance UST systems shall meet the release detection requirements for new systems in subsection (2) of this section.

(2) Release detection at new hazardous substance UST systems shall employ some method of release containment such as secondary containment systems, double-walled tanks, or external liners (e.g., in a pit or excavation). Such methods shall meet the following requirements:

(a) Secondary containment systems shall be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent precipitation and ground water from entering the external liner and prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every thirty days.

Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

(b) Double-walled tanks shall be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(c) External liners (including vaults) shall be designed, constructed, and installed to:

(i) Contain one hundred percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(d) Underground piping shall be equipped with secondary containment that satisfies the requirements of subsection (2)(a) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with WAC 173-360-350 (3)(a).

(e) Other methods of release detection may be used if owners and operators:

(i) Demonstrate to the department or delegated agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in WAC 173-360-345 (6)(b) through (6)(i) can detect a release of petroleum;

(ii) Provide information to the department or delegated agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(iii) Obtain approval from the department or delegated agency to use the alternate release detection method before the installation and operation of the new UST system.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-340, filed 11/28/90, effective 12/29/90.]

WAC 173-360-345 Methods of release detection for tanks. (1) Any method of release detection for tanks shall meet the performance requirements of this section. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, shall be

capable of detecting the leak rate or quantity specified for that method in subsection (6)(b), (c), (d), and (e) of this section with a probability of detection of 0.95 and a probability of false alarm of 0.05. (That is, under test conditions, a method will correctly detect at least ninety-five of one hundred actual releases, and will falsely indicate a release no more than five times in one hundred tests of nonleaking systems.)

Note: The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not in any way meant to imply that actual leak rates less than these limits are allowable. No release is acceptable, and any indication that a release may have occurred should be investigated in accordance with WAC 173-360-360. Manufacturers and tank services providers installing or utilizing leak detection equipment and/or methods are encouraged to follow EPA's standard test procedures for evaluating leak detection methods to demonstrate compliance with the requirements of subsection (1) of this section.

(2) UST systems that meet the new tank or upgraded tank performance standards in WAC 173-360-305 or 173-360-310, and the inventory control requirements in subsection (6) (a) or (b) of this section, may use tank tightness testing (conducted in accordance with subsection (6)(d) of this section) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under WAC 173-360-310(2), whichever is later.

(3) UST systems that do not meet the new tank or upgraded tank performance standards in WAC 173-360-305 or 173-360-310 may use inventory controls (conducted in accordance with subsection (6) (a) or (b) of this section) and annual tank tightness testing (conducted in accordance with subsection (6)(d) of this section) until December 22, 1998, when the tank shall be upgraded under WAC 173-360-310 or permanently closed under WAC 173-360-385.

(4) Tanks with capacity of one thousand gallons or less may use weekly tank gauging conducted in accordance with subsection (6)(b) of this section.

(5) Tanks that store fuel solely for use by emergency power generators may use the following methods of release detection:

(a) Emergency power generator tanks with nominal capacity of one thousand gallons or less may use monthly tank gauging conducted in accordance with subsection (6)(c) of this section.

(b) Emergency power generator tanks with nominal capacity of five hundred fifty-one to two thousand gallons may use monthly tank gauging conducted in accordance with subsection (6)(c) of this section, in conjunction with annual tank tightness testing conducted in accordance with subsection (6)(d) of this section.

(c) Except as provided in subsection (2) of this section, emergency power generator tanks with nominal capacity greater than two thousand gallons may use weekly tank gauging conducted in accordance with subsection (6)(b) of this section, in conjunction with annual tank tightness testing conducted in accordance with subsection (6)(d) of this section.

(6) Each method of release detection for tanks used to meet the requirements of WAC 173-360-335 shall be conducted in accordance with the following:

(a) Daily inventory control. Daily inventory control (or another test of equivalent performance) shall be conducted

in a manner capable of detecting a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

- (i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- (ii) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch;
- (iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
- (v) Dispensing of regulated substances is metered and recorded within the local standards for meter calibration or an accuracy of at least six cubic inches for every five gallons of regulated substances which is withdrawn; and
- (vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.

(b) Weekly tank gauging. Only tanks of one thousand gallons or less nominal capacity may use weekly tank gauging as the sole method of release detection. Tanks of one thousand to two thousand gallons may use the method in place of daily inventory control in (a) of this subsection, in conjunction with tank tightness testing, as specified in (d) of this subsection. Tanks of greater than two thousand gallons nominal capacity may use this method to meet the requirements of WAC 173-360-330 through 173-360-355 only if such tanks store fuel solely for use by emergency power generators. Weekly tank gauging shall meet the following requirements:

- (i) Tank liquid level measurements are taken weekly at the beginning and ending of a period of at least thirty-six hours during which no liquid is added to or removed from the tank;
- (ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period (that is, four measurements shall be taken, two consecutive measurements at the beginning and two consecutive measurements at the end of the period during which no liquid has been added or removed from the tank);
- (iii) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch;
- (iv) If the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table, a leak may be occurring and the requirements of WAC 173-360-360 through 173-360-375 shall be followed:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons
2,001 gallons or more*	.75% of capacity	.5% of capacity

(*Emergency Power Generator Tanks only.)

(c) Monthly tank gauging. Only tanks that store fuel solely for use by emergency power generators with a nominal capacity of two thousand gallons or less may use monthly tank gauging as a method of release detection. Such tanks with nominal capacity of five hundred fifty-one to two thousand gallons shall also have an annual tank tightness test conducted in accordance with (d) of this subsection. Monthly tank gauging shall meet the following requirements:

- (i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded whenever inputs or withdrawals occur;
- (ii) Tank liquid level measurements reconciled with inventory volume measurements are taken monthly at the beginning and ending of a period of at least twenty-one days, except when extreme snowfall or other travel obstructions occurring in remote locations and preventing access are specifically documented by the owner and operator;
- (iii) Level measurements are based on an average of two consecutive readings at both the beginning and ending of the period (that is, four measurements shall be taken, two consecutive measurements at the beginning and two consecutive measurements at the end of the period);
- (iv) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch or a corresponding amount of gallons;
- (v) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month;
- (vi) If the variation between beginning and ending measurements exceeds the monthly standards in the following table, a leak may be occurring and the requirements of WAC 173-360-360 through 173-360-375 shall be followed:

Nominal Tank Capacity	Monthly Standard (average of four tests)
550 gallons or less	5 gallons
551-1,000 gallons	7 gallons
1,001-2000 gallons	13 gallons

(d) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) shall be capable of detecting at least a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(e) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control shall meet the following requirements:

- (i) The automatic product level monitor test can detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance; and
- (ii) Daily inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (a) of this subsection.
- (f) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:

(i) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(ii) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(iii) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty days;

(iv) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(v) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(vi) In the UST excavation zone, the site is evaluated for its appropriateness for installation of vapor monitors to ensure compliance with the requirements of this subsection and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance; and

(vii) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

Note: Monitoring wells must also comply with the minimum standards for construction, maintenance, and abandonment of wells specified in chapter 173-160 WAC.

(g) Ground water monitoring. Testing or monitoring for liquids on or in the ground water shall meet the following requirements:

(i) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(ii) Ground water is never more than twenty feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(iii) The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(iv) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(v) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(vi) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(vii) Within and immediately below the UST system excavation zone, the site is evaluated for its appropriateness for installation of ground water monitors to ensure compliance with the requirements in (g)(i) through (v) of this subsection and to establish the number and positioning of

monitoring wells or devices that will detect releases from any portion of the tank that routinely contains a regulated substance; and

(viii) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

Note: Monitoring wells must also comply with the minimum standards for construction, maintenance, and abandonment of wells specified in chapter 173-160 WAC.

(h) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains a regulated substance and also meets one of the following requirements:

(i) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance;

Note: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(ii) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(A) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(B) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(C) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(D) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days;

(E) The site is evaluated for its appropriateness for installation of interstitial monitors to ensure that the secondary barrier is always above the ground water and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(F) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(iii) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(i) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(i) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(ii) The department or delegated agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of

the methods allowed in (d) through (i) of this subsection. In comparing methods, the department or delegated agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department or delegated agency on its use to ensure the protection of human health and the environment.

(7) Tank services providers who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-345, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-345, filed 11/28/90, effective 12/29/90.]

WAC 173-360-350 Methods of release detection for piping. (1) Any method of release detection for piping shall meet the performance requirements of this section, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in subsection (3)(a) and (b) of this section with a probability of detection of 0.95 and a probability of false alarm of 0.05. (That is, under test conditions, a method will correctly detect at least ninety-five of one hundred actual releases, and will falsely indicate a release no more than five times in one hundred tests of nonleaking systems.)

Note: The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not in any way meant to imply that actual leak rates less than these limits are allowable. No release is acceptable, and any indication that a release may have occurred should be investigated in accordance with WAC 173-360-360.

(2) Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the following requirements:

(a) Pressurized piping. Underground piping that conveys regulated substances under pressure shall:

(i) Be equipped with an automatic line leak detector conducted in accordance with subsection (3)(a) of this section; and

(ii) Have an annual line tightness test conducted by a licensed tank services provider in accordance with subsection (3)(b) of this section or have monthly monitoring conducted in accordance with subsection (3)(c) of this section.

(b) Suction piping. Underground piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every three years and in accordance with subsection (3)(b) of this section, or use a monthly monitoring method conducted in accordance with subsection (3)(c) of this section. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with subsection (2)(b)(ii) through (iv) of this section to be readily determined.

(3) Each method of release detection for piping used to meet the requirements of WAC 173-360-335 shall be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) Applicable tank methods. Any of the methods in WAC 173-360-345 (6)(f) through (i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) Tank services providers who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-350, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-350, filed 11/28/90, effective 12/29/90.]

WAC 173-360-355 Release detection recordkeeping.

All UST system owners and operators shall maintain records demonstrating compliance with all applicable requirements of WAC 173-360-330 through 173-360-355. These records shall include the following:

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five years, or for another reasonable period of time determined by the department or delegated agency, from the date of installation;

(2) The results of any sampling, testing, or monitoring shall be maintained for at least five years, or for another reasonable period of time determined by the department or delegated agency, except that the results of tank tightness testing conducted in accordance with WAC 173-360-345 (6)(d) shall be retained until the next test is conducted; and

(3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least five years after the servicing work is completed, or for another reasonable time period determined by the department or delegated agency. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer

turer shall be retained for five years from the date of installation.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-355, filed 11/28/90, effective 12/29/90.]

WAC 173-360-360 Reporting of suspected releases.

Owners and operators of UST systems shall report to the department or delegated agency within twenty-four hours, or another reasonable time period specified by the department or delegated agency, and follow the procedures in WAC 173-360-370 when any of the following conditions apply:

(1) Owners and operators or others discover released regulated substances at the UST site or in the surrounding area (including but not limited to the presence of free product or its constituents in soils, basements, sewer and utility lines, ground water, and/or surface water).

(2) Unusual operating conditions are observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of a regulated substance from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; or

(3) Monitoring results from a release detection method required under WAC 173-360-335 and 173-360-340 indicate that a release may have occurred unless:

(a) A false alarm is confirmed;

(b) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(c) In the case of inventory control, a second month of data does not confirm the initial result, except that owners and operators shall immediately investigate all larger-than-normal or reoccurring variations in inventory control results, and report such variations if they are unaccounted for, without waiting to obtain a second month of data.

Note: Other federal, state, and local laws also require reporting, and in some cases investigation, of suspected releases.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-360, filed 11/28/90, effective 12/29/90.]

WAC 173-360-365 Investigation due to off-site impacts. When required by the department or delegated agency, owners and operators of UST systems shall follow the procedures in WAC 173-360-370 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (including but not limited to the presence of free product or its constituents in soils, basements, sewer and utility lines, ground water, and/or surface water) that has been observed by the department or delegated agency or brought to their attention by another person.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-365, filed 11/28/90, effective 12/29/90.]

WAC 173-360-370 Release investigation and confirmation steps. Unless corrective action is initiated in accordance with WAC 173-360-399, owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under WAC 173-360-360 within seven days of discovery, or

another reasonable time period specified by the department or delegated agency, using either the following steps or another procedure approved by the department or delegated agency:

(1) System test. Owners and operators shall have a licensed tank services provider conduct tests (according to the requirements for tightness testing in WAC 173-360-345 (6)(d) and 173-360-350 (3)(b)) that determine whether a leak exists in any portions of the UST system that routinely contains a regulated substance, including the tank and the attached delivery piping, and in any connected tanks and piping that may or may not be in use. All such portions shall be tested either separately or together or in combinations thereof.

(a) Owners and operators shall have a licensed tank services provider repair, replace, upgrade, or close the UST system, and shall begin corrective action in accordance with WAC 173-360-399 if the test results for the system, tank, or delivery piping indicate that a leak exists.

(b) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(c) Owners and operators shall conduct a site check in accordance with subsection (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators shall have a person registered by the department to perform site assessments, as specified in WAC 173-360-610, sample for the presence of a release. Such samples shall be taken, analyzed, and results reported to the department or delegated agency in accordance with the department's guidance document for site checks and site assessments, or as otherwise directed by the department or delegated agency, where contamination is most likely to be present at the UST site.

(a) If the site check results indicate that a release has occurred, owners and operators shall report to the department or delegated agency in accordance with WAC 173-360-372 and begin corrective action in accordance with WAC 173-360-399.

(b) If the site check results do not indicate that a release has occurred, further investigation is not required.

(3) Tank services providers who perform any of the tank services described in this section, and persons who perform site checks, shall certify that such services or site checks, as applicable, comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-370, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-370, filed 11/28/90, effective 12/29/90.]

WAC 173-360-372 Reporting of confirmed releases.

Owners and operators shall report all confirmed releases, including but not limited to those confirmed in accordance with WAC 173-360-370 and 173-360-390, and those required to be reported under WAC 173-360-375, to the department or delegated agency within twenty-four hours.

Note: Other federal, state, and local laws also require reporting, and in some cases cleanup, of confirmed releases.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-372, filed 11/28/90, effective 12/29/90.]

WAC 173-360-375 Cleanup and reporting of spills and overfills. (1) Owners and operators of UST systems shall immediately contain and clean up any spill or overflow of petroleum or hazardous substances in accordance with subsections (2) and (3) of this section. Spills and overfills shall also be reported as follows:

(a) Owners and operators shall immediately report any spill or overflow of petroleum and the results of any related cleanup to the department or delegated agency if the spill or overflow comes in contact with soil, ground water, or surface water. Spills or overfills of petroleum which are above a de minimis amount but do not come in contact with soil, ground water, or surface water shall be reported within twenty-four hours. A de minimis amount of petroleum is any amount that immediately evaporates or that is specified by the department or delegated agency through guidance documents. Spills or overfills of petroleum which do not exceed a de minimis amount and do not come in contact with soil, ground water, or surface water are not required to be reported.

(b) Owners and operators shall immediately report any spill or overflow of a hazardous substance and the results of any related cleanup to the department or delegated agency if the spill or overflow comes in contact with soil, ground water, or surface water. Spills or overfills of hazardous substances which are above a de minimis amount but which do not come in contact with soil, ground water, or surface water shall also be reported immediately. A de minimis amount of a hazardous substance is any amount that is below the specified reportable quantity under CERCLA. Spills or overfills of hazardous substances which do not exceed a de minimis amount and do not come in contact with soil, ground water, or surface water are not required to be reported.

Note: A release of a hazardous substance equal to or in excess of its reportable quantity under CERCLA (40 CFR 302) must also be reported immediately to the National Response Center under sections 102 and 103 of CERCLA (40 CFR 302.6) and to the appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).

(2) Containment and cleanup shall include the following actions:

(a) Visually inspect and take immediate action to prevent any further release and/or spreading of the regulated substance into the environment, including surrounding soils, ground water, and surface water;

(b) Eliminate or minimize any fire, explosion, and vapor hazards, and absorb or otherwise contain all free product and provide for proper disposal of such product and any used absorbent materials in accordance with all applicable federal, state, and local requirements. Free product shall not be flushed into storm drains, catch basins, dry wells, monitoring wells, or other locations with a possible connection to surrounding soils, ground water, or surface water; and

(c) Provide for proper disposal of, or treat, any contaminated soils in accordance with all applicable federal, state, and local requirements.

(3) Owners and operators shall take appropriate action in accordance with WAC 173-360-399 in the following cases:

(a) A spill or overflow of petroleum that results in a release to the environment of less than twenty-five gallons or another reasonable amount specified by the department or delegated agency, if cleanup is not or cannot be accomplished within twenty-four hours or another reasonable time period established by the department or delegated agency;

(b) A spill or overflow of petroleum that results in a release to the environment that exceeds twenty-five gallons or another reasonable amount specified by the department or delegated agency;

(c) A spill or overflow of petroleum, regardless of amount, that results in ground water contamination or causes a sheen on ground water or surface water, including such water in dry wells;

(d) A spill or overflow of a hazardous substance that results in a release to the environment that is less than the reportable quantity under CERCLA, if cleanup is not or cannot be accomplished within twenty-four hours or another reasonable time period established by the department or delegated agency; and

(e) A spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-375, filed 11/28/90, effective 12/29/90.]

WAC 173-360-380 Temporary closure of UST systems. (1) When an UST system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with WAC 173-360-320, and any release detection in accordance with WAC 173-360-330 through 173-360-355. WAC 173-360-360 through 173-360-375 and 173-360-399 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(2) When an UST system is temporarily closed for three months or more, owners and operators shall also comply with the following requirements:

(a) Leave vent lines open and functioning; and

(b) Cap and secure all other lines, pumps, entryways, and ancillary equipment.

(3) Any UST system temporarily closed for three months or more shall be tightness tested by a licensed tank services provider in accordance with WAC 173-360-345 (6)(d) and 173-360-350 (3)(b) prior to being put back into service unless the system is subject to and in compliance with the release detection requirements of WAC 173-360-330.

(4) When an UST system is temporarily closed for more than twelve months, owners and operators shall have a

licensed tank services provider permanently close the UST system if it does not either meet the performance standards in WAC 173-360-305 for new UST systems or the upgrading requirements in WAC 173-360-310 (2) and (3). Such UST systems shall be permanently closed in accordance with WAC 173-360-385 through 173-360-398 at the end of the twelve-month period unless the department or delegated agency provides an extension before expiration of the twelve-month temporary closure period. Owners and operators shall have a site assessment completed in accordance with WAC 173-360-390 before such an extension is applied for.

(5) Tank services providers who perform any of the tank services described in this section, and persons who perform site assessments, shall certify that such services and site assessments, as applicable, comply with the requirements of this chapter by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).

(6) Any active permits for those systems being temporarily closed shall be returned to the department within thirty days of completion of the temporary closure activities.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-380, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-380, filed 11/28/90, effective 12/29/90.]

WAC 173-360-385 Permanent closure and change-in-service. (1) At least thirty days before beginning either permanent closure or a change-in-service under subsections (2) and (3) of this section, or within another reasonable time period determined by the department or delegated agency, owners and operators shall notify the department or delegated agency in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The site assessment required under WAC 173-360-390 shall be performed after notifying the department or delegated agency but before completion of the permanent closure or a change-in-service.

(2) Permanent closure shall be completed by a licensed tank services provider within sixty days after expiration of the thirty-day notice, unless a written request for an extension, explaining the reason for the request, is approved by the department or delegated agency. Any UST system not permanently closed by a compliance date that the UST system is subject to, shall be in compliance with the requirement associated with the compliance date, including the payment of fees. Any UST system not in compliance with any such requirement will be subject to the penalties described in WAC 173-360-170.

(3) To permanently close an UST system, the tank services provider shall empty and clean the tank by removing all liquids and accumulated sludges.

Note: Any sludges removed must also be designated and disposed of in accordance with chapter 173-303 WAC.

(4) All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material. All piping shall either be capped (except any vent lines) or removed from the ground.

(5) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall have a licensed tank services provider empty and clean the tank

by removing all liquid and accumulated sludge, and shall have a site assessment conducted in accordance with WAC 173-360-390.

Note: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard...Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

(5) Tank services providers who perform any of the tank services described in this section, and persons who perform site assessments, shall certify that such services or site assessments, as applicable, comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12). Any active tank permits for the systems being closed shall be returned to the department within thirty days of closure activities.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-385, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-385, filed 11/28/90, effective 12/29/90.]

WAC 173-360-390 Site assessment at closure or change-in-service. (1) Before permanent closure or a change-in-service is completed, except as specified in subsections (2), (3), and (4) of this section, owners and operators shall have a person registered by the department to perform site assessments, as specified in WAC 173-360-610, sample for the presence of a release. Such samples shall be taken, analyzed, and the results reported to the department or delegated agency in accordance with the department's guidance document for site assessments, or as otherwise directed by the department or delegated agency, where contamination is most likely to be present at the UST site.

(2) The requirements of this section are satisfied if one of the external release detection methods allowed in WAC 173-360-345 (6)(f) and (g) is employed for the UST system being closed or undergoing a change-in-service, if the following conditions are met:

(a) The external release detection method is operating, at the time of closure or change-in-service, in accordance with the requirements of WAC 173-360-345 (6)(f) or (g), as applicable; and

(b) A report is provided to the department with sufficient information to clearly demonstrate that:

(i) The external release detection method employed was appropriately designed, installed, and operated to adequately detect any releases from the UST system; and

(ii) No release was detected from the UST system.

(3) If the department determines that the conditions specified in subsection (2)(a) and (b) of this section have not

been satisfactorily met, the department may require that a site assessment be performed for the site.

(4) If contaminated soils, contaminated ground water, or free product is discovered under subsection (1) of this section, or by any other manner, owners and operators shall report to the department or delegated agency in accordance with WAC 173-360-372 and take appropriate action in accordance with WAC 173-360-399.

(5) Persons who perform site assessments shall certify that such site assessments comply with the requirements of this section by submitting the appropriate checklist to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-390, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-390, filed 11/28/90, effective 12/29/90.]

WAC 173-360-395 Applicability to previously closed UST systems. When directed by the department or delegated agency, the owner or operator of an UST system permanently closed or abandoned before December 22, 1988, shall have a person registered to perform site assessments assess the site and shall have a licensed tank services provider close the UST system in accordance with WAC 173-360-380 through 173-360-398 if releases from the UST may, in the judgment of the department or delegated agency, pose a current or potential threat to human health and the environment.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-395, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-395, filed 11/28/90, effective 12/29/90.]

WAC 173-360-398 Closure records. Owners and operators shall maintain records that demonstrate compliance with closure requirements under WAC 173-360-380 through 173-360-398. The results of the site assessment required in WAC 173-360-390 shall be maintained for at least five years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service;

(2) By the current owners and operators of the UST system site; or

(3) By mailing these records to the department or delegated agency if they cannot be maintained at the closed facility.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-398, filed 11/28/90, effective 12/29/90.]

WAC 173-360-399 Corrective action requirements. Except as provided in WAC 173-360-375, upon confirmation of a release in accordance with WAC 173-360-370 or 173-360-390, or after a release from the UST system is identified in any other manner, owners and operators shall immediately undertake appropriate measures in accordance with chapter 173-340 WAC and/or this chapter, and any additional measures as directed by the department under chapter 90.48 RCW. Owners and operators shall also report such releases to the department or delegated agency within twenty-four hours in accordance with WAC 173-360-372.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-399, filed 11/28/90, effective 12/29/90.]

PART IV FINANCIAL RESPONSIBILITY REQUIREMENTS

WAC 173-360-400 Applicability. (1) WAC 173-360-400 through 173-360-499 applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(2) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in WAC 173-360-403.

(3) state and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of WAC 173-360-400 through 173-360-499.

(4) The requirements of WAC 173-360-400 through 173-360-499 do not apply to owners and operators of any UST system described in WAC 173-360-110 (2) or (3).

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in WAC 173-360-403.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-400, filed 11/28/90, effective 12/29/90.]

WAC 173-360-403 Compliance dates. Owners of petroleum underground storage tanks are required to comply with the requirements of WAC 173-360-400 through 173-360-499 by the following dates:

(1) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of twenty million dollars or more to the United States Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989, except that compliance with WAC 173-360-410 (2) is required by July 24, 1989.

(2) All petroleum marketing firms owning 100-999 USTs; October 26, 1989.

(3) All petroleum marketing firms owning a combined total of 13-99 USTs which are located at more than one facility; April 26, 1991.

(4) All petroleum UST owners not described in subsections (1), (2), or (3) of this section, including all local government entities; the same as the requirements and deadlines adopted under 40 C.F.R. 280.91.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-403, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-403, filed 11/28/90, effective 12/29/90.]

WAC 173-360-406 Amount and scope of required financial responsibility. (1) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(a) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year; one million dollars.

(b) For all other owners or operators of petroleum underground storage tanks; five hundred thousand dollars.

(2) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(a) For owners or operators of 1 to 100 petroleum underground storage tanks, one million dollars; and

(b) For owners or operators of 101 or more petroleum underground storage tanks, two million dollars.

(3) For the purposes of subsections (2) and (4) of this section only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(4) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(5) The amounts of assurance required under this section exclude legal defense costs.

(6) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-406, filed 11/28/90, effective 12/29/90.]

WAC 173-360-410 Allowable mechanisms and combinations of mechanisms. (1) Subject to the limitations of subsections (2) and (3) of this section, an owner or operator may use any one or combination of the mechanisms listed in WAC 173-360-413 through 173-360-436 to demonstrate financial responsibility under WAC 173-360-400 through 173-360-499 for one or more underground storage tanks.

(2) An owner or operator may use a guarantee or surety bond to establish financial responsibility under WAC 173-360-400 through 173-360-499.

(3) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule,

the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

(4) Except as provided in subsection (5) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(a) Taking corrective action;

(b) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(c) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in WAC 173-360-406 (1) and (2).

(5) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-410, filed 11/28/90, effective 12/29/90.]

WAC 173-360-413 Financial test of self-insurance.

(1) An owner or operator, and/or guarantor, may satisfy the requirements of WAC 173-360-406 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor shall meet the criteria of subsection (2) or (3) of this section based on year-end financial statements for the latest completed fiscal year.

(2)(a) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by WAC 173-360-406, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state agency under a state program authorized by EPA under Part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state agency under a state program authorized by EPA under 40 CFR Part 145.

Note: Titles of the above-referenced CFR citations are as follows: Part 264.101 - Corrective Action for Solid Waste Management Units; Part 264.143 - Financial Assurance for Closure; Part 264.145 - Financial Assurance for Post-Closure Care; Part 265.143 - Financial Assurance for Closure; Part 265.145 - Financial Assurance for Post-Closure Care; Part 264.147 - Liability Requirements; Part 265.147 - Liability Requirements; Part 144.63 - Financial Assurance for Plugging and Abandonment; and Part 145 - State UIC Program Requirements.

(b) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten million dollars.

(c) The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer as specified in subsection (4) of this section and as set forth in WAC 173-360-470.

(d) The owner or operator, and/or guarantor, shall either:

(i) File financial statements annually with the United States Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(e) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(3)(a) The owner or operator, and/or guarantor shall meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in WAC 173-360-406 (2)(a) and (b) for the "amount of liability coverage" each time specified in that section.

(b) The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(c) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(d) The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer, worded as specified in subsection (4) of this section.

(e) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the United States Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, shall obtain a special report by an independent certified public accountant stating that:

(i) He or she has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) To demonstrate that it meets the financial test under subsection (2) or (3) of this section, the chief financial officer of the owner or operator, and/or guarantor, shall sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as set forth in WAC 173-360-470, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(5) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(6) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of WAC 173-360-413 (2) or (3) and (4), the owner or operator shall obtain alternate coverage within thirty days after notification of such a finding.

(7) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the director of such failure within ten days.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-413, filed 11/28/90, effective 12/29/90.]

WAC 173-360-416 Guarantee. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

(a) A firm that:

(i) Possesses a controlling interest in the owner or operator;

(ii) Possesses a controlling interest in a firm described under (a)(i) of this subsection; or

(iii) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(b) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(2) Within one hundred twenty days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of WAC 173-360-413 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in WAC 173-360-413(4) and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that he no longer meets the requirements of the financial test of WAC 173-360-413 (2) or (3) and (4), the guarantor shall notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in WAC 173-360-460(3).

(3) The guarantee shall be worded as set forth in WAC 173-360-473, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(4) An owner or operator who uses a guarantee to satisfy the requirements of WAC 173-360-406 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director under WAC 173-360-453. This standby trust fund shall meet the requirements specified in WAC 173-360-436.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-416, filed 11/28/90, effective 12/29/90.]

WAC 173-360-420 Insurance and risk retention group coverage. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy shall be amended by an endorsement worded as specified in WAC 173-360-476 or evidenced by a certificate of insurance worded as specified in WAC 173-360-480, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

(3) Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-420, filed 11/28/90, effective 12/29/90.]

WAC 173-360-423 Surety bond. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond shall be worded as set forth in WAC 173-360-483, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(4) The owner or operator who uses a surety bond to satisfy the requirements of WAC 173-360-406 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under WAC 173-360-453. This standby trust fund shall meet the requirements specified in WAC 173-360-436.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-423, filed 11/28/90, effective 12/29/90.]

WAC 173-360-426 Letter of credit. (1) An owner or operator may satisfy the requirements of WAC 173-360-406

by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in Washington state and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit shall be worded as set forth in WAC 173-360-486, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of WAC 173-360-406 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under WAC 173-360-453. This standby trust fund shall meet the requirements specified in WAC 173-360-436.

(4) The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-426, filed 11/28/90, effective 12/29/90.]

WAC 173-360-433 Trust fund. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by establishing a trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2) The wording of the trust agreement shall be identical to the wording specified in WAC 173-360-490, and shall be accompanied by a formal certification of acknowledgment as specified in WAC 173-360-493.

(3) The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(4) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(5) If other financial assurance as specified in WAC 173-360-400 through 173-360-499 is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(6) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsections (4) or (5) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-433, filed 11/28/90, effective 12/29/90.]

WAC 173-360-436 Standby trust fund. (1) An owner or operator using any one of the mechanisms authorized by WAC 173-360-416, 173-360-423, or 173-360-426 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2)(a) The standby trust agreement or trust agreement shall be worded as set forth in WAC 173-360-490, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(b) The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgment similar to that set forth in WAC 173-360-493.

(3) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(4) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-436, filed 11/28/90, effective 12/29/90.]

WAC 173-360-440 Substitution of financial assurance mechanisms by owner or operator. (1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in WAC 173-360-400 through 173-360-499, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of WAC 173-360-406.

(2) After obtaining alternate financial assurance as specified in WAC 173-360-400 through 173-360-499, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance in accordance with requirements for cancellation set forth for the specific mechanism in WAC 173-360-470 through 173-360-490.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-440, filed 11/28/90, effective 12/29/90.]

WAC 173-360-443 Cancellation or nonrenewal by a provider of financial assurance. (1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(a) Termination of a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance may not occur until sixty

days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in WAC 173-360-446, the owner or operator shall obtain alternate coverage as specified in this section within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator shall notify the director of such failure and submit:

(a) The name and address of the provider of financial assurance;

(b) The effective date of termination; and

(c) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with WAC 173-360-450(2).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-443, filed 11/28/90, effective 12/29/90.]

WAC 173-360-446 Reporting by owner or operator.

(1) An owner or operator shall submit the appropriate forms listed in WAC 173-360-450(2) documenting current evidence of financial responsibility to the director:

(a) Within thirty days after the owner or operator identifies a release from an underground storage tank required to be reported under WAC 173-360-372, 173-360-375 or 173-360-399;

(b) If the owner or operator fails to obtain alternate coverage as required by WAC 173-360-400 through 173-360-499, within thirty days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor, (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism, (iii) Failure of a guarantor to meet the requirements of the financial test, (iv) Other incapacity of a provider of financial assurance; or

(c) As required by WAC 173-360-413(7) and 173-360-443(2).

(2) An owner or operator shall certify compliance with the financial responsibility requirements of WAC 173-360-400 through 173-360-499 as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under WAC 173-360-200.

(3) The director may require an owner or operator to submit evidence of financial assurance as described in WAC 173-360-450(2) or other information relevant to compliance with WAC 173-360-400 through 173-360-499 at any time.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-446, filed 11/28/90, effective 12/29/90.]

WAC 173-360-450 Recordkeeping. (1) Owners or operators shall maintain evidence of all financial assurance

mechanisms used to demonstrate financial responsibility under WAC 173-360-400 through 173-360-499 for an underground storage tank until released from the requirements of WAC 173-360-400 through 173-360-499 under 173-360-456. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department or delegated agency.

(2) An owner or operator shall maintain the following types of evidence of financial responsibility:

(a) An owner or operator using an assurance mechanism specified in WAC 173-360-413 through 173-360-433 shall maintain a copy of the instrument worded as specified.

(b) An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.

(c) An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(d) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator covered by a financial assurance program shall maintain on file a copy of any evidence of coverage supplied by or required by the state.

(f) An owner or operator using an assurance mechanism specified in WAC 173-360-413 through 173-360-433 shall maintain an updated copy of a certification of financial responsibility worded as set forth in WAC 173-360-496, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-450, filed 11/28/90, effective 12/29/90.]

WAC 173-360-453 Drawing on financial assurance mechanisms.

(1) The director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a)(i) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to WAC 173-360-360 through 173-360-375 or 173-360-399 of a release from an underground storage tank covered by the mechanism; or

(b) The conditions of subsection (2)(a), (b)(i) or (ii) of this section are satisfied.

(2) The director may draw on a standby trust fund when:

(a) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under WAC 173-360-399; or

(b) The director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification shall be worded as set forth in WAC 173-360-499, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under WAC 173-360-400 through 173-360-499 and the director determines that the owner or operator has not satisfied the judgment.

(3) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (2) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (2)(b)(i) of this section and valid court orders under subsection (2)(b)(ii) of this section.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-453, filed 11/28/90, effective 12/29/90.]

WAC 173-360-456 Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under WAC 173-360-400 through 173-360-499 for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by WAC 173-360-380 through 173-360-398.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-456, filed 11/28/90, effective 12/29/90.]

WAC 173-360-460 Bankruptcy or other incapacity of owner or operator. (1) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of such commencement and submit the appropriate forms listed in WAC 173-360-450(2) documenting current financial responsibility.

(2) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as

debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360-416.

(3) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in WAC 173-360-400 through 173-360-499 within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, he shall notify the director.

(4) Within thirty days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-460, filed 11/28/90, effective 12/29/90.]

WAC 173-360-463 Replenishment of guarantees, letters of credit, or surety bonds. (1) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(a) Replenish the value of financial assurance to equal the full amount of coverage required, or (b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by WAC 173-360-406. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-463, filed 11/28/90, effective 12/29/90.]

WAC 173-360-466 Suspension of enforcement. Reserved.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-466, filed 11/28/90, effective 12/29/90.]

WAC 173-360-470 Appendix A—Letter from chief financial officer.

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property

damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: The name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to WAC 173-360-200.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

	Amount
EPA Regulations:	
Closure (264.143 and 265.143)	\$
Post-Closure Care (264.145 and 265.145)	\$
Liability Coverage (264.147 and 265.147)	\$
Corrective Action (264.101(b))	\$
Plugging and Abandonment (144.63)	\$

	Amount
Authorized state programs:	
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$
Corrective Action	\$
Plugging and Abandonment	\$
TOTAL	\$

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of WAC 173-360-413(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of WAC 173-360-413(3) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . . . \$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$
3. Sum of lines 1 and 2 \$

- 4. Total tangible assets \$
- 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$
- 6. Tangible net worth [subtract line 5 from line 4] \$
Yes No
- 7. Is line 6 at least \$10 million?
- 8. Is line 6 at least 10 times line 3?
- 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?
- 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?
- 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?
- 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A?
[Answer "Yes" only if both criteria have been met]

ALTERNATIVE II

- 1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . . . \$
- 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$
- 3. Sum of lines 1 and 2 \$
- 4. Total tangible assets \$
- 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$
- 6. Tangible net worth [subtract line 5 from line 4] \$
- 7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$
Yes No
- 8. Is line 6 at least \$10 million?
- 9. Is line 6 at least 6 times line 3?
- 10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11]
- 11. Is line 7 at least 6 times line 3?
[Fill in either lines 12-15 or lines 16-18:]
- 12. Current assets \$
- 13. Current liabilities \$

- 14. Net working capital [subtract line 13 from line 12] \$
Yes No
- 15. Is line 14 at least 6 times line 3?
- 16. Current bond rating of most recent bond issue
- 17. Name of rating service
- 18. Date of maturity of bond
- 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in WAC 173-360-470 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-470, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-473 Appendix B—Guarantee.

GUARANTEE

Guarantee made this [date] by name of guaranteeing entity, a business entity organized under the laws of (name of state), herein referred to as guarantor, to the Washington state department of ecology and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of WAC 173-360-413 (2) or (3) and (4) and agrees to comply with the requirements for guarantors as specified in WAC 173-360-416(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility.] This guarantee satisfies WAC 173-360-400 through 173-360-499 requirements for assuring funding for [insert: "Taking corrective action" and/or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Washington state department of ecology and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the director of the Washington state department of ecology has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director, shall fund a standby trust fund in accordance with the provisions of WAC 173-360-453, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360-399, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of WAC 173-360-453, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of WAC 173-360-453 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of WAC 173-360-413 (2) or (3) and (4), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360 WAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of WAC 173-360-400 through 173-360-499 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Washington state department of ecology, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in WAC 173-360-473 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-473, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-473, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-476 Appendix C—Endorsement.

ENDORSEMENT

Name: [Name of each covered location]

Address: [Address of each covered location]

Policy Number:

Period of Coverage: [Current policy period]

Name of [insurer or risk retention group]:

Address of [insurer or risk retention group]:

Name of insured:

Address of insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's or group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["insurer" or "group"] of its obligations under the policy to which this endorsement is attached.

b. The ["insurer" or "group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["insurer" or "group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360-413 through 173-360-433.

c. Whenever requested by the director of the Washington state department of ecology, the ["insurer" or "group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["insurer" or "group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["insurer" or "group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360-476 and that the ["insurer" or "group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of insurer or risk retention group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of insurer or risk retention group]

[Address of representative]

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-476, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-480 Appendix D—Certificate of insurance.

CERTIFICATE OF INSURANCE

Name: [Name of each covered location]

Address: [Address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [Current policy period]

Name of [insurer or risk retention group]:

Address of [insurer or risk retention group]:

Name of insured:

Address of insured:

Certification:

1. [Name of insurer or risk retention group], [the "insurer" or "group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility].

for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's or group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["insurer" or "group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["insurer" or "group"] of its obligations under the policy to which this certificate applies.

b. The ["insurer" or "group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["insurer" or "group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360-413 through 173-360-433.

c. Whenever requested by the director of the Washington state department of ecology, the ["insurer" or "group"] agrees to furnish the director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["insurer" or "group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["insurer" or "group"] within six months of the effective date of the cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360-480 and that the ["insurer" or "group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer or risk retention group]

[Address of representative]

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-480, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-480, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-483 Appendix E—Performance bond.

PERFORMANCE BOND

Date bond executed:

Period of coverage:

Principal: [Legal name and business address of owner or operator]

Type of organization: [Insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [Name(s) and business address(es)]

Scope of coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility. List the coverage guaranteed by the bond: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence \$

Annual aggregate \$

Surety's bond number:

Know All Persons by These Presents, that we, the principal and surety(ies), hereto are firmly bound to the Washington state department of ecology, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sums only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully ["take corrective action, in accordance with WAC 173-360-399 and the director of the Washington state department of ecology's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the principal shall provide alternate financial assurance, as specified in WAC 173-360-400 through 173-360-499, within 120 days after the date the notice of cancellation is received by the principal from the surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (1) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (2) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (3) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (4) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (5) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above.

Upon notification by the director of the Washington state department of ecology that the principal has failed to ["take corrective action, in accordance with WAC 173-360-399 and the director's instructions" and/or "compensate injured third parties"] as guaranteed by this bond, the surety(ies) shall either perform ["corrective action in accordance with WAC 173- 360-399 and the director's instructions" and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the director under WAC 173-360-453.

Upon notification by the director that the principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the principal from the surety(ies) and that the director has determined or suspects that a release has occurred, the surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the director under WAC 173-360-453.

The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the

annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal, as evidenced by the return receipt.

The principal may terminate this bond by sending written notice to the surety(ies).

In witness thereof, the principal and surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in WAC 173- 360-483 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
[State of incorporation:
[Liability limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-483, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-486 Appendix F—Irrevocable standby letter of credit.

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]
[Name and address of director of the Washington state department of ecology]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No., and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regula-

tions issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in WAC 173-360-486 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-486, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-490 Appendix G—Trust agreement.

TRUST AGREEMENT

Trust agreement, the "agreement," entered into as of [date] by and between [name of the owner or operator], a Washington state [insert "corporation," "partnership," "association," or "proprietorship"], the "grantor," and [name of corporate trustee], [insert "Incorporated in the state of Washington" or "a national bank"], the "trustee."

Whereas, the department of ecology, "ecology", an agency of the state of Washington, has established certain regulations applicable to the grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and addresses of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);]

Whereas, the grantor, acting through its duly authorized officers, has selected the trustee to be the trustee under this agreement, and the trustee is willing to act as trustee;

Now, therefore, the grantor and the trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(1) The term "grantor" means the owner or operator who enters into this agreement and any successors or assigns of the grantor.

(2) The term "trustee" means the trustee who enters into this agreement and any successor trustee.

Section 2. Identification of the Financial Assurance Mechanism. This agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement).].

Section 3. Establishment of fund. The grantor and the trustee hereby establish a trust fund, the "fund," for the benefit of the Washington state department of ecology. The grantor and the trustee intend that no third party have access to the fund except as herein provided. [The fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provid-

er of financial assurance pursuant to the director of the department of ecology's instruction are transferred to the trustee and are referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund shall be held by the trustee, IN TRUST, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the grantor as provider of financial assurance, any payments necessary to discharge any liability of the grantor established by the department of ecology.

Section 4. Payment for ["corrective action" and/or "third-party liability claims"]. The trustee shall make payments from the fund as the director of the department of ecology shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this agreement.

The fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

The trustee shall reimburse the grantor, or other persons as specified by the director from the fund for corrective action expenditures and/or third-party liability claims in such amounts as the director shall direct in writing. In addition, the trustee shall refund to the grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the fund as defined herein.

Section 5. Payments comprising the fund. Payments made to the trustee for the fund shall consist of cash and securities acceptable to the trustee.

Section 6. Trustee management. The trustee shall invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with

the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(1), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the extent insured by an agency of the federal or state government; and

(c) The trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and investment. The trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the trustee. The trustee may vote such shares in its discretion.

Section 8. Express powers of trustee. Without in any way limiting the powers and discretions conferred upon the trustee by the other provisions of this agreement or by law, the trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the trustee shall at all times show that all such securities are part of the fund;

(d) To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the trustee, in its separate corporate capacity, or in any other

banking institution affiliated with the trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the fund.

Section 9. Taxes and expenses. All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund. All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the grantor, and all other proper charges and disbursements of the trustee shall be paid from the fund.

Section 10. Advice of counsel. The trustee may from time to time consult with counsel, who may be counsel to the grantor, with respect to any questions arising as to the construction of this agreement or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee compensation. The trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the grantor.

Section 12. Successor trustee. The trustee may resign or the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, the trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the grantor and the present trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 13. Instructions to the trustee. All orders, requests, and instructions by the grantor to the trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. All orders, requests, and instructions by the director of the Washington state department of ecology to the trustee shall be in writing, signed by the director, and the trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the grantor or the director, hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor and/or the director, except as provided for herein.

Section 14. Amendment of agreement. This agreement may be amended by an instrument in writing executed by the

grantor and the trustee, or by the trustee and the director of the department of ecology, if the grantor ceases to exist.

Section 15. Irrevocability and termination. Subject to the right of the parties to amend this agreement as provided in Section 14, this trust shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the director of the department of ecology, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the grantor.

Section 16. Immunity and indemnification. The trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the grantor or the director of the department of ecology, issued in accordance with this agreement. The trustee shall be indemnified and saved harmless by the grantor, from and against any personal liability to which the trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the grantor fails to provide such defense.

Section 17. Choice of law. This agreement shall be administered, construed, and enforced according to the laws of the state of Washington, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this agreement shall not affect the interpretation or the legal efficacy of this agreement.

In witness whereof the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this agreement is identical to the wording specified in WAC 173-360-490 as such regulations were constituted on the date written above.

[Signature of grantor]

[Name of the grantor]

[Title]

Attest:

[Signature of trustee]

[Name of the trustee]

[Title]

[Seal]

Attest:

[Signature of witness]

[Name of witness]

[Title]

[Seal]

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-490, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-493 Appendix H—Certification of acknowledgment.

State of Washington
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of notary public]
[Name of notary public]

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-493, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-496 Appendix I—Certification of financial responsibility.

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of WAC 173-360-400 through 173-360-499.

The financial assurance mechanism[s] used to demonstrate financial responsibility under WAC 173-360-400 through 173-360-499 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-496, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-499 Appendix J—Certification of valid claim.

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[. . .].

[Signatures] [Signature(s)]
Owner or Operator Claimant(s)
Attorney for Attorney(s) for
Owner or Operator Claimant(s)
(Notary) Date (Notary) Date

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-499, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**PART V
LOCAL PROGRAMS**

Note: RCW 90.76.110 states that the rules adopted under chapter 90.76 RCW preempt and supersede any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by these regulations. Exceptions are: (1) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance; (2) local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right of ways that were in existence prior to July 1, 1990; and (3) underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that were in effect on November 1, 1988. These cities, towns, and counties were required by the statute to notify the department of the existence of that ordinance by July 1, 1989. The department has received notification from: City of Spokane, Spokane County, Tacoma-Pierce County, city of Redmond, and city of Renton.

WAC 173-360-500 Local delegation of underground storage tank programs. (1) The department encourages the delegation of underground storage tank program responsibilities to a qualified city, town, or county.

(2) A city, town, or county may apply to the department for delegation of authority to enforce, within its jurisdictional boundaries, the state underground storage tank regulations included in part or all of WAC 173-360-100 through 173-360-399.

(3) A fire protection district or political subdivision may enter into an agreement under chapter 39.34 RCW with a city, town, or county to assume all or a portion of delegated program responsibilities. Department approval shall be obtained prior to the effective date of such agreement, and such agreement shall be part of the city, county, or town's agreement or contract with the department.

(4) A city, town, or county seeking delegation of underground storage tank program activities shall submit a written application to the department, describing the portions of the state program for which delegation is sought. The application shall contain the following:

(a) A description of the scope, structure, and procedures of the proposed program; and

(b) A description, including an organization chart, of the local agency which will operate the program, including:

(i) The number of employees, occupation and general duties of each employee who will carry out the activities of the program;

(ii) An estimate of the cost of establishing and administering the program, including the cost of personnel listed in (b)(i) of this subsection, as well as administrative and technical support.

(5) Within thirty days after receiving the application, the department will review the application for completeness and request any additional information needed in order for the application to be complete.

(6) The department will begin negotiating with the applicant within thirty days of receiving a complete application, in order to establish the following:

(a) The source and amount of funding available to meet the costs listed in subsection (4)(b)(ii) of this section, including any restrictions or limitation upon this funding;

(b) The applicable procedures, including any required permit procedures;

(c) Permit forms, application forms, and reporting forms that will be used in the program;

(d) The methods to be used to assure compliance and enforcement of the program; and

(e) The procedures to be used to coordinate information with the department, including the frequency of reporting and report content.

(7) After finalizing the items listed in subsection (6) of this section, the department will prepare and mail a written agreement or contract to the applicant, which outlines the terms and conditions under which the department will delegate the state underground storage tank program, or portions of the state program, to the applicant. The applicant must sign and return the agreement or contract to the department in order for the agreement or contract to become effective.

(8) In developing agreements or contracts with local governments, the department shall, if possible, provide for an appropriate distribution of resources collected under RCW 90.76.090, while still enabling the department to operate a state program.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-500, filed 11/28/90, effective 12/29/90.]

WAC 173-360-510 Environmentally sensitive areas.

(1) An environmentally sensitive area is an area, proposed by a city, town or county, and designated by the department, which possesses physical characteristics that make it especially vulnerable to threats from leaking underground storage tanks, and in which local underground storage tank requirements more stringent than state-wide requirements are necessary.

(2) Any city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

(3) An area that has been designated a sensitive area for the purposes of protecting ground water or surface water from pollution under another statute or regulation will, upon request for designation by the local government, be approved as an environmentally sensitive area for the purposes of WAC 173-360-510. Those areas may include, but are not limited to:

(a) An aquifer identified as the primary source of supply for public water supply systems;

(b) An aquifer underlying a critical water supply service area where the coordinated water system plan established pursuant to chapter 70.116 RCW has identified a need for a ground water management program;

(c) An aquifer designated as a sole source aquifer by the Federal Environmental Protection Agency;

(d) An area designated a certified ground water management area identified under chapter 173-100 WAC; and

(e) An area designated an aquifer protection area, under chapter 36.36 RCW.

(4) The agency requesting designation shall comply with WAC 173-360-530.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-510, filed 11/28/90, effective 12/29/90.]

WAC 173-360-520 Physical criteria for environmentally sensitive areas. Except as provided for in WAC 173-360-510(3), environmentally sensitive areas shall be designated based on the criteria established by the department. One or more of the criteria shall be present and the department will evaluate the application for designation based on the overall sensitivity of the environment and consistency with WAC 173-360-510(1). Those criteria include, but are not limited to:

(1) Ground water that is vulnerable to pollution because of specific hydrogeological characteristics, including but not limited to, recharge areas, permeability, precipitation, direction and quantity of ground water flow, and presence of aquitards;

(2) Proximity to wetlands;

(3) Being located within a 100-year flood plain; or

(4) Proximity to other surface waters that can be shown to have a hydrogeologic link to such ground water as is described in subsection (1) of this section, underlying an area where underground storage tank systems are installed or may be installed, if a leak from such a system has a reasonable chance of reaching ground water.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-520, filed 11/28/90, effective 12/29/90.]

WAC 173-360-530 Application for designation of environmentally sensitive area and approval of local regulations.

(1) Designation of an environmentally sensitive area under this chapter is solely for the purposes of implementing chapter 90.76 RCW, and such designation under chapter 90.76 RCW does not establish an environmentally sensitive area under any other law.

(2) The application for designation of an environmentally sensitive area shall consist of a concise, factual report and shall consider the guidelines and criteria set forth in WAC 173-360-520. The local government applicant shall provide sufficient information for the department to determine if the area should be so designated. Information provided by the applicant shall include, but need not be limited to, the following:

(a) A rationale for the proposed designation;

(b) A description of any underground water resource included within the proposed environmentally sensitive area;

(c) The geographic limits of the area where more stringent underground storage tank standards would be required;

(d) Any available maps of the aquifer and recharge area, including water table;

(e) A map of the area to be designated;

(f) A description of the more stringent underground storage tank standards proposed to be required in the area, including underground storage tank technical standards, operating standards, and administrative procedures. When proposing more stringent standards, the local jurisdiction should consider:

(i) Actions already undertaken by owners or operators to upgrade existing underground storage tank systems to federal or state standards, and the economic impacts of requiring already upgraded systems to meet more stringent standards; and

(ii) The possible impacts of contaminated ground water on human health and the environment and whether underground storage tank systems which have already been upgraded under the requirements of the state or federal rules will effectively prevent leaks which may contaminate ground water.

(g) A description of any other measures in place or considered to protect ground water and/or surface water from environmental threats;

(h) Any written comments submitted by members of the public to the local government regarding the proposed designation of an environmentally sensitive area; and

(i) Documentation of coordination with affected state and local agencies and water user groups.

(3) Additional information may be required by the department if necessary to adequately evaluate the proposal. This information may include, but is not limited to, the following:

(a) The geographic limits of the ground water recharge zone;

(b) The geographic limits of the underground water resource;

(c) The geology within both the recharge zone and the underground water resource;

(d) Location, yield, well depth and present use of wells within the limits of the threatened underground water resource;

(e) Estimated capacity of the underground water resource;

(f) Location, type and number of underground storage tanks existing in the proposed area;

(g) Such other information the department deems necessary.

(4) Prior to submitting the request for designation and approval of more stringent standards to the department, the local government applicant shall hold at least one public hearing for the purpose of receiving comments from the public, affected local, state, and tribal agencies and ground water user groups, regarding the designation proposal. The local government shall provide adequate notice to affected parties.

The local government applicant shall submit the application for designation and approval of more stringent standards to the department and other affected agencies and ground water user groups for their review and comment. Comments shall be submitted to the department.

(5) Within thirty days after receiving the application, the department will review the application for completeness and

request any additional information needed in order for the application to be complete.

(a) Prior to approval of the application, the department may, at its discretion, hold a public hearing in the jurisdiction where the environmentally sensitive area is proposed.

(b) The department shall approve or disapprove the application for designation as an environmentally sensitive area based upon review of the application, comments received, whether the proposed area meets the guidelines and criteria of WAC 173-360-520 and 173-360-530, and whether the proposed local ordinance or resolution is reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.

(6) If application for the designation of an environmentally sensitive area is made later than five years after the date of final adoption of these rules, proposed local ordinances and resolutions shall only apply to new underground storage tank installations.

Ordinances and resolutions described under subsection (1) of this section and disapproved by the department may be modified by the local government and resubmitted to the department for approval.

(7) Proposed local ordinances and resolutions shall become effective when approved by the department.

(8) A local jurisdiction with an approved ordinance or resolution under this chapter may establish local tank fees, in an amount not to exceed fifty percent of the annual state tank fee, if the fee is necessary for enhanced program administration or enforcement. Pursuant to RCW 90.76.090, the fee shall be collected and deposited into the state underground storage tank account.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-530, filed 11/28/90, effective 12/29/90.]

PART VI REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS AND SERVICE SUPERVISORS

Note: Individuals who perform underground tank services may be subject to additional state laws and regulations. These include, but may not be limited to:

- (1) Chapter 18.27 RCW and chapter 296-200 WAC, which apply to individuals who are general and specialty contractors;
- (2) Chapter 18.104 RCW and chapter 173-162 WAC, which apply to individuals who install ground water monitoring wells;
- (3) Chapter 19.28 RCW, chapters 296-46 and 296-40 WAC, which apply to individuals who install and repair impressed current cathodic protection systems; and
- (4) Chapter 49.17 RCW and chapter 296-62 WAC, which apply to individuals engaged in activities involving hazardous chemicals and substances and who perform confined space entry during field activities, and chapter 296-155 WAC, which sets forth safety standards for construction work.

WAC 173-360-600 Purpose of Part VI. The purpose of WAC 173-360-600 through 173-360-690 is to regulate firms and persons that service and inspect underground storage tank systems in order to assure that underground storage tank systems are being serviced in a manner which will protect human health and the environment.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-600, filed 11/28/90, effective 12/29/90.]

WAC 173-360-610 Scope. (1) WAC 173-360-610 through 173-360-690 establishes requirements for:

(a) Registration and licensing of firms that perform services on underground storage tank systems;

(b) Examination, qualification, and licensing of persons who supervise the performance of underground storage tank system service;

(c) Examination and licensing of persons conducting underground storage tank system inspections for determination of compliance with the state underground storage tank regulations; and

(d) Administration and enforcement of these rules by the department.

(2) Except as specified in WAC 173-360-655, 173-360-610 through 173-360-690 applies to any person or firm who performs the installation, retrofitting, decommissioning, testing, site check, site assessment, and inspection for compliance with state regulations, by any person, of underground storage tanks regulated by chapter 90.76 RCW.

(3) A site assessment or site check shall only be performed by a hydrogeologist, geologist, licensed professional engineer, professional soil scientist, certified ground water professional or other person whose experience, education, and/or training meet criteria established by the department. A person performing site assessments and site checks must register with the department on a form provided by the department. No license is required for this activity.

(4) The requirements of this licensing program do not apply to persons performing the activities specified in subsection (2) of this section for tanks which are exempt or deferred from the UST rule, as provided in WAC 173-360-110 (1) and (2).

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-610, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-610, filed 11/28/90, effective 12/29/90.]

WAC 173-360-630 Registration and licensing of tank service providers. (1) Only firms that are licensed by the department shall perform tank services in the state of Washington.

(2) Application for a license shall be accomplished by:

(a) Completing an application form provided by the department, including submission of the following information to the department:

(i) The name, address, and telephone number of the firm;

(ii) The nature of the tank services to be offered;

(iii) A summary of the recent project history of the firm (the two-year period immediately preceding the application) including the number of projects completed by the firm in each tank services category and identification of any other industry or government licenses held by the firm related to specific tank services;

(iv) Identifying the names of employees or principals responsible for on-site project supervision; and

(b) Including a signed statement that certifies that:

"I (name), am the chief executive officer of (company) and do hereby certify that I will comply with the applicable laws, and rules, and procedures pertaining to the regulation of underground storage tanks in the state of Washington and will direct the employees and principals of this company to

perform the tank services rendered by this company in a manner that is consistent with these requirements."

(3) Only tank services providers who have obtained a license from the department may install, retrofit, test, decommission, or inspect for the purpose of determining compliance with state regulations, an underground storage tank system in the state of Washington.

(4) An application for a tank services provider license must be submitted to the department and must include:

(a) The information required by subsection (2)(a) and (b) of this section;

(b) A list of employees licensed by the department to supervise tank services, and identification of the specific tank services for which they are licensed; the date the employee received a license from the department; and the license number of the employee.

(5) The department will review the license application for completeness. If the application is incomplete, the department shall notify the applicant of the deficiencies. The department shall deny, in writing, a license to an applicant who has not satisfied the license application requirements. The department shall issue a license to the applicant after approving the application.

(6) The department shall issue licenses for a period not to exceed two years.

(7) Renewals:

(a) License renewals must be applied for in the same manner as is required for an initial license, pursuant to subsection (4) of this section.

(b) The complete license renewal application shall be submitted to the department no later than thirty days prior to the expiration date of the current license.

(8) The department may suspend or revoke a license if the tank services provider:

(a) Fraudulently obtains or attempts to obtain a license;

(b) Fails at any time to satisfy the requirements for a license or comply with any rules or procedures adopted by the department;

(c) Fails to meet any applicable state or federal standard relating to the service performed under the license; or

(d) Fails to employ and designate a licensed supervisor for each underground storage tank project which is directly overseen by the tank services provider.

(9) A tank services provider who has a license suspended or revoked may reapply for a license after demonstrating to the department that the cause of the revocation has been resolved.

(10) In the event a tank services provider no longer employs a supervisor licensed to perform a particular tank service, the tank services provider must stop providing this service on any regulated underground storage tank system. Work involving this service shall not start until a supervisor licensed for the particular service is again employed by the provider and written notice of the hiring of a licensed supervisor is received by the department.

(11) Any tank services provider licensed by the department under the provisions of this chapter shall:

(a) Comply with WAC 173-360-600 through 173-360-690;

(b) Maintain a current address on file with the department; and

(c) Comply with all federal and state regulations and procedures when performing tank services.

(12)(a) A checklist must be completed for each regulated activity performed. The service provider shall submit the checklist to the department within thirty days following the completion of an underground storage tank installation, retrofit, decommissioning, or test, using the appropriate form provided by the department. The checklist must be signed by the owner or operator, by an executive officer of the service provider firm, or his or her designee, and by the licensed tank services supervisor.

(b) A checklist must be completed for each site check or site assessment performed. The person performing the site check or site assessment shall submit the checklist to the department within thirty days following the completion of the site check or site assessment. A checklist for a site check or site assessment must be signed by the person registered to perform site assessments (rather than a licensed supervisor) and an executive officer of the firm or his or her designee, and the tank owner or operator.

(c) The firm shall submit an as-built site plan, showing the location of completed tank system installations or retrofitted tank system, including adjacent structures, if present. The as-built site plan shall be submitted on the appropriate form provided by the department, or shall be an 8 1/2 inch by 11 inch single page drawing.

(13) A licensed tank services provider, or person qualified to conduct a site assessment or site check shall report to the department and the tank owner or operator the existence of any confirmed release from an underground tank system that poses a threat to human health and the environment. This report shall be provided to the tank owner or operator immediately, and to the department within seventy-two hours of the discovery of the condition. If the owner or operator are not immediately available, the report should be made immediately to the department.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-630, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-630, filed 11/28/90, effective 12/29/90.]

WAC 173-360-640 Types of licenses. (1) The department will issue the following five separate licenses:

- (a) Tank services provider;
- (b) Supervision of tank installation and retrofiting;
- (c) Supervision of tank decommissioning;
- (d) Supervision of tightness testing; and
- (e) Supervision of cathodic protection installation and testing.

(2) A tank services supervisor must pass an examination and obtain a license for each activity that person intends to supervise. A firm which obtains a tank services provider license may provide all authorized tank services.

(3) A license will be issued to firms and individuals who meet the qualification requirements of WAC 173-360-630 (2)(a) and (b) or 173-360-650(4), whichever is applicable.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-640, filed 11/28/90, effective 12/29/90.]

WAC 173-360-650 Examination and licensing of tank services supervisors. (1) A licensed tank services

supervisor shall be present on site at all times tank service activities are being carried out at a tank installation, retrofit, testing, or decommissioning project unless otherwise determined by the department. These tasks may include but may not be limited to:

(a) Preparing the excavation immediately prior to receiving backfill and placement of the tank into the excavation;

(b) Any movement of the tank vessel, including but not limited to transferring the vessel from the vehicle used to transport it to the project site;

(c) Setting the tank and its associated piping into the excavation, including placing any anchoring devices and strapping, if any, and backfilling to the level of the tank;

(d) Placing and connecting the piping system to the tank vessel;

(e) Installing cathodic protection systems;

(f) All pressure testing of the underground storage tank system, including associated piping, performed during the installation or retrofiting;

(g) Completing the backfill and filling of the installation;

(h) Evaluating preparation for and installing any tank lining system;

(i) Tank purging or inerting;

(j) Removal of the tank, removal of sludge from the tank, and cleaning of the tank;

(k) Removing flammable vapors from tanks;

(l) Excavating around tanks for removal;

(m) Field installation and operational testing of cathodic protection systems;

(n) Inspecting of existing tank and piping systems for corrosion;

(o) Tank or line tightness testing;

(p) Inspection of existing tanks for structural integrity; and

(q) Inspection of existing tank and piping systems for the purpose of determining compliance with the Washington state underground storage tank regulations; and

(r) Installation of release detection equipment.

(2) If a licensed supervisor, or person registered as a site assessor, obtains knowledge, in the course of performing regulated activities, that a regulated underground storage tank has not been registered with the department, or is otherwise out of compliance with the requirements of this chapter, the individual shall inform the tank owner or operator of the notification requirement and any other applicable requirements.

(3) Only persons licensed by the department under this section may perform the duties of a tank services supervisor.

(4) To obtain a license from the department as a tank services supervisor, a person shall take and pass a qualifying examination approved by the department.

(5) Twice each year the department shall offer a qualifying examination for any person who wishes to become licensed to install, remove, test, or retrofit underground storage tank systems. Not less than thirty days prior to offering an examination, the department shall prepare and make available to interested persons, a study guide which may include sample examination questions. The department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.

(6) An application for a supervisor examination and license shall be submitted to the department on a form provided at least forty-five days prior to the date of the qualifying examination.

(7) A tank services supervisor license is valid for a period not to exceed two years after the date of issue. Upon issuance of a supervisor's license, the department shall issue an identification card showing the license number and license expiration date to the successful applicant.

The supervisor's license identification card shall be available for inspection at any project site supervised by the licensee.

(8) License renewals shall be applied for in the same manner as the original license, including taking a qualifying examination.

(9) The department may suspend or revoke a supervisor's license for failure to comply with any state or federal law, regulation, or procedure pertaining to underground storage tanks.

(10) If a supervisor's license is revoked, that person may not apply for another supervisor license prior to ninety days after the revocation date.

(11) The requirements of this section are in addition to and not in lieu of any other licensing and registration requirement imposed by other laws or regulations.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-650, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-650, filed 11/28/90, effective 12/29/90.]

WAC 173-360-655 Examination and licensing of persons who perform inspections. Only persons who have the appropriate supervisor license shall conduct underground storage tank system inspections for the purpose of determining compliance with the Washington state underground storage tank regulations. Persons wishing to obtain such a license shall comply with the requirements of WAC 173-360-650. This requirement applies only to inspectors who are employed by the department or by an agency which has received delegation of regulatory authority from the department.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-655, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-655, filed 11/28/90, effective 12/29/90.]

WAC 173-360-660 Study guide fees. The department shall make examination study guides available to the public for a fee of ten dollars for each set of study guides.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-660, filed 11/28/90, effective 12/29/90.]

WAC 173-360-670 Penalties. Any person or firm who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation, pursuant to RCW 90.76.080(2).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-670, filed 11/28/90, effective 12/29/90.]

WAC 173-360-680 Reciprocity with other states. If the director or director's designee determines that a licensing program established by another state is essentially equivalent to the licensing program created by this chapter, and a

person with a valid license from such a state applies to the department on a Washington state form, the department may issue a Washington license. This license shall be valid until the expiration date of the license issued by the previous state, or the expiration date of the licensing period described in WAC 173-360-630 and 173-360-650, whichever date comes first. The license shall become immediately invalid if revoked by the state in which it was initially issued, and may be revoked by the department as provided in WAC 173-360-650(9).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-680, filed 11/28/90, effective 12/29/90.]

WAC 173-360-690 Appeals. The revocation of a license may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-690, filed 11/28/90, effective 12/29/90.]

WAC 173-360-695 Inactive license. An individual or firm may voluntarily deactivate their license by notifying the department in writing and requesting that the license be made inactive.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-695, filed 10/29/91, effective 11/29/91.]

Chapter 173-400 WAC

GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

WAC

- 173-400-010 Policy and purpose.
- 173-400-020 Applicability.
- 173-400-030 Definitions.
- 173-400-040 General standards for maximum emissions.
- 173-400-045 Control technology fees.
- 173-400-050 Emission standards for combustion and incineration units.
- 173-400-060 Emission standards for general process units.
- 173-400-070 Emission standards for certain source categories.
- 173-400-075 Emission standards for sources emitting hazardous air pollutants.
- 173-400-081 Startup and shutdown.
- 173-400-091 Voluntary limits on emissions.
- 173-400-100 Registration.
- 173-400-101 Registration interim fee.
- 173-400-105 Records, monitoring, and reporting.
- 173-400-107 Excess emissions.
- 173-400-110 New source review (NSR).
- 173-400-112 Requirements for new sources in nonattainment areas.
- 173-400-113 Requirements for new sources in attainment or unclassifiable areas.
- 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
- 173-400-115 Standards of performance for new sources.
- 173-400-116 New source review fees.
- 173-400-120 Bubble rules.
- 173-400-131 Issuance of emission reduction credits.
- 173-400-136 Use of emission reduction credits.
- 173-400-141 Prevention of significant deterioration (PSD).
- 173-400-151 Retrofit requirements for visibility protection.
- 173-400-161 Compliance schedules.
- 173-400-171 Public involvement.
- 173-400-180 Variance.
- 173-400-190 Requirements for nonattainment areas.
- 173-400-200 Creditable stack height and dispersion techniques.

(6) An application for a supervisor examination and license shall be submitted to the department on a form provided at least forty-five days prior to the date of the qualifying examination.

(7) A tank services supervisor license is valid for a period not to exceed two years after the date of issue. Upon issuance of a supervisor's license, the department shall issue an identification card showing the license number and license expiration date to the successful applicant.

The supervisor's license identification card shall be available for inspection at any project site supervised by the licensee.

(8) License renewals shall be applied for in the same manner as the original license, including taking a qualifying examination.

(9) The department may suspend or revoke a supervisor's license for failure to comply with any state or federal law, regulation, or procedure pertaining to underground storage tanks.

(10) If a supervisor's license is revoked, that person may not apply for another supervisor license prior to ninety days after the revocation date.

(11) The requirements of this section are in addition to and not in lieu of any other licensing and registration requirement imposed by other laws or regulations.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-650, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-650, filed 11/28/90, effective 12/29/90.]

WAC 173-360-655 Examination and licensing of persons who perform inspections. Only persons who have the appropriate supervisor license shall conduct underground storage tank system inspections for the purpose of determining compliance with the Washington state underground storage tank regulations. Persons wishing to obtain such a license shall comply with the requirements of WAC 173-360-650. This requirement applies only to inspectors who are employed by the department or by an agency which has received delegation of regulatory authority from the department.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-655, filed 10/29/91, effective 11/29/91; 90-24-017, § 173-360-655, filed 11/28/90, effective 12/29/90.]

WAC 173-360-660 Study guide fees. The department shall make examination study guides available to the public for a fee of ten dollars for each set of study guides.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-660, filed 11/28/90, effective 12/29/90.]

WAC 173-360-670 Penalties. Any person or firm who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation, pursuant to RCW 90.76.080(2).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-670, filed 11/28/90, effective 12/29/90.]

WAC 173-360-680 Reciprocity with other states. If the director or director's designee determines that a licensing program established by another state is essentially equivalent to the licensing program created by this chapter, and a

person with a valid license from such a state applies to the department on a Washington state form, the department may issue a Washington license. This license shall be valid until the expiration date of the license issued by the previous state, or the expiration date of the licensing period described in WAC 173-360-630 and 173-360-650, whichever date comes first. The license shall become immediately invalid if revoked by the state in which it was initially issued, and may be revoked by the department as provided in WAC 173-360-650(9).

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-680, filed 11/28/90, effective 12/29/90.]

WAC 173-360-690 Appeals. The revocation of a license may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

[Statutory Authority: Chapter 90.76 RCW. 90-24-017, § 173-360-690, filed 11/28/90, effective 12/29/90.]

WAC 173-360-695 Inactive license. An individual or firm may voluntarily deactivate their license by notifying the department in writing and requesting that the license be made inactive.

[Statutory Authority: Chapter 90.76 RCW. 91-22-020 (Order 91-26), § 173-360-695, filed 10/29/91, effective 11/29/91.]

Chapter 173-400 WAC

GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

WAC

- 173-400-010 Policy and purpose.
- 173-400-020 Applicability.
- 173-400-030 Definitions.
- 173-400-040 General standards for maximum emissions.
- 173-400-045 Control technology fees.
- 173-400-050 Emission standards for combustion and incineration units.
- 173-400-060 Emission standards for general process units.
- 173-400-070 Emission standards for certain source categories.
- 173-400-075 Emission standards for sources emitting hazardous air pollutants.
- 173-400-081 Startup and shutdown.
- 173-400-091 Voluntary limits on emissions.
- 173-400-100 Registration.
- 173-400-101 Registration interim fee.
- 173-400-105 Records, monitoring, and reporting.
- 173-400-107 Excess emissions.
- 173-400-110 New source review (NSR).
- 173-400-112 Requirements for new sources in nonattainment areas.
- 173-400-113 Requirements for new sources in attainment or unclassifiable areas.
- 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
- 173-400-115 Standards of performance for new sources.
- 173-400-116 New source review fees.
- 173-400-120 Bubble rules.
- 173-400-131 Issuance of emission reduction credits.
- 173-400-136 Use of emission reduction credits.
- 173-400-141 Prevention of significant deterioration (PSD).
- 173-400-151 Retrofit requirements for visibility protection.
- 173-400-161 Compliance schedules.
- 173-400-171 Public involvement.
- 173-400-180 Variance.
- 173-400-190 Requirements for nonattainment areas.
- 173-400-200 Creditable stack height and dispersion techniques.

173-400-205	Adjustment for atmospheric conditions.
173-400-210	Emission requirements of prior jurisdictions.
173-400-220	Requirements for board members.
173-400-230	Regulatory actions.
173-400-240	Criminal penalties.
173-400-250	Appeals.
173-400-260	Conflict of interest.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

173-400-080	Compliance schedules. [Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-080, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-080, filed 5/8/79; Order DE 76-38, § 173-400-080, filed 12/21/76. Formerly WAC 18-04-080.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-090	Sensitive area designation. [Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-090, filed 8/20/80; Order DE 76-38, § 173-400-090, filed 12/21/76. Formerly WAC 18-04-090.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-130	Regulatory actions. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-130, filed 5/8/79; Order DE 76-38, § 173-400-130, filed 12/21/76. Formerly WAC 18-04-130.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-135	Criminal penalties. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-135, filed 5/8/79.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-140	Appeals. [Order DE 76-38, § 173-400-140, filed 12/21/76. Formerly WAC 18-04-140.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-150	Variance. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-150, filed 5/8/79; Order DE 76-38, § 173-400-150, filed 12/21/76. Formerly WAC 18-04-150.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-160	Maintenance of pay. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-160, filed 5/8/79.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
173-400-170	Requirements for boards and director. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-170, filed 5/8/79.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

WAC 173-400-010 Policy and purpose. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish technically feasible and reasonably attainable standards and to establish rules generally applicable to the control and/or prevention of the emission of air contaminants.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-010, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-010, filed 4/15/83; Order DE 76-38, § 173-400-010, filed 12/21/76. Formerly WAC 18-04-010.]

WAC 173-400-020 Applicability. (1) The provisions of this chapter shall apply state-wide.

(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.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-020, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-020, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-020, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-020, filed 5/8/79; Order DE 76-38, § 173-400-020, filed 12/21/76. Formerly WAC 18-04-020.]

WAC 173-400-030 Definitions. Except as provided elsewhere in this chapter, the following definitions 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" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

(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 stationary source calculated using the maximum rated capacity of the stationary source (unless the stationary 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 set forth in 40 CFR Part 60 or 61;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or

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

(6) "Ambient air" means the surrounding outside air.

(7) "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.

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

(9) "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 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 CFR Part 60 and Part 61, as they exist on May 7, 1993, or their later enactments as adopted by reference by the director by rule. 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.

(10) "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.

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

(12) "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.

(13) "Class I area" means any area designated pursuant to §§ 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

Alpine Lakes Wilderness;
Glacier Peak Wilderness;
Goat Rocks Wilderness;
Mount Adams Wilderness;
Mount Rainier National Park;
North Cascades National Park;
Olympic National Park;
Pasayten Wilderness;
Spokane Indian Reservation.

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

(15) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

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

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled 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.

(16) "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.

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

(18) "Dispersion technique" means a method which 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.

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

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

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

(22) "Emission standard" and "emission limitation" means a requirement established under the FCAA or chapter 70.94 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 promulgated under the FCAA or chapter 70.94 RCW.

(23) "Emissions 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 FCAA, chapter 70.94 or 70.98 RCW.

(24) "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard.

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

(26) "Existing stationary facility" means a stationary source of air pollutants which has the potential to emit two hundred fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

(27) "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.

(28) "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(29) "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.

(30) "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.

(31) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(32) "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.

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

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

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

(36) "Integral vista" means a view perceived from within a mandatory Class I federal area of a specific land-

mark or panorama located outside the boundary of the mandatory Class I federal area.

(37) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(38) "Mandatory Class I federal area" means any area defined in Section 162(a) of the FCAA. The mandatory Class I federal areas in Washington state are as follows:

Alpine Lakes Wilderness;
Glacier Peak Wilderness;
Goat Rocks Wilderness;
Mount Adams Wilderness;
Mount Rainier National Park;
North Cascades National Park;
Olympic National Park;
Pasayten Wilderness.

(39) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA. Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(i) The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, in a prevention of significant deterioration permit or notice of construction approval; or

(ii) The stationary source is approved to use under any federally-enforceable notice of construction approval or a PSD permit issued by the environmental protection agency;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, in a prevention of significant deterioration permit or a notice of construction approval;

(g) Any change in ownership at a stationary source.

(40) "Major stationary source" means:

(a) Any stationary source which:

(i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the state or Federal Clean Air Acts; or

(ii) Is located in a "marginal" or "moderate" ozone nonattainment area and which emits or has the potential to emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen.

(b) Any stationary source (or group of stationary sources) which:

(i) Is located in a "serious" carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels and which emits or has the potential to emit fifty tons per year or more of carbon monoxide; or

(ii) Is located in a "serious" particulate matter (PM₁₀) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM₁₀ emissions.

(c) Any physical change that would occur at a stationary source not qualifying under (a) or (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself;

(d) A major stationary source that is major for VOCs or NO_x shall be considered major for ozone;

(e) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the source is a major stationary source due to (b) of this subsection:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cements plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, was being regulated under sections 111 or 112 of the Federal Clean Air Act.

(f) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

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

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

(43) "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 definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(44) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61.

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

(46) "Net emissions increase" means:

(a) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular change or change in method of operation at a source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit, in which case the credit shall expire ten years after the date of original issue of the ERC. Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) Ecology or the authority has not relied on it in issuing any permit or order of approval for the source under regulations approved pursuant to 40 CFR 51 Subpart I or the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(iv) Ecology or the authority has not relied on it in issuing any permit or order of approval under regulations approved pursuant to 40 CFR 51 Subpart I, the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21, or ecology or the authority has not relied on it in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(47) "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.

(48) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.

(49) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.

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

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

(52) "Open 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. Wood waste disposal in wigwam burners is not considered open burning.

(53) "Order" means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense,

the terms order, corrective action order, order of approval, and regulatory order.

(54) "Order of approval" or "approval order" means a regulatory order issued by ecology or the authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

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

(56) "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 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

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

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

(59) "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 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(60) "PM-10 emissions" means finely divided solid or liquid material, including condensible 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 Appendix M of 40 CFR Part 51 or by a test method specified in the Washington state implementation plan.

(61) "Potential to emit" means the maximum capacity of a stationary 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(62) "Prevention of significant deterioration (PSD)" means the program set forth in WAC 173-400-141.

(63) "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.

(64) "Reasonably attributable" means attributable by visual observation or any other technique the state deems appropriate.

(65) "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.

(66) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.

(67) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission equal to or greater than any one of the following rates:

Pollutant	Tons/Year
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter (PM)	25
Fine particulate matter (PM ₁₀)	15
Volatile organic compounds (VOC)	40
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H ₂ S)	10
Total reduced sulfur (including H ₂ S)	10
Municipal waste combustor organics	0.0000035
(measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans	
Municipal waste combustor metals (measured as PM)	15
Municipal waste combustor acid gases (measured as SO ₂ and hydrogen chloride)	40

(68) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

(69) "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. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

(70) "Source category" means all sources of the same type or classification.

(71) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(72) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

(73) "Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(74) "Stationary source" means any building, structure, facility, or installation which emits or may emit any 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 of the FCAA.

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

(76) "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 EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

(77) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

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

(79) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

(80) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

(81) "Volatile organic compound (VOC)" means:

(a) Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any organic compound other than the following, which have negligible photochemical activity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro 2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 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); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations; and

(iii) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by ecology or the authority.

(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 or the authority, the amount of negligibly-reactive compounds in the source's emissions.

[Statutory Authority: Chapter 70.94 RCW, 93-18-007 (Order 93-03), § 173-400-030, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-030, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510, 85-06-046 (Order 84-48), § 173-400-030, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW, 83-09-036 (Order DE 83-13), § 173-400-030, filed 4/15/83. Statutory Authority: RCW 70.94.331, 80-11-059 (Order DE 80-14), § 173-400-030, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331, 79-06-012 (Order DE 78-21), § 173-400-030, filed 5/8/79; Order DE 76-38, § 173-400-030, filed 12/21/76. Formerly WAC 18-04-030.]

WAC 173-400-040 General standards for maximum emissions. All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard will take precedent over a general emission standard listed in this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units. Further, all emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, ecology or the authority shall, as provided in section 8, chapter 252, Laws of 1993, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(1) Visible emissions. No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ecology or the authority be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more sources are connected to a common stack, ecology or the authority may allow or require the use of an alternate time period if it is more representative of normal operations.

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

(2) Fallout. No person shall cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner(s) or operator(s) of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) Fugitive emissions. The owner or operator of any emissions unit engaging in materials handling, construction, demolition or any other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the contaminants for which nonattainment has been designated.

(4) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(5) Emissions detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) Sulfur dioxide.

No person shall cause or permit the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ecology or the authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the authority.

(7) Concealment and masking. No person shall cause or permit the installation or use of any means which con-

ceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(8) Fugitive dust sources.

(a) The owner or operator of a source of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to minimize emissions.

(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to a PM-10 nonattainment area shall be required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(3).

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-040, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-040, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-040, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-040, filed 5/8/79; Order DE 76-38, § 173-400-040, filed 12/21/76. Formerly WAC 18-04-040.]

WAC 173-400-045 Control technology fees. (1) General. Ecology may assess and collect a fee as authorized in RCW 70.94.154 and described in subsections (2) through (5) of this section.

(2) Fee schedule for source-specific determinations where RACT analysis and determination are performed by ecology.

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - one thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but less than ten tons per year of any toxic air pollutant - one thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - two thousand dollars.

(3) Fee schedule for source-specific determinations where RACT analysis is performed by the source and review and determination conducted by ecology.

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - one thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and determination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - one thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but less than ten tons per year of any toxic air pollutant - five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - one thousand dollars.

(4) Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application (NOCA) for replacement or substantial alteration of control technology - three hundred fifty dollars.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - five hundred dollars.

(5) Fee schedule for categorical RACT determinations. Fees for categorical RACT determinations (for categories with more than three sources) shall be assessed as shown below. The fees described in (a) of this subsection shall be based on the most complex source within a category. Except as provided in (b) and (d) of this subsection, fees for individual sources in the category will be determined by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than twenty tons per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than twenty tons/year and less than one hundred tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ten tons per year, or the analysis addresses two to five types of emissions units) - fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed one hundred tons per year, average source emissions of one or more individual toxic air pollutants exceed ten tons per year, or the analysis addresses more than five types of emission units) - one hundred thousand dollars.

(b) If an emission unit is being evaluated for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

(6) Small business fee reduction. The RACT analysis and determination fee identified in subsections (2) through (5) of this section may be reduced for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the RACT analysis and determination fee shall be reduced to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and average annual profits. In no case will a RACT analysis and determination fee be reduced below one hundred dollars.

(7) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

(8) Fee payments. Fees specified in subsection (4)(a) of this section shall be paid at the time a notice of construction

applications is submitted to the department. Other fees specified in subsections (2) through (7) of this section shall be paid no later than thirty days after receipt of an ecology billing statement. For fees specified in subsection (5) of this section, a billing for one-half of the payment from each source will be mailed when the source category rule-making effort is commenced as noted by publication of the CR101 form in the *Washington State Register*. A billing for the second half of the payment will be mailed when the proposed rule is published in the *Washington State Register*. No order of approval or other action approving or identifying a source to be at RACT will be issued by the department until all fees have been paid by the source. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(9) Dedicated account. All control technology fees collected by the department from permit program sources shall be deposited in the air operating permit account created under RCW 70.94.015. All control technology fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account.

(10) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of source-specific determinations under subsections (2) through (4) of this section, Ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection (5) of this section, ecology shall track time and expenditures on a source-category basis.

(11) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

[Statutory Authority: RCW 70.94.153 and 70.94.154. 94-17-070, § 173-400-045, filed 8/15/94, effective 9/15/94.]

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow or permit the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA method 5 or approved procedures contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology.

(2) For any incinerator, no person shall cause or permit emissions in excess of one hundred ppm of total carbonyls as measured by applicable EPA methods or acceptable procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, on file at ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from ecology or the authority.

(3) Measured concentrations for combustion and incineration sources shall be adjusted for volumes corrected to seven percent oxygen, except when ecology or the

authority determines that an alternate oxygen correction factor is more representative of normal operations.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

WAC 173-400-060 Emission standards for general process units. General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. EPA test methods from 40 CFR Appendix A which are adopted by reference and any other approved test procedures which are contained in ecology's "Source Test Manual - Procedures For Compliance Testing" as of July 12, 1990, will be used to determine compliance.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-060, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-060, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-060, filed 8/20/80; Order DE 76-38, § 173-400-060, filed 12/21/76. Formerly WAC 18-04-060.]

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) Wigwam burners.

(a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7).

(b) All wigwam burners shall use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) Ecology may establish additional requirements for wigwam burners located in sensitive areas as defined by chapter 173-440 WAC. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(1). An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) Hog fuel boilers.

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and ecology or the authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) Orchard heating.

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) Grain elevators.

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) Catalytic cracking units.

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or permit the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 173-400-040.

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(7) Sulfuric acid plants.

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) The emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency (EPA) as in effect on date of adoption, as contained in Title 40, Code of Federal Regulations, Part 61, are adopted by reference. The term "administrator" in 40 CFR Part 61 shall mean both the administrator of EPA and the director of ecology.

(2) Ecology or the authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants such as: Asbestos, benzene from fugitive emission sources, beryllium, mercury, or vinyl chloride shall conform with the requirements of Title 40, Code of Federal Regulations, Part 61, as promulgated prior to January 1, 1993.

(4) This section shall not apply to any source operating pursuant to a waiver granted by EPA or an exemption granted by the president of the United States during the effective life of such waiver or exemption.

[Statutory Authority: Chapter 70.94 RCW. 93-05-044 (Order 92-34), § 173-400-075, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-075, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-075, filed 3/6/85. Statutory Authority: Chapter 70.94 RCW. 84-10-019 (Order DE 84-8), § 173-400-075, filed 4/26/84. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-075, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-075, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-075, filed 5/8/79; Order DE 76-38, § 173-400-075, filed 12/21/76. Formerly WAC 18-04-075.]

WAC 173-400-081 Startup and shutdown. In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) ecology and the authorities shall consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown. Where ecology or the authority determines that the source or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, ecology or the authority shall include in the standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions. In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, ecology and the authorities shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule. Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in an approved state implementation

plan shall not take effect until approved by EPA as a SIP amendment.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-081, filed 8/20/93, effective 9/20/93.]

WAC 173-400-091 Voluntary limits on emissions.

(1) Upon request by the owner or operator of a source, ecology or the authority with jurisdiction over the source shall issue a regulatory order that limits the source's potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and ecology or the authority with jurisdiction over the source.

(2) A condition contained in an order issued under this section shall be less than the source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70.94 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 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 shall be subject to the notice and comment procedures under WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington state implementation plan. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-091, filed 8/20/93, effective 9/20/93.]

WAC 173-400-100 Registration. (1) Except as provided in subsection (4) of this section, the owner or operator of each source within the following source categories shall register the source with ecology or the authority:

- (a) Agricultural drying and dehydrating operations;
- (b) Asphalt plants;
- (c) Beverage can surface coating operations;
- (d) Bulk gasoline terminals;
- (e) Cattle feedlots with facilities for one thousand or more cattle;
- (f) Chemical plants;
- (g) Ferrous foundries;
- (h) Fertilizer plants;
- (i) Flexible vinyl and urethane coating and printing operations;
- (j) Grain handling, seed processing, pea and lentil processing facilities;
- (k) Metallic mineral processing plants;
- (l) Mineralogical processing plants;
- (m) Nonferrous foundries;
- (n) Other metallurgical processing plants;
- (o) Petroleum refineries;

- (p) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;
 - (q) Pressure sensitive tape and label surface coating operations;
 - (r) Rendering plants;
 - (s) Scrap metal operations;
 - (t) Synthetic organic chemical manufacturing industries;
 - (u) Sulfuric acid plants;
 - (v) Synthetic fiber production facilities;
 - (w) Veneer dryers;
 - (x) Wood waste incinerators including wigwam burners;
 - (y) Other incinerators designed for a capacity of one hundred pounds per hour or more;
 - (z) Stationary internal combustion engines rated at five hundred horse power or more;
 - (aa) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;
 - (bb) Any category of stationary sources subject to a federal standard of performance (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters);
 - (cc) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);
 - (dd) Any major stationary source.
- (2) Registration shall be on forms to be supplied by ecology or the authority within the time specified on the form.
- (3) A report of closure shall be filed with ecology or the authority within ninety days after operations producing emissions permanently cease at any source within the above categories.
- (4) Permit program sources, as defined in RCW 70.94.030(17), are not required to comply with the registration requirements of this section after the Environmental Protection Agency grants interim or final approval for the state operating permit program.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-100, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-100, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-100, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-100, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-100, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-100, filed 5/8/79; Order DE 76-38, § 173-400-100, filed 12/21/76. Formerly WAC 18-04-100.]

WAC 173-400-101 Registration interim fee. (1) The department shall assess and collect from registered sources within its jurisdiction an interim assessment to fund a portion of the department's registration program development. Registered sources include:

- (a) Facilities and emission units currently registered with the department; and
- (b) Other facilities and emission units subject to WAC 173-400-100 that the department determines by April 1, 1994, to be within its jurisdiction.

(2) The amount collected from the interim fee shall not exceed one hundred sixty thousand dollars. The interim fee will be assessed to sources in the following categories according to the schedule listed in Table A.

TABLE A

(a)	Agricultural drying	\$600
(b)	Asphalt plants	\$600
(c)	Beverage can surface coating	\$600
(d)	Bulk gasoline terminals	\$600
(e)	Cattle feedlots >1000	\$600
(f)	Chemical plants	\$600
(g)	Ferrous foundries	\$600
(h)	Fertilizer plants	\$600
(i)	Flexible vinyl & urethane coating & printing operations	\$600
(j)	Grain handling, seed processing, etc.	\$300
(k)	Metallic mineral processing plants	\$600
(l)	Mineralogical processing plants	\$600
(m)	Nonferrous foundries	\$600
(n)	Other metallurgical processing plants	\$600
(o)	Petroleum refineries	\$600
(p)	Power boilers using coal, hog fuel, oil, or other solid or liquid fuel	\$600
(q)	Pressure sensitive tape & label surface coating operations	\$600
(r)	Rendering plants	\$600
(s)	Scrap metal operations	\$600
(t)	Synthetic organic chemical manufacturing industries	\$600
(u)	Sulfuric acid plants	\$600
(v)	Synthetic fiber production facilities	\$600
(w)	Veneer dryers	\$600
(x)	Wood waste incinerators including wigwam burners	\$600
(y)	Other incinerators designed for a capacity of one hundred lbs. per hour or more	\$600
(z)	Stationary internal combustion engines rated at five hundred horse power or more	\$600
(aa)	Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination	\$600
(bb)	Except for country grain elevators, any category of stationary sources subject to a federal standard of performance (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters)	\$600
(cc)	Except for country grain elevators, any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS)	\$600

(3) The fee schedule in subsection (2) of this section is based upon sources within each source category paying the same fee. Ecology may approve alternate methods of allocating the fees among two or more sources within the same source category. Groups of sources requesting an alternate schedule must submit a written request signed by all sources subject to the alternate method prior to May 1, 1994. The written request must specify fee amounts for each source and demonstrate that the aggregate fee amount to be collected from those sources is equal to the aggregate amount that would be collected under subsection (2) of this section. Sources within a source category who elect not to participate in such an agreement shall pay the applicable amount specified in subsection (2) of this section.

(4) Sources subject to the interim operating permit fee established pursuant to RCW 70.94.161 shall not be required to pay an interim registration fee.

(5) The department shall determine the persons subject to the interim registration fee and will provide a billing notice by June 1, 1994, with collection due thirty days later.

[Statutory Authority: Chapter 70.94 RCW. 94-10-042 (Order 93-39), § 173-400-101, filed 4/29/94, effective 5/30/94.]

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) Investigation of conditions. Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) Source testing. To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from

40 CFR 60 Appendix A which are adopted by reference, or approved procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) Continuous monitoring and recording. Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5, promulgated October 6, 1975, and amended November 7, 1986, which is adopted by reference.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology

determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-105, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-105, filed 2/19/91, effective 3/22/91; 87-20-019 (Order 87-12), § 173-400-105, filed 9/30/87.]

WAC 173-400-107 Excess emissions. (1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.

(2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.

(3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emis-

sions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(6) Excess emissions due to upsets shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-107, filed 8/20/93, effective 9/20/93.]

WAC 173-400-110 New source review (NSR). (1) **Applicability.**

(A) A notice of construction application must be filed by the owner or operator and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification which is listed in WAC 173-400-100 or required to obtain a permit under RCW 70.94.161.

(b) Ecology or the authority may require that a notice of construction application be filed by the owner or operator of a proposed new source or modification and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification, other than a single family or a duplex dwelling.

(c) New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification.

(2) **Completeness determination.** Within thirty days of receipt of a notice of construction application, 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, based upon review of information already supplied, to complete the application. For a project subject to PSD review under WAC 173-400-141 a completeness determination includes a determination that the application provides all information required to conduct PSD review.

(3) **Final determination.**

(a) Within sixty days of receipt of a complete application, ecology or the authority shall either issue a final decision on the application or, for those projects subject to public notice, initiate notice and comment procedures under WAC 173-400-171 on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(b) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of ecology or the authority.

(c) If the new source is a major stationary source or the change is a major modification, ecology or the authority shall submit any control technology determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA.

(4) **Appeals.** An order of approval, any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. Ecology or the authority shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the Pollution Control Hearings Board and, where applicable, to the EPA Environmental Appeals Board.

(5) **Portable sources.** For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction application, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

(6) Approval to construct or modify a stationary source shall become invalid if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. Ecology or the authority may extend the eighteen-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 months of the projected and approved commencement date.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-110, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-110, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-110, filed 4/15/83. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. 81-03-002 (Order DE 80-53), § 173-400-110, filed 1/8/81. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-110, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-110, filed 5/8/79; Order DE 76-38, § 173-400-110, filed 12/21/76. Formerly WAC 18-04-110.]

WAC 173-400-112 Requirements for new sources in nonattainment areas. Ecology or an authority reviewing an application to establish a new source or modification in a nonattainment area, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine 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, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

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

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) If the proposed new source or the proposed modification is major for the contaminant for which the area is designated nonattainment, allowable emissions from the proposed new source or modification of that contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (prior to submittal of the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the FCAA) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(a) The proposed new level of allowable emissions of the source or emission unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders, or permits cannot be credited.

(b) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emissions of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new source is located. For any other nonattainment area, the emissions offsets must provide a positive net air quality benefit in the nonattainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S.

(c) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the new or modified source commences operation. The new source may not commence operation before the date such reductions are actually achieved. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in an EPA-approved state implementation plan.

(7) If the proposed new source is a major stationary source or the proposed modification is a major modification for the purposes of the PSD program described in WAC 173-400-141, it meets the requirements of that program for all contaminants for which the area has not been designated nonattainment.

(8) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(9) If the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.28(c) through (e) except for (c)(4)(i), (g), and (h), as in effect on March 3, 1993, and determined that the project meets the criteria set forth in 40 CFR 52.28(g). For purposes of this subsection, definitions referenced in 40 CFR 52.28(b) are incorporated by reference, except that the term "visibility protection area" means any Class I area, and terms defined in WAC 173-400-030 shall have the meanings defined in that section. References in 40 CFR 52.28 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-112, filed 8/20/93, effective 9/20/93.]

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. Ecology or an authority reviewing an application to establish a new source or modification in an area that is in attainment or unclassifiable for any air contaminant the new source would emit and that is in attainment or unclassifiable for ozone if the proposed new or modified source would emit VOCs or NO_x, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies all 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, emission standards adopted under chapter 70.94 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 modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment area does not exceed the following levels for the pollutant(s) for which the area has been designated nonattainment:

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	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification for purposes of the PSD program described in WAC 173-400-141, it meets all applicable requirements of that chapter.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

(6) If, within the meaning of the PSD program described in WAC 173-400-141, the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.27(d) through (f), as in effect on March 3, 1993, and has determined that the source would not cause an adverse impact upon visibility. References in 40 CFR 52.27 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-113, filed 8/20/93, effective 9/20/93.]

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) For projects not otherwise reviewable under WAC 173-400-110, ecology or the 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 RCW.

(3) Within thirty 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 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(15), 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 authority takes no action within thirty 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 months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. Ecology or the authority may extend the eighteen-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 months of the projected and approved commencement date.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-114, filed 8/20/93, effective 9/20/93.]

WAC 173-400-115 Standards of performance for new sources. Title 40, Code of Federal Regulations, Part 60 (standards of performance for new sources), as in effect on January 1, 1993, is adopted by reference except for sections 60.5 (determination of construction or modification) and 60.6 (review of plans). The term "administrator" in 40 CFR Part 60 shall mean both the administrator of EPA and the director of ecology.

As of January 1, 1993, the federal regulations adopted by reference hereby set standards of performance affecting facilities for the following described subparts of 40 CFR Part 60:

Subpart D	Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
Subpart Da	Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
Subpart Db	Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts
Subpart Dc	Small industrial-commercial-institutional steam generating units
Subpart E	Incinerators
Subpart Ea	Municipal waste combustors
Subpart F	Portland cement plants
Subpart G	Nitric acid plants
Subpart H	Sulfuric acid plants
Subpart I	Asphalt concrete plants
Subpart J	Petroleum refineries which produce less than 25,000 barrels per day of refined products
Subpart K	Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984
Subpart L	Secondary lead smelters
Subpart M	Brass and bronze ingot production plants
Subpart N	Iron and steel plants
Subpart O	Sewage treatment plants
Subpart P	Primary copper smelters
Subpart Q	Primary zinc smelters
Subpart R	Primary lead smelters
Subpart S	Primary aluminum reduction plants
Subpart T	Phosphate fertilizer industry: Wet process phosphoric acid plants
Subpart U	Phosphate fertilizer industry: Superphosphoric acid plants
Subpart V	Phosphate fertilizer industry: Diammonium phosphate plants
Subpart W	Phosphate fertilizer industry: Triple superphosphate plants

Subpart X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities
Subpart Y	Coal preparation plants
Subpart Z	Ferrous alloy production facilities
Subpart AA	Steel plants: Electric arc furnaces
Subpart AAa	Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels
Subpart BB	Kraft pulp mills
Subpart CC	Glass manufacturing plants
Subpart DD	Grain elevators
Subpart EE	Industrial surface coating: Metal furniture
Subpart GG	Stationary gas turbines
Subpart HH	Lime manufacturing plants
Subpart KK	Lead-acid battery plants
Subpart LL	Metallic mineral processing plants
Subpart MM	Automobile and light duty truck surface coating operations
Subpart NN	Phosphate rock plants
Subpart PP	Ammonium sulfate manufacture
Subpart QQ	Publication rotogravure printing
Subpart RR	Pressure sensitive tape and label surface coating operations
Subpart SS	Industrial surface coating: Large appliances
Subpart TT	Industrial surface coating: Metal coils
Subpart UU	Asphalt processing and asphalt roofing manufacture
Subpart VV	SOCMI equipment leaks (VOC)
Subpart WW	Beverage can surface coating operations
Subpart XX	Bulk gasoline terminals
Subpart AAA	New residential wood heaters
Subpart BBB	Rubber tire manufacturing industry
Subpart DDD	VOC emissions from the polymer manufacturing industry
Subpart FFF	Flexible vinyl and urethane coating and printing
Subpart GGG	Petroleum refineries - compressors and fugitive emission sources
Subpart HHH	Synthetic fiber production facilities
Subpart III	VOC emissions from SOCMI air oxidation unit processes
Subpart JJJ	Petroleum dry cleaners
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants
Subpart LLL	Onshore natural gas processing; SO ₂ emissions
Subpart NNN	VOC emissions from SOCMI distillation operations
Subpart PPP	Wool fiberglass insulation manufacturing plants
Subpart QQQ	VOC emissions from petroleum refinery wastewater emissions
Subpart SSS	Magnetic tape coating facilities
Subpart TTT	Industrial surface coating: Surface coating of plastic parts for business machines
Subpart VVV	Polymeric coating of supporting substrates facilities

Note: For fossil fuel fired steam generators referenced by Subpart D and Da above, units greater than 250 megawatts are governed by the energy facility site evaluation council (EFSEC) in Title 463 WAC.

[Statutory Authority: Chapter 70.94 RCW. 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-400-115, filed 4/15/83; 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

WAC 173-400-116 New source review fees. (1) Applicability. Every person required to submit a notice of construction application to the department of ecology as authorized in RCW 70.94.152 for establishment of any proposed new source or emissions unit(s) shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee to ecology to cover the costs of Prevention of significant deterioration (PSD) permits issued pursuant to WAC 173-400-141, Second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an order of approval is issued or denied.

(2) Basic review fees. All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, BACT determination, technical review, public involvement and approval/denial orders. Complexity determination shall be based on the project described in the notice of construction application. Basic review fees are shown below:

(a) Low complexity new source or emission unit (emissions of individual criteria pollutants are all less than one-half of the significance levels established in WAC 173-400-030(67) or emissions of individual toxic air pollutants are all less than 2.0 tons/year) - one thousand dollars;

(b) Moderate complexity new source or emission unit (emissions of one or more individual criteria pollutants are greater than one-half of the significance levels established in WAC 173-400-030(67) or emissions of one or more toxic air pollutants are greater than 2.0 tons/year and less than ten tons/year) - five thousand dollars; or

(c) High complexity new source or emissions unit (emissions of one or more criteria pollutants are greater than the significance levels established in WAC 173-400-030(67) or emissions of one or more toxic air pollutants are greater than ten tons/year) - fifteen thousand dollars.

(d) Exceptions. The following fees for new source review shall be charged instead of the applicable fees listed in (a) through (c) of this subsection and in subsection (3) of this section:

(i)	Dry cleaners	\$200
(ii)	Gasoline stations	\$200
(iii)	Storage tanks	
(A)	< 20,000 gallons	\$200
(B)	20,000 - 100,000 gallons	\$500
(C)	> 100,000	\$700

(iv)	Chromic acid plating and anodizing identified in WAC 173-460-060	\$200
(v)	Solvent metal cleaners identified in WAC 173-460-060	\$200
(vi)	Abrasive blasting identified in WAC 173-460-060	\$200
(vii)	New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 401 source or nonchapter 401 source	\$200

(e) Additional units. An owner or operator proposing to build more than one identical emission unit shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.

(3) Additional charges. In addition to those fees required under subsection (2)(a) through (c) of this section, the following fees will be required as applicable:

(a) Prevention of significant deterioration review (includes ecology review of local air authority sources) - ten thousand dollars;

(b) Establishing LAER and offset requirements for a major stationary source or major modification proposing to locate in a nonattainment area - ten thousand dollars;

(c) Tier II toxics review as required under WAC 173-460-090 - seven thousand five hundred dollars;

(d) Tier III review as required under WAC 173-460-100 - five thousand dollars;

(e) State Environmental Policy Act review (where ecology is the lead agency):

(i) Determination of nonsignificance (DNS) and environmental checklist review - two hundred dollars; or

(ii) Environmental impact statement (EIS) review or preparation - two thousand dollars;

(iii) Where more than one ecology program is charging a fee for reviewing or preparing SEPA documents, ecology will not charge a SEPA review fee as part of the new source review fees;

(f) Case-by-case MACT determinations required for a new source or modification under Section 112(g) or Section 112(j) of the FCAA - five thousand dollars.

(4) Small business fee reduction. The new source review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce the fees defined in subsections (2) and (3) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a notice of construction application is submitted to the department. A notice of construction application is considered incomplete until ecology has received the appropriate new source review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an ecology billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(7) Dedicated account. All new source review fees collected by the department from permit program sources shall be deposited in the air operating permit account created under RCW 70.94.015. All new source review fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account.

(8) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of complexity categories.

(9) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

[Statutory Authority: RCW 70.94.153 and 70.94.154. 94-17-070, § 173-400-116, filed 8/15/94, effective 9/15/94.]

WAC 173-400-120 Bubble rules. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of ecology or the authority.

(a) The contaminants exchanged must be of the same type, that is, PM₁₀ for PM₁₀, sulfur dioxide for sulfur dioxide, etc.

(b) The bubble will not interfere with the attainment and maintenance of air quality standards. No bubble shall be authorized in a nonattainment area unless there is an EPA-approved SIP which demonstrates attainment for that area.

(c) The bubble will not result in a delay in compliance by any source, nor a delay in any existing enforcement action.

(d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous contaminants shall not be increased.

(e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.

(f) A bubble may not be authorized only for opacity limits. However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:

(i) The new opacity limit shall be specific for the given emissions unit;

(ii) The new opacity limit shall be consistent with the new particulates limit;

(iii) An opacity greater than sixty percent shall never be authorized;

(iv) If the given emissions unit emits or has the potential to emit one hundred tons per year or more of particulate matter, the opacity shall be monitored continuously.

(g) The emission limits of the bubble are equivalent to existing limits in enforceability.

(h) Concurrent with or prior to the authorization of a bubble, each emission unit involved in a bubble shall receive or have received a regulatory order or permit that establishes total allowable emissions from the source of the contaminant being bubbled, expressed as weight of the contaminant per unit time.

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

(j) Specific situations may require additional demonstration as requested by ecology or the authority.

(3) Jurisdiction. Whenever a bubble application involves emissions units, some of which are under the jurisdiction of an authority, approval will require concurrence by both authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, ecology or the authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all the required information has been received, ecology or the authority shall

approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit affected by the bubble. The regulatory order or equivalent document shall include any conditions required to assure that subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-120, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-120, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 89-02-055 (Order 88-39), § 173-400-120, filed 1/3/89; 83-09-036 (Order DE 83-13), § 173-400-120, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-120, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-120, filed 5/8/79; Order DE 76-38, § 173-400-120, filed 12/21/76. Formerly WAC 18-04-120.]

WAC 173-400-131 Issuance of emission reduction credits. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply to ecology or the authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions unit(s) involved.

(2) Time of application. The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) Conditions. An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of ecology or the authority.

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

(d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC 173-400-112(4), nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, NESHAPS, BACT, or LAER.

(e) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(f) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) Additional information. Within thirty days after the receipt of an ERC application and all supporting data and documentation, ecology or the authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. If the application is approved, ecology or the authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsection (3)(a) through (e) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-131, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-131, filed 2/19/91, effective 3/22/91.]

WAC 173-400-136 Use of emission reduction credits. (1) Permissible use. An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per WAC 173-400-112, 173-400-113(3) or (6), or to satisfy requirements for PSD review per WAC 173-400-113(4).

(2) Surrender of ERC certificate. When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the issuing authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) Conditions of use. An ERC may be used only for the contaminant(s) for which it was issued. Ecology or the authority may impose additional conditions of use to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC.

(4) Sale of an ERC. An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) Time of use. An unused ERC and any unused portion thereof shall expire ten years after date of original issue.

(6) Discount due to change in SIP. If reductions in emissions beyond those identified in the state implementation plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by ecology or the authority after public involvement per WAC 173-400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-136, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-136, filed 2/19/91, effective 3/22/91.]

WAC 173-400-141 Prevention of significant deterioration (PSD). Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and (w), Prevention of Significant Deterioration of Air Quality, as in effect on March 3, 1993, are incorporated by reference with the following additions and modifications:

(1) Construction of "administrator." In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) administrator shall mean both the administrator of EPA and the director of ecology.

(2) Contemporaneous. Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs. If a decrease occurred more than one year prior to the date of submittal of the notice of construction application for the particular change it can only be credited if the decrease has been documented by an emission reduction credit."

(3) Public participation. Subpart 40 CFR 51.166(q) public participation, as in effect March 3, 1993, is hereby incorporated by reference except that in 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days and the word "administrator" shall mean the EPA administrator.

(4) Section 40 CFR 51.166 Subpart (p)(1) Sources Impacting Federal Class I areas - additional requirements - Notice to EPA, as in effect on March 3, 1993, is herein incorporated by reference.

(5) Secondary emissions. Subpart 40 CFR 52.21 (b)(18) is changed to read:

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. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(6) Significant. The definition of "significant" in 40 CFR 52.21 (b)(23) is changed to exclude from the list of pollutants which may trigger PSD review any pollutant listed under FCAA § 112.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-141, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-141, filed 2/19/91, effective 3/22/91.]

WAC 173-400-151 Retrofit requirements for visibility protection. (1) Determination of best available retrofit technology (BART). Ecology shall identify and analyze each source which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I area in Washington and any adjacent state and to determine BART for the contaminant of concern and those additional air pollution control technologies that are to be required to reduce impairment from the source.

(2) Initially defined BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART for each contaminant contributing to visibility impairment that is emitted at more than 250 tons per year. Each source for which BART is required must install and operate BART as expeditiously as possible, but in no case later than five years after the conditions are included in a regulatory order.

(3) Future definitions of BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART as new technology becomes available for a contaminant if:

(a) The source emits more than 250 tons per year of the contaminant; and,

(b) The controls representing BART have not previously been required in this section.

(4) Appeal. Any source owner or operator required by this section to install, operate, and maintain BART, may apply to the EPA administrator for an exception from that requirement pursuant to 40 CFR 51.303.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-151, filed 2/19/91, effective 3/22/91.]

WAC 173-400-161 Compliance schedules. (1) **Issuance.** Whenever a source is found to be in violation of an emission standard or other provision of this chapter, ecology or the authority may issue a regulatory order requiring that the source be brought into compliance within a specified time. The order shall contain a schedule for installation, with intermediate benchmark dates and a final completion date, and shall constitute a compliance schedule. Requirements for public involvement (WAC 173-400-171) must be met.

(2) **Federal action.** A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included with a regulatory order are being met. Such compliance does not preclude federal enforcement action by the EPA until and unless the

schedule is submitted and adopted as an amendment to the state implementation plan.

(3) **Penalties for delayed compliance.** Sources on a compliance schedule but not meeting emissions standards may be subject to penalties as provided in the Federal Clean Air Act.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-161, filed 2/19/91, effective 3/22/91.]

WAC 173-400-171 Public involvement. (1) **Applicability.** Ecology or the authority shall provide public notice prior to the approval or denial of any of the following types of applications or other actions:

(a) Notice of construction application for any new or modified source or emissions unit, if a significant net increase in emissions of any pollutant regulated by state or federal law would result; or

(b) Any application or other proposed action for which a public hearing is required by PSD rules; or

(c) Any order to determine RACT; or

(d) An order to establish a compliance schedule or a variance; or

(e) The establishment or disestablishment of a nonattainment area, or the changing of the boundaries thereof; or

(f) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(g) An order to authorize a bubble; or

(h) Notice of construction application or regulatory order used to establish a creditable emission reduction;

(i) An order issued under WAC 173-400-090 which establishes limitations on a source's potential to emit; or

(j) Any application or other proposed action made pursuant to this chapter in which there is a substantial public interest according to the discretion of ecology or the authority.

(2) **Public notice.** Public notice shall be made only after all information required by ecology or the authority has been submitted and after applicable preliminary determinations, if any, have been made. The cost of providing public notice shall be borne by the applicant or other initiator of the action. Public notice shall include:

(a) Availability for public inspection in at least one location near the proposed project, of the nonproprietary information submitted by the applicant and of any applicable preliminary determinations, including analyses of the effect(s) on air quality.

(b) Publication in a newspaper of general circulation in the area of the proposed project of notice:

(i) Giving a brief description of the proposal;

(ii) Advising of the location of the documents made available for public inspection;

(iii) Advising of a thirty-day period for submitting written comment to ecology or the authority;

(iv) Advising that a public hearing may be held if ecology or the authority determines within a thirty-day period that significant public interest exists.

(c) A copy of the notice will be sent to the EPA regional administrator.

Public participation procedures for notice of construction applications that are processed in coordination with an application to issue or modify an operating permit shall be conducted as provided in the state operating permit rule.

(3) **Public comment.** No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the thirty-day period for written comment published as provided above. If a public hearing is held the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public hearings.** The applicant, any interested governmental entity, any group or any person may request a public hearing within the thirty-day period published as above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. Ecology or the authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time(s) and place(s) as ecology or the authority deems reasonable.

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, such procedures may be used in lieu of the provisions of this section.

(6) **Public information.** Copies of notices of construction, orders, and modifications thereof which are issued hereunder shall be available for public inspection on request at ecology or the authority.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-171, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-171, filed 2/19/91, effective 3/22/91.]

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.

(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.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-180, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-180, filed 2/19/91, effective 3/22/91.]

WAC 173-400-190 Requirements for nonattainment areas. The development of specific requirements for nonattainment areas shall include consultation with local government in the area and shall include public involvement per WAC 173-400-171.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-190, filed 2/19/91, effective 3/22/91.]

WAC 173-400-200 Creditable stack height and dispersion techniques. (1) Applicability. These provisions shall apply to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open burning for agricultural or silvicultural purposes as covered under the smoke management plan;

(e) Residential wood combustion and open burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(2) Prohibitions. No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack which exceeds the greater of:

(i) Sixty-five meters, measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$

where: H_g = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), subject to the proviso below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(3) Exception. EPA, ecology, or an authority may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the EPA Guideline for Determination of Good Engineering Practice Height (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-141 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the state implementation plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-200, filed 2/19/91, effective 3/22/91.]

(1995 Ed.)

WAC 173-400-205 Adjustment for atmospheric conditions. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant is prohibited, except as directed according to air pollution episode regulations.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-205, filed 2/19/91, effective 3/22/91.]

WAC 173-400-210 Emission requirements of prior jurisdictions. Any emissions unit that was under the jurisdiction of an authority and now is under the jurisdiction of ecology, shall meet all emission requirements that were applicable prior to transfer of jurisdiction if those standards are more stringent than the standards of this chapter or the specific chapter relating to that source.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-210, filed 2/19/91, effective 3/22/91.]

WAC 173-400-220 Requirements for board members. (1) **Public interest.** A majority of the members of any ecology or authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

(2) **Disclosure.** Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.

(3) **Define significant income.** For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income."

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-220, filed 2/19/91, effective 3/22/91.]

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 days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, 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 or 70.120 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. 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 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first 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 day following final resolution of the appeal.

The maximum penalty amounts established in RCW 70.94.431 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 control account established in RCW 70.94.015 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 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 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.

[Statutory Authority: Chapter 70.94 RCW. 93-05-044 (Order 92-34), § 173-400-230, filed 2/17/93, effective 3/20/93; 91-05-064 (Order 90-06), § 173-400-230, 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.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-240, filed 2/19/91, effective 3/22/91.]

WAC 173-400-250 Appeals. Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC.

[Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-250, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-250, filed 2/19/91, effective 3/22/91.]

WAC 173-400-260 Conflict of interest. All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest, and 40 CFR 103(d) which is incorporated by reference.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-400-260, filed 2/19/91, effective 3/22/91.]

Chapter 173-401 WAC OPERATING PERMIT REGULATION

WAC

PART I
OVERVIEW

173-401-100 Program overview.

PART II
DEFINITIONS

173-401-200 Definitions.

PART III
APPLICABILITY

173-401-300 Applicability.

PART IV
PROGRAM DELEGATION

173-401-400 Program delegation.

PART V
PERMIT APPLICATIONS

173-401-500 Permit applications.
173-401-510 Permit application form.
173-401-520 Certification.
173-401-530 Insignificant emission units.
173-401-531 Thresholds for hazardous air pollutants.
173-401-532 Categorically exempt insignificant emission units.
173-401-533 Units and activities defined as insignificant on the basis of size or production rate.

PART VI
PERMIT CONTENT

173-401-600 Permit content.
173-401-605 Emission standards and limitations.
173-401-610 Permit duration.
173-401-615 Monitoring and related recordkeeping and reporting requirements.
173-401-620 Standard terms and conditions.
173-401-625 Federally enforceable requirements.
173-401-630 Compliance requirements.
173-401-635 Temporary sources.
173-401-640 Permit shield.
173-401-645 Emergency provision.
173-401-650 Operational flexibility.

PART VII
PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

173-401-700 Action on application.
173-401-705 Requirement for a permit.
173-401-710 Permit renewal, revocation and expiration.
173-401-720 Administrative permit amendments.
173-401-722 Changes not requiring permit revisions.
173-401-724 Off-permit changes.
173-401-725 Permit modification.
173-401-730 Reopening for cause.
173-401-735 Permit appeals.

PART VIII
THE PERMIT PROCESS FOR GENERAL PERMITS

173-401-750 General permits.

PART IX
PUBLIC INVOLVEMENT AND PERMIT REVIEW BY EPA AND
AFFECTED STATES

173-401-800 Public involvement.
173-401-805 Permit register.
173-401-810 EPA review.
173-401-820 Review by affected states.
173-401-830 Appendix A—Insignificant activities and emission units.

PART X
FEE DETERMINATION AND CERTIFICATION

173-401-900 Fee determination—Ecology.
173-401-905 Fee determination—Delegated local authorities.
173-401-910 General permit fee determination.
173-401-915 Fee collection—Ecology and delegated local authorities.
173-401-920 Accountability—Ecology and delegated local authorities.
173-401-925 Source data statements and petition for review of statements—Ecology and delegated local authorities.
173-401-930 Fee payment and penalties—Ecology.

173-401-935 Development and oversight remittance by local authorities—Ecology and delegated local authorities.
173-401-940 Fee eligible activities—Ecology and delegated local authorities.

PART I
OVERVIEW

WAC 173-401-100 Program overview. (1) The provisions in this chapter establish the elements of a comprehensive Washington state air operating permit program consistent with the requirements of Title V of the Federal Clean Air Act (FCAA) (42 U.S.C. 7401, et seq.).

(2) All sources subject to this regulation shall have a permit to operate that assures compliance by the source with all applicable requirements. While chapter 173-401 WAC does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(3) The requirements of this chapter, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under Title IV of the FCAA (acid rain program).

(4) Issuance of permits under this chapter may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the state, the United States Environmental Protection Agency (EPA), or the United States Army Corps of Engineers.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-100, filed 10/4/93, effective 11/4/93.]

PART II
DEFINITIONS

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Affected source" means a source that includes one or more affected units.

(2) "Affected states" are the states or federally-recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) "Affected unit" means a fossil-fuel fired combustion device or a source that opts-in under 40 CFR part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule

making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 CFR 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) "Chapter 401 permit" or "permit" means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) "Chapter 401 source" means any source subject to the permitting requirements of this chapter.

(7) "Delegated authority" means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(8) "Designated representative" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(9) "Draft permit" means the version of a permit for which the permitting authority offers public participation or affected state review.

(10) "Emissions allowable under the permit" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(11) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(12) The "EPA" or the "administrator" means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(13) "Federal Clean Air Act" or "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.

(14) "Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 CFR §§70.7 and 70.8.

(15) "General permit" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(16) "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(17) "Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or

gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the FCAA, but only with respect to those air pollutants that have been regulated for that category;

(c) A major stationary source as defined in part D of Title I of the FCAA, including:

- (i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the

administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.

(18) "Permit modification" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(19) "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

(20) "Permit revision" means any permit modification or administrative permit amendment.

(21) "Permitting authority" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(22) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(23) "Proposed permit" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 CFR 70.8.

(24) "Regulated air pollutant" means the following:

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

- (i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would

be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(25) "Regulated pollutant (for fee calculation)," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

(a) Carbon monoxide;

(b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

(26) "Renewal" means the process by which a permit is reissued at the end of its term.

(27) "Responsible official" means one of the following:

(a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 CFR part 70.

(28) "Section 502 (b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that

are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(29) "Small business stationary source" means a stationary source that:

(a) Is owned or operated by a person that employs one hundred or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit fifty tons or more per year of any regulated pollutant; and

(e) Emits less than seventy-five tons per year of all regulated pollutants.

(30) "Solid waste incineration unit" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(31) "State" means any nonfederal permitting authority, including any local agency, interstate association, or state-wide program.

(32) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

(33) "Title I modification" or "modification under any provision of Title I of the FCAA" means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

[Statutory Authority: Chapter 70.94 RCW. 94-11-105 (Order 93-30), § 173-401-200, filed 5/17/94, effective 6/17/94; 93-20-075 (Order 91-68), § 173-401-200, filed 10/4/93, effective 11/4/93.]

**PART III
APPLICABILITY**

WAC 173-401-300 Applicability. (1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

(a) Any source required by the FCAA to have an operating permit. These include the following sources:

(i) Any major source as defined in WAC 173-401-200(18).

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the FCAA.

(iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) (Prevention of Accidental Releases) of the FCAA.

(iv) Any solid waste incineration units required to obtain permits under section 129 of the FCAA.

(v) Any "affected source" regulated under Title IV (Acid Deposition Control) of the FCAA.

(vi) Any source in a source category designated by the EPA pursuant to 40 CFR Part 70, as amended through April 7, 1993.

(b) Any source that the permitting authority determines may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare under RCW 70.94.161(4) using the procedures in subsection (5) of this section.

(c) Any other source which chooses to apply for a permit.

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that:

(i) Ecology completes a rulemaking to determine whether nonmajor sources should be required to obtain permits. During this rulemaking, ecology will consider the compliance information contained in individual permit applications when evaluating the regulatory effectiveness and administrative feasibility of issuing operating permits to nonmajor sources relative to other regulatory options. This rulemaking must be completed no later than three years after the effective date of the permit program; or

(ii) The administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operating permits and ecology completes a rule making to adopt EPS's revised applicability criteria.

(b) Subsection (2)(a) of this section shall not apply to nonmajor sources subject to a standard or other requirement established under either section 111 or section 112 of the FCAA after July 21, 1992, if, during those rulemakings, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt EPS's applicability criteria.

(c) Any source listed in (a) of this subsection exempt from the requirement to obtain a permit under this section may opt to apply for a permit under this chapter.

(d) The following source categories are exempt from the obligation to obtain permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

(3) Emissions units and chapter 401 sources.

The permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the source.

(4) Fugitive emissions. Fugitive emissions from a chapter 401 source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(5) Process for determining threat to public health or welfare. The following criteria shall be used to identify sources that are covered pursuant to subsection (1)(b) of this section:

(a) The source may cause or to contribute air pollution in such quantity as to create a violation of any ambient air quality standard as demonstrated by a dispersion modeling analysis performed in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods; or

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any class A or class B toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

(c) Small business stationary sources otherwise covered under (a) and (b) of this subsection are exempt except when all of the following requirements are satisfied:

(i) The source is in an area that currently exceeds or has been projected by ecology to exceed within five years any federal or state air quality standard. Prior to determining that any area threatens to exceed a standard, ecology shall hold a public hearing or hearings within the threatened area.

(ii) Ecology provides justification that requiring a source to have a permit is necessary to meet or to prevent exceeding a federal or state air quality standard.

(6) Permitting authorities shall develop and maintain a list of names of chapter 401 sources within their jurisdictions. This list shall be made available to the public. A chapter 401 source inadvertently omitted from this list is not exempted from the requirement to obtain a permit under this chapter.

(7) Federally enforceable limits. Any source which is defined as a chapter 401 source solely because its potential to emit exceeds the annual tonnage thresholds defined in WAC 173-401-200(18) shall be exempt from the requirement

to obtain an operating permit when federally enforceable conditions which limit that source's potential to emit to levels below the relevant tonnage thresholds have been established for that source.

(a) In applying for an exemption under this subsection, the owner or operator of the source shall demonstrate to the permitting authority that the source's potential to emit, taking into account any federally enforceable restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200(18). Such demonstrations shall be in accordance with WAC 173-401-520 and shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to support the source's emission calculations.

(b) Permitting authorities may use the following approaches to establish federally enforceable limitations:

(i) Regulatory orders. The permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC 173-400-090.

(ii) Notice of construction approvals. The permitting authority may establish source-specific conditions in a notice of construction approval issued pursuant to state or local regulations contained in an EPA-approved state implementation plan; or

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW 70.94.161(11). Following EPA approval of the general permit, limitations on potential to emit become federally enforceable against a particular source after that source applies for, and receives coverage under the general permit.

(c) A source receiving a federally enforceable limit on its potential to emit shall annually certify that its potential to emit is less than that which would require the source to obtain an operating permit. Such certifications shall contain the information specified in (a) of this subsection.

(d) Notice of issuance of any order or permit which limits a source's potential to emit shall be published in the permit register pursuant to WAC 173-401-805 (2)(e).

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-300, filed 10/4/93, effective 11/4/93.]

PART IV PROGRAM DELEGATION

WAC 173-401-400 Program delegation. (1) General. Ecology is authorized to submit the state operating permit program for approval under section 502 of the Federal Clean Air Act. Subject to federal approval, ecology may, in turn, delegate the federally approved state permit program to the local authority with jurisdiction in a given area. This section describes the procedures for delegating the federally approved state operating permit program to a local authority.

(2) Application. The board of any local air pollution control authority may apply to ecology for a delegation order authorizing that authority to administer the operating permit program for sources under that authority's jurisdiction pursuant to RCW 70.94.161 (2)(b).

(3) Delegation orders. Ecology will, by order, approve such delegation if ecology finds that the authority has the

technical and financial resources needed to discharge the responsibilities of a permitting authority under the FCAA. Each delegation order shall specify the terms and conditions for program delegation and define the responsibilities of the permitting authority and ecology in implementing the state-wide program. All delegation orders and supporting program documentation shall be submitted to EPA for review and approval.

(4) Required information. A delegation request from the authority shall include the information specified in 40 CFR 70.4 (b)(3), (b)(7), (b)(8), and (b)(11). In addition, the request shall include a description of how the authority will meet the requirement that every proposed permit be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority and, with respect to the latter, signed, dated, and stamped by the supervising professional engineer.

(5) Effective date. Any delegation order issued under this section shall take effect ninety days after the EPA authorizes the local authority to issue operating permits under the FCAA.

(6) Public notice. Ecology shall publish in the *State Register* notice of proposed decisions on program delegation and substantial program revision. The notice shall summarize the proposal and provide at least a thirty-day public comment period. EPA review of these requests may occur concurrently with the state process. Notice of approval of program delegation and substantial program revision requests shall be published in the *State Register*. Notice of approval of minor program revisions may be given by a letter from ecology to the authority.

(7) Performance review. Reviews of the implementation of the operating permit program by ecology and delegated local authorities shall be conducted as provided in WAC 173-401-920.

(8) Program revisions. Revisions to the state program, EPA approval of those revisions, and delegation to local authorities shall be implemented using the procedures in subsections (1) through (6) of this section.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-400, filed 10/4/93, effective 11/4/93.]

PART V PERMIT APPLICATIONS

WAC 173-401-500 Permit applications. (1) Source identification. Within ninety days after the date that a permitting authority submits for EPA approval a permit program or partial permit program, the permitting authority shall notify each potential chapter 401 source within its jurisdiction that the source may be required to obtain a permit. Failure of the permitting authority to notify a source shall not relieve that source from the obligation to file a timely and complete application.

(2) Application distribution. No later than thirty days after EPA grants final or interim, full or partial, approval to the state program, the responsible permitting authority shall send an application to each potential chapter 401 source within its jurisdiction, and a notice stating a deadline by which an application must be filed. Unless otherwise

specified in the permit, the permitting authority will send a permit renewal application to each source no less than twenty months from the date of expiration of the source's permit. Failure of the permitting authority to distribute permit or renewal applications to an individual source shall not relieve that source from the obligation to file a timely and complete application.

(3) Duty to apply. For each chapter 401 source, the owner or operator shall submit a timely and complete permit application in accordance with this section. Whenever practicable, the applicant shall utilize methods provided by the permitting authority for electronic transmission of the completed application.

(a) Existing chapter 401 sources. Chapter 401 sources in existence on the date of EPA approval of the state permit program shall submit permit applications no later than one hundred eighty days after EPA approval of the state permitting program.

(b) Existing sources becoming chapter 401 sources due to future regulations. An existing source may become subject to the operating permit program as a result of regulations promulgated after EPA approval of the state permit program. For those sources, a complete application must be submitted within twelve months from the time that the source becomes subject to the permit program.

(c) New or modified sources. New or modified chapter 401 sources which commence operation after EPA approval of the state operating program shall file a complete application to obtain the chapter 401 permit or permit revision within twelve months after commencing operation. Where an existing chapter 401 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. The applicant may elect to integrate procedures for new source review and operating permit issuance as described in subsection (10) of this section.

(d) Permit renewal. For purposes of permit renewal, a timely application is one that is submitted at the time specified in WAC 173-401-710.

(e) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(4) Complete application. To be deemed complete, an application must provide all information required pursuant to WAC 173-401-510, except that applications for permit revision need supply such information only if it is related to the proposed change. Information submitted under WAC 173-401-510 must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with WAC 173-401-520. Unless the permitting authority determines in writing that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in WAC 173-401-700(6). Any notification of incompleteness shall specify the information needed to make the application complete and prescribe a reasonable time frame for response from the applicant. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of the supplemental information,

the application shall be deemed complete. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in WAC 173-401-705(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(5) Confidential information. In the case where a source has submitted information to the permitting authority under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the administrator.

(6) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(7) Completeness criteria. An application is complete when it contains the following information:

(a) A completed version of the standard application form or forms described in WAC 173-401-510, including the required information for each emission unit (other than insignificant emission units) at the facility, along with any necessary supporting data and calculations;

(b) A compliance plan that meets the criteria of WAC 173-401-630; and

(c) Certification by a responsible official of the chapter 401 source of the truth, accuracy, and completeness of the application, as provided in WAC 173-401-520.

(8) EPA notification. The permitting authority shall provide EPA with a copy of all complete permit applications and compliance plans for chapter 401 sources unless EPA waives or modifies this requirement.

(9) Public notice. Ecology shall publish a notice of all applications received under this section in the permit register as required under WAC 173-401-805.

(10) Operating permits for new sources. At the time of filing a notice of construction application under RCW 70.94.152 for the construction of a new source or modification of an existing source, the owner or operator may elect in writing to integrate new source review and operating permit issuance. Procedures for integration of these two processes are as follows:

(a) Modification of existing source. The owner or operator of an existing permitted source applying to modify the source within the meaning of RCW 70.94.030(14) may select integrated review by so indicating on its notice of construction application. The permitting authority shall process the notice of construction application in accordance with the procedures set forth in WAC 173-401-700. The permitting authority shall process the two applications in parallel, and consolidate all required public hearings, comment periods and EPA review periods. A proposed

order of approval for the modification shall be provided to EPA for review as provided in WAC 173-401-810, along with a proposed administrative permit amendment to the source's operating permit. The administrative permit amendment shall incorporate into the operating permit the requirements contained in the order of approval. The order of approval shall include compliance requirements for the new or modified emissions units that meet the requirements of WAC 173-401-600 through 173-401-650. The permitting authority shall issue the final permit amendment and order of approval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 CFR 70.8.

(b) Construction of new source. Any person who proposes to construct a new source, within the meaning of RCW 70.94.030(16), may select integrated review by concurrently filing with the permitting authority a notice of construction application and an operating permit application. The permitting authority shall process both applications in accordance with the procedures set forth in WAC 173-401-700. The permitting authority shall process the two applications in parallel, and consolidate all required public hearings, comment periods, and EPA review periods. A proposed order of approval for the new source shall be provided to EPA for review as provided in WAC 173-401-810, along with the proposed operating permit. The permitting authority shall issue the final operating permit and order of approval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 CFR 70.8.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-500, filed 10/4/93, effective 11/4/93.]

WAC 173-401-510 Permit application form. (1) Standard application form and required information. Ecology shall develop a standard application form or forms to be used by each permitting authority. Information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units shall be included in the application. However, an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the permitting authority's fee schedule.

(2) Required data elements for individual permit applications. The application forms developed under subsection (1) of this section shall contain the data elements specified below:

(a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, responsible official name and address, and telephone number and names of plant site manager/contact.

(b) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternative operating scenario identified by the source pursuant to WAC 173-401-650.

(c) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except

emissions from insignificant emission units or activities as defined in WAC 173-401-530. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the permitting authority's fee schedule;

(ii) Identification and description of all points of emissions described in (c)(i) of this subsection in sufficient detail to establish the basis for fees and applicability of applicable requirements;

(iii) Emissions rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(iv) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules;

(v) Identification and description of all air pollution control equipment and compliance monitoring devices or activities;

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the chapter 401 source;

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the FCAA); and

(viii) Calculations on which the information in (c)(i) through (vii) of this subsection are based.

(d) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(e) Other specific information that may be necessary to implement and enforce other applicable requirements or this chapter or to determine the applicability of such requirements.

(f) An explanation of any proposed exemptions from otherwise applicable requirements.

(g) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to WAC 173-401-650(1) or to define permit terms and conditions implementing WAC 173-401-650(e) and 173-401-722.

(h) A compliance plan for all chapter 401 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements;

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis; and

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis;

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(iv) For those sources required to have a schedule of compliance to remedy a violation, a schedule for submission of certified progress reports every six months or at a more frequent period specified in an applicable requirement.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(i) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with WAC 173-401-520 and section 114 (a)(3) of the FCAA;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA.

(j) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(k) Requirements which the source believes are inapplicable pursuant to WAC 173-401-640(2) and a request to extend the permit shield to those requirements.

[Statutory Authority: Chapter 70.94 RCW. 94-11-105 (Order 93-30), § 173-401-510, filed 5/17/94, effective 6/17/94; 93-20-075 (Order 91-68), § 173-401-510, filed 10/4/93, effective 11/4/93.]

WAC 173-401-520 Certification. Any application form, report, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this chapter

shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-520, filed 10/4/93, effective 11/4/93.]

WAC 173-401-530 Insignificant emission units. (1) General. This section contains criteria for identifying insignificant emission units or activities for purposes of the operating permit program. Designation of an emission unit or activity as insignificant for purposes of this chapter does not exempt the unit or activity from any applicable requirement. An emission unit or activity is insignificant based on one or more of the following approaches:

(a) Actual emissions of all regulated air pollutants from a unit or activity are less than the emission thresholds established in subsection (4) of this section. Such emission units and activities must be listed in the permit application;

(b) The emission unit or activity is listed in WAC 173-401-532 as categorically exempt. Such emission units or activities do not have to be listed in the permit application;

(c) The emission unit or activity is listed in WAC 173-401-533 and is considered insignificant if its size or production rate based on maximum rated capacity is below the specified level. These emission units or activities must be listed in the permit application.

(d) The emission unit or activity generates only fugitive emissions (as defined in WAC 173-400-030(31)), which are subject to no applicable requirement other than generally applicable requirements of the state implementation plan as defined in subsection (2) of this section. These units or activities must be listed on the permit application.

(2) Applicable requirements.

(a) Notwithstanding any other provision of this chapter, no emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity. For purposes of this section, generally applicable requirements of the state implementation plan are those federally enforceable requirements that apply universally to all emission units or activities without reference to specific types of emission units or activities.

(b) The application shall list and the permit shall contain all generally applicable requirements that apply to insignificant emission units or activities in the source.

(c) The permit shall not require testing, monitoring, reporting or recordkeeping for insignificant emission units or activities except where generally applicable requirements of the state implementation plan specifically impose these requirements. These requirements identified in the state implementation plan shall be deemed to satisfy the requirements of WAC 173-401-615 and 173-401-630(1).

(d) For insignificant emission units or activities, the source will not need to certify compliance under WAC 173-401-630(5).

(3) Permit shield. The permit shield described in WAC 173-401-640 shall not apply to any insignificant emissions unit or activity designated under this section.

(4) Insignificant emission thresholds. An emission unit or activity shall be considered insignificant if it qualifies under subsection (1)(b), (c) or (d) of this section, or if its actual emissions, based on methods approved by the permitting authority, are below the practical quantification limit (PQL), or are less than or equal to all of the following threshold levels:

- (a) 5 tons per year of carbon monoxide;
- (b) 2 tons per year of nitrogen oxides;
- (c) 2 tons per year of sulfur oxides;
- (d) 2 tons per year of volatile organic compounds (VOC);
- (e) 0.75 tons per year of PM₁₀ (as defined in chapter 173-400-030(53));
- (f) 0.005 tons per year of lead;
- (g) 0.15 tons per year of fluorides;
- (h) 0.35 tons per year of sulfuric acid mist;
- (i) 0.5 tons per year of hydrogen sulfide;
- (j) 0.5 tons per year of total reduced sulfur (including hydrogen sulfide);
- (k) 0.000000175 tons per year of municipal waste combustor organics (measured as total tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans);
- (m) 0.75 tons per year of municipal waste combustor metals (measured as PM);
- (n) 2.0 tons per year of municipal waste combustor acid gases (measured as SO₂ and hydrogen chloride);
- (o) 2.0 tons per year of ozone depleting substances in aggregate (the sum of Class I and/or Class II substances as defined in Title VI and 40 CFR Part 82);
- (p) Thresholds levels for hazardous air pollutants as defined in WAC 173-401-531;
- (q) 0.5 tons per year for any regulated air pollutant not listed above or in WAC 173-401-531.

(5) Documentation.

(a) Upon request from the permitting authority the applicant must provide sufficient documentation to enable the permitting authority to determine that the emission unit or activity has been appropriately listed as insignificant.

(b) Upon request from the permitting authority, at any time during the term of the permit, an applicant who lists an activity or emissions unit as insignificant under subsection (1)(a) of this section shall demonstrate to the permitting authority that the actual emissions of the unit or activity are below the emission thresholds listed in subsection (4) of this section.

(6) Permit revision.

If an emission unit or activity that qualifies as insignificant solely on the basis of subsection (1)(a) of this section exceeds one of the emissions thresholds specified in subsection (4) of this section prior to issuance of a permit, the applicant shall promptly amend its permit application to include the relevant activity or emissions unit in the permit, as provided in WAC 173-401-500(6). Once the permit is issued, an activity or emissions unit that qualifies as insignificant solely on the basis of subsection (1)(a) of this section shall not exceed the emissions thresholds specified in subsection (4) of this section, until the permit is modified pursuant to WAC 173-401-725 (Permit modifications).

(7) Local air authority discretion. Local air authorities may establish by rule other criteria for defining insignificant emissions units or activities. At a minimum, such criteria

must be at least as stringent as the requirements in subsections (2) and (3) of this section. Insignificant emission units or activities defined by local air authority rule may not exceed threshold levels established under subsection (4) of this section.

[Statutory Authority: Chapter 70.94 RCW. 94-11-105 (Order 93-30), § 173-401-530, filed 5/17/94, effective 6/17/94.]

WAC 173-401-531 Thresholds for hazardous air pollutants. General. The following tables provide thresholds for hazardous air pollutants:

(1) Carcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
189-55-9	1,2,7,8-dibenzopyrene	0.005
107-06-2	1,2-dichloroethane	0.4
78-87-5	1,2-dichloropropane	0.5
540-73-8	1,2-dimethylhydrazine	0.004
122-66-7	1,2-diphenylhydrazine	0.045
106-99-0	1,3-butadiene	0.035
1120-71-4	1,3-propane sultone	0.003
106-46-7	1,4-dichlorobenzene(p)	0.5
123-91-1	1,4-dioxane (1,4-diethyleneoxide)	0.5
94-75-7	2,4-d salts & esters	0.5
95-80-7	2,4-toluene diamine	0.01
584-84-9	2,4-toluene diisocyanate	0.05
53-96-3	2-acetylaminofluorene	0.0025
119-90-4	3,3'-dimethoxybenzidine	0.5
119-93-7	3,3-dimethyl benzidine	0.004

CAS Number	Chemical Name	Threshold Levels (tons/year)
101-14-4	4,4'-methylenebis (2-chloroaniline)	0.5
75-07-0	acetaldehyde	0.5
107-13-1	acrylonitrile	0.15
62-53-3	aniline	0.5
C7440-38-2	arsenic and inorganic arsenic compounds	0.002
1332-21-4	asbestos (fibers/ml)	0.00004
71-43-2	benzene	0.5
92-87-5	benzidine (and its salts)	0.00015
56-55-3	benzo(a)anthracene	0.005
50-32-8	benzo(a)pyrene	0.005
205-99-2	benzo(b)fluoranthene	0.005
7440-41-7	beryllium and compounds (except salts)	0.004
117-81-7	bis(2-ethylhexyl)phthalate	0.5
542-88-1	bis(chloromethyl)ether	0.00015
75-25-2	bromoform	0.5
7440-43-9	cadmium and compounds	0.005
56-23-5	carbon tetrachloride	0.5
57-74-9	chlordane	0.005
510-15-6	chlorobenzilate	0.2
67-66-3	chloroform	0.45
107-30-2	chloromethyl methyl ether	0.1
126-99-8	chloroprene	0.5
C7440-47-3	chromium, hexavalent metal	0.001
218-01-9	chrysene	0.005
---	coke oven emissions	0.015
3547-04-4	DDE	0.005
53-70-3	dibenz(a,h)anthracene	0.005
132-64-9	dibenzofuran	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
111-44-4	dichloroethyl ether	0.03
75-09-2	dichloromethane	0.5
77-78-1	dimethyl sulfate	0.1
---	dioxins & furans (tcdd equivalent)	3e-07
106-89-8	epichlorohydrin	0.5
107-06-2	ethylene dichloride	0.4
106-93-4	ethylene dibromide (dibromethane)	0.05
75-21-8	ethylene oxide	0.1
96-45-7	ethylene thiourea	0.3
76-44-8	heptachlor	0.01
118-74-1	hexachlorobenzene	0.005
58-89-9	hexachlorocyclohexane, gamma	0.005
302-01-2	hydrazine	0.002
193-39-5	indeno(1,2,3-cd)pyrene	0.005
---	lead & compounds (except those listed)	0.005
58-89-9	lindane	0.005
75-09-2	methylene chloride	0.5
62-75-9	n-nitrosodimethylamine	0.0005
C7440-02-0	nickel and compounds (except those listed)	0.02
13463-39-3	nickel carbonyl	0.1
95-53-4	o-toluidine	0.5
87-86-5	pentachlorophenol	0.35
127-18-4	perchloroethylene	0.5
1336-36-3	polychlorinated biphenyls	0.0045
75-56-9	propylene oxide	0.5
8001-35-2	toxaphene	0.005
79-01-6	trichloroethylene	0.5
75-01-4	vinyl chloride	0.1
79-34-5	1,1,2,2-tetrachloroethane	0.15
79-00-5	1,1,2-trichloroethane	0.5
57-14-7	1,1-dimethyl hydrazine	0.004
96-12-8	1,2-dibromo-3-chloropropane	0.004

CAS Number	Chemical Name	Threshold Levels (tons/year)
79-06-1	acrylamide	0.01
98-07-7	benzotrithloride	0.003
62-73-7	dichlorvos	0.1
79-44-7	dimethyl carbamoyl chloride	0.5
140-88-5	ethyl acrylate	0.5
51-79-6	ethyl carbamate	0.5
151-56-4	ethylene imine	0.5
87-68-3	hexachlorobutadiene	0.5
67-72-1	hexachloroethane	0.5
60-34-4	methyl hydrazine	0.03
684-93-5	n-nitroso-n-methylurea	0.5
12035-72-2	nickel refinery dust	0.08
---	nickel subsulfide	0.02
82-68-8	pentachloronitrobenzene	0.15
91-22-5	quinoline	0.003
1582-09-8	trifluralin	0.5
593-60-2	vinyl bromide	0.5
75-35-4	vinylidene chloride	0.2
189559	1,2:7,8-dibenzopyrene	0.005
121142	2,4-dinitrotoluene	0.01
88062	2,4,6-trichlorophenol	0.5
91941	3,3-dichlorobenzidene	0.1
57596	7,12-dimethylbenz(a)anthracene	0.005
50000	formaldehyde	0.5

(2) Noncarcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
75-34-3	ethylidene dichloride (1,1-dichloroethane)	0.5
75-55-8	1,2 propylenimine (2-methyl aziridine)	0.003
120-82-1	1,2,4-trichlorobenzene	0.5
106-88-7	1,2-epoxybutane	0.5
542-75-6	1,3-dichloropropene (dichloropropene)	0.5
51-28-5	2,4-dinitrophenol	0.5
111-76-2	2-butoxyethanol	0.5
110-80-5	2-ethoxyethanol	0.5
109-86-4	2-methoxyethanol	0.5
92-93-3	4-nitrobiphenyl	0.5
100-02-7	4-nitrophenol	0.5
75-05-8	acetonitrile	0.5
98-86-2	acetophenone	0.5
107-02-8	acrolein	0.04
79-10-7	acrylic acid	0.5
107-05-1	allyl chloride	0.5
C7440-36-0	antimony & compounds as sb	0.5
1309-64-4	antimony trioxide, as sb	0.5
7784-42-1	arsine	0.1
100-44-7	benzyl chloride	0.1
92-52-4	biphenyl	0.5
156-62-7	calcium cyanamide	0.5
105-60-2	caprolactam, dust	0.5
105-60-2	caprolactam, vapor	0.5
133-06-2	captan	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
63-25-2	carbaryl	0.5
75-15-0	carbon disulfide	0.5
463-58-1	carbonyl sulfide	0.5
120-80-9	catechol	0.5
7782-50-5	chlorine	0.1
79-11-8	chloroacetic acid	0.1
532-27-4	chloroacetophenone, alpha-	0.06
108-90-7	chlorobenzene	0.5
C7440-47-3	chromium (ii) compounds, as cr	0.5
C7440-47-3	chromium (iii) compounds, cr	0.5
10210-68-1	cobalt carbonyl, as co	0.1
7440-48-4	cobalt, as co metal dust, fume	0.1
1319-77-3	cresols/cresylic acid, (isomers and mixture)	0.5
95-48-7	o-cresol	0.5
108-39-4	m-cresol	0.5
106-44-5	p-cresol	0.5
98-82-8	cumene	0.5
51-12-5	cyanides, as cn	0.5
84-74-2	dibutyl phthalate	0.5
111-42-2	diethanolamine	0.5
60-11-7	dimethyl aminoazobenzene	0.5
121-69-7	dimethylaniline	0.5
68-12-2	dimethylformamide	0.5
131-11-3	dimethylphthalate	0.5
100-41-4	ethyl benzene	0.5
75-00-3	ethyl chloride	0.5
107-21-1	ethylene glycol	0.5
111-76-2	ethylene glycol monobutyl ether	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
---	glycol ethers (except for listed ones)	0.5
77-47-4	hexachlorocyclopentadiene	0.1
822-06-0	hexamethylene, 1,6-diisocyanate	0.02
110-54-3	hexane (n-hexane)	0.5
110-54-3	hexane, other isomers	0.5
7647-01-0	hydrogen chloride	0.5
7664-39-3	hydrogen fluoride, as f	0.1
123-31-9	hydroquinone	0.5
78-59-1	isophorone	0.5
108-31-6	maleic anhydride	0.5
C7439-96-5	manganese dust & compounds (except listed)	0.5
748-79-4	mercuric chloride	0.01
10045-94-0	mercuric nitrate	0.01
C7439-97-6	mercury, elemental	0.01
72-43-5	methoxychlor	0.5
67-56-1	methyl alcohol	0.5
74-83-9	methyl bromide	0.5
74-87-3	methyl chloride	0.5
71-55-6	methyl chloroform (1,1,1-trichloroethane)	0.5
78-93-3	methyl ethyl ketone (mek)	0.5
74-88-4	methyl iodide	0.06
108-10-1	methyl isobutyl ketone	0.5
624-83-9	methyl isocyanate	0.1
80-62-6	methyl methacrylate	0.5
1634-04-4	methyl tert-butyl ether	0.5
12108-13-3	methylcyclopentadienyl manganese tricarbonyl	0.1

CAS Number	Chemical Name	Threshold Levels (tons/year)
540841	2,2,4-trimethylpentane	0.5
95954	2,4,5-trichlorophenol	0.5
92671	4-aminobiphenyl	0.5
101779	4,4'-methylenedianiline	0.5
534521	4,6-dinitro-o-cresol and salts	0.1
60355	acetamide	0.5
1345046	antimony trisulfide	0.1
7783702	antimony pentafluoride	0.1
28300745	antimony potassium tartrate	0.5
133904	chloramben	0.5
2---	chromium compounds, except hexavalent and trivalent	0.5
10025737	chromic chloride	0.1
334883	diazomethane	0.5
64675	diethyl sulfate	0.5
62207765	fluomine	0.1
680319	hexamethylphosphoramide	0.01
12108133	methylcyclopentadienyl manganese	0.1
101688	methylene diphenyl diisocyanate	0.1
69892	N-nitrosomorpholine	0.5
90040	o-anisidine	0.5
---	polycyclic organic matter	0.01
151508	potassium cyanide	0.1
14339	sodium cyanide	0.1
10102188	sodium selenite	0.1
13410010	sodium selenate	0.1
96093	styrene oxide	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
101-68-8	methylene bisphenyl isocyanate	0.1
91-20-3	naphthalene	0.5
98-95-3	nitrobenzene	0.5
106-50-3	p-phenylenediamine	0.5
56-38-2	parathion	0.1
108-95-2	phenol	0.1
62-38-4	phenyl mercuric acetate	0.01
75-44-5	phosgene	0.1
7803-51-2	phosphine	0.5
7723-14-0	phosphorus	0.1
85-44-9	phthalic anhydride	0.5
57-57-8	propiolactone, beta-	0.1
123-38-6	propionaldehyde	0.5
114-26-1	propoxur	0.5
106-51-4	quinone	0.5
C7782-49-2	selenium compounds, as se	0.5
7783-79-1	selenium hexafluoride, as se	0.5
7488-56-4	selenium sulfides (mono and di)	0.5
100-42-5	styrene monomer	0.5
78-00-2	tetraethyl lead, as pb	0.01
75-74-1	tetramethyl lead, as pb	0.01
7550-45-0	titanium tetrachloride	0.1
108-88-3	toluene	0.5
121-44-8	triethylamine	0.5
108-05-4	vinyl acetate	0.5
593-60-2	vinyl bromide	0.5
1330-20-7	xylenes (m-, o-, p-isomers)	0.5
79469	2-nitropropane	0.5

[Statutory Authority: Chapter 70.94 RCW. 94-11-105 (Order 93-30), § 173-401-531, filed 5/17/94, effective 6/17/94.]

WAC 173-401-532 Categorically exempt insignificant emission units. (1) General. This section contains lists of units and activities that are categorically exempt from this chapter. The activities listed in this section may be omitted from the permit application.

(2) Mobile transport tanks on vehicles, except for those containing asphalt.

(3) Lubricating oil storage tanks.

(4) Storage tanks, reservoirs and pumping and handling equipment of any size, limited to soaps, lubricants, hydraulic fluid, vegetable oil, grease, animal fat, aqueous salt solutions or other materials and processes using appropriate lids and covers where there is no generation of objectionable odor or airborne particulate matter.

(5) Pressurized storage of oxygen, nitrogen, carbon dioxide, air, or inert gases.

(6) Storage of solid material, dust-free handling.

(7) Vehicle exhaust from auto maintenance and repair shops.

(8) Vents from continuous emissions monitors and other analyzers.

(9) Vents from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls and separate exhaust are provided.

(10) Internal combustion engines for propelling or powering a vehicle.

(11) Recreational fireplaces including the use of barbecues, campfires and ceremonial fires.

(12) Brazing, soldering and welding equipment and oxygen-hydrogen cutting torches for use in cutting metal where in components of the metal do not generate HAPs or HAPs precursors.

(13) Atmospheric generators used in connection with metal heat treating processes.

(14) Metal finishing or cleaning using tumblers.

(15) Metal casting molds and molten metal crucibles that do not contain potential HAPs.

(16) Die casting.

(17) Metal or glass heat-treating, in absence of molten materials, oils, or VOCs.

(18) Drop hammers or hydraulic presses for forging or metalworking.

(19) Electrolytic deposition, used to deposit brass, bronze, copper, iron, tin, zinc, precious and other metals not listed as the parents of HAPs.

(20) Metal fume vapors from electrically heated foundry/forge operations wherein the components of the metal do not generate HAPs or HAP precursors. Electric arc furnaces are excluded from consideration for listing as insignificant.

(21) Metal melting and molten metal holding equipment and operations wherein the components of the metal do not generate HAPs or HAP precursors. Electric arc furnaces are not considered for listing as insignificant.

(22) Inspection equipment for metal products.

(23) Plastic and resin curing equipment, excluding FRP.

(24) Extrusion equipment, metals, minerals, plastics, grain or wood.

(25) Presses and vacuum forming, for curing rubber and plastic products or for laminating plastics.

(26) Roller mills and calendars, rubber and plastics.

(27) Conveying and storage of plastic pellets.

(28) Plastic compression, injection, and transfer molding and extrusion, rotocasting, pultrusion, blowmolding, excluding acrylics, PVC, polystyrene and related copolymers and the use of plasticizer. Only oxygen, carbon dioxide, nitrogen, air, or inert gas allowed as blowing agents.

(29) Plastic pipe welding.

(30) Nonmetallic mineral mines and screening plants except for crushing and associated activities that are not subject to 40 CFR Part 60 Subpart 000. Quarrying of silica rock and associated activities are not considered for listing as insignificant.

(31) Wet sand and gravel screening.

(32) Wax application.

(33) Plant upkeep including routine housekeeping, preparation for and painting of structures or equipment, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and paving or stripping parking lots.

(34) Agricultural activities on a facility's property that are not subject to registration or new source review by the permitting authority.

(35) Cleaning and sweeping of streets and paved surfaces.

(36) Ultraviolet curing processes.

(37) Hot melt adhesive application with no VOCs in the adhesive formulation.

(38) Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents.

(39) Steam cleaning operations.

(40) Steam sterilizers.

(41) Food preparing for human consumption including cafeterias, kitchen facilities and barbecues located at a source for providing food service on the premises.

(42) Portable drums and totes.

(43) Lawn and landscaping activities.

(44) Flares used to indicate danger to the public.

(45) General vehicle maintenance including vehicle exhaust from repair facilities.

(46) Comfort air conditioning or air cooling systems, not used to remove air contaminants from specific equipment.

(47) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks subject to size and service limitations expressed elsewhere in this section.

(48) Natural and forced air vents and stacks for bathroom/toilet facilities.

(49) Office activities.

(50) Personal care activities.

(51) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.

(52) Fire fighting and similar safety equipment and equipment used to train fire fighters excluding fire drill pits.

(53) Materials and equipment used by, and activity related to operation of infirmary; infirmary is not the source's business activity.

(54) Fuel and exhaust emissions from vehicles in parking lots.

(55) Carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, shot peening, sintering or polishing: Ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock or wood provided that:

(a) Activity is performed indoors;

(b) Particulate emission control in the immediate vicinity of the activity;

(c) Exhaust from the particulate control is within the building housing the activity;

(d) No fugitive particulate emissions enter the environment.

(56) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment subject to other exemption limitation, e.g., internal and external combustion equipment.

(57) Slaughterhouse equipment except rendering cookers.

(58) Ozonation equipment.

(59) Nonasbestos brake shoe bonding.

(60) Batch loading and unloading of solid phase catalysts.

(61) Demineralization and oxygen scavenging (deaeration) of water.

(62) Pulse capacitors.

(63) Laser trimmers, using dust collection to prevent fugitive emissions.

(64) Plasma etcher, using dust collection to prevent fugitive emissions and using only oxygen, nitrogen, carbon dioxide, or inert gas.

(65) Gas cabinets using only gasses that are not regulated air pollutants.

(66) CO₂ lasers, used only on metals and other materials which do not emit HAPs in the process.

(67) Structural changes not having air contaminant emissions.

(68) Confection cooking equipment.

(69) Mixing, packaging, storage and handling activities of any size, limited to soaps, lubricants, vegetable oil, grease, animal fat, aqueous salt solutions.

(70) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy, e.g., blueprint activity, photocopiers, mimeograph, telefax, photographic developing, and microfiche.

(71) Pharmaceutical and cosmetics packaging equipment.

(72) Paper trimmers/binders.

(73) Sample gathering, preparation and management.

(74) Repair and maintenance activities, not involving installation of an emission unit and not increasing potential emissions of a regulated air pollutant.

(75) Handling equipment and associated activities for glass and aluminum which is destined for recycling, not the re-refining process itself.

(76) Hydraulic and hydrostatic testing equipment.

(77) Batteries and battery charging.

(78) Porcelain and vitreous enameling equipment.

(79) Solid waste (as defined in the Washington Administrative Code) containers.

(80) Salt baths using nonvolatile salts and not used in operations which result in air emissions.

(81) Shock chambers.

(82) Wire strippers.

(83) Humidity chambers.

(84) Solar simulators.

(85) Environmental chambers not using hazardous air pollutant (HAPs) gasses.

(86) Totally enclosed conveyors.

(87) Steam vents and safety relief valves.

(88) Air compressors, pneumatically operated equipment, systems and hand tools.

(89) Steam leaks.

(90) Recovery boiler blow-down tank.

(91) Salt cake mix tanks.

(92) Continuous digester chip feeders.

(93) Weak liquor and filter tanks.

(94) Process water and white water storage tanks.

(95) Demineralizer tanks.

(96) Clean condensate tanks.

(97) Alum tanks.

(98) Broke beaters, repulpers, pulp and repulping tanks, stock chests and pulp handling.

(99) Lime mud filtrate tank.

(100) Hydrogen peroxide tanks.

(101) Lime mud water.

(102) Lime mud filter.

(103) Liquor clarifiers and storage tanks and associated pumping, piping and handling.

(104) Lime grits washers, filters and handling.

(105) Lime silos and feed bins.

(106) Paper forming.

(107) Dryers (Yankee, after dryer, curing systems and coolings systems).

(108) Vacuum systems exhausts.

(109) Starch cooking.

(110) Stock cleaning and pressurized pulp washing.

(111) Winders.

(112) Chipping.

(113) Debarking.

(114) Sludge dewatering and handling.

(115) Screw press vents.

(116) Pond dredging.

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

(118) NonPCB oil filled circuit breakers, oil filled transformers and other equipment that is analogous to, but not considered to be, a tank.

(119) Electric or steam-heated drying ovens and autoclaves.

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

(121) Water cooling towers processing exclusively noncontact cooling water.

[Statutory Authority: Chapter 70.94 RCW. 94-11-105 (Order 93-30), § 173-401-532, filed 5/17/94, effective 6/17/94.]

WAC 173-401-533 Units and activities defined as insignificant on the basis of size or production rate. (1) General. This section contains lists of units or activities that are exempt from this chapter on the basis of size or production rate. Units and activities listed in this section must be listed on the permit application.

(2) The following units and activities are determined to be insignificant based on their size or production rate:

(a) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than two hundred sixty gallon capacity (35 cft), heated only to the minimum extent to avoid solidification if necessary.

(b) Operation, loading and unloading of storage tanks, not greater than one thousand one hundred gallon capacity, with lids or other appropriate closure, not for use with hazardous air pollutants (HAPs), maximum (max.) vp 550mm Hg.

(c) Operation, loading and unloading of VOC storage tanks (including gasoline storage tanks), ten thousand gallons capacity or less, with lids or other appropriate closure, vp not greater than 80mm Hg at 21°C.

(d) Operation, loading and unloading storage of butane, propane, or liquified petroleum gas (LPG), storage tanks, vessel capacity under forty thousand gallons.

(e) Combustion source less than five million Btu/hr. exclusively using natural gas, butane, propane and/or LPG.

(f) Combustion source, less than five hundred thousand Btu/hr., using any commercial fuel containing less than 0.4% by weight sulfur for coal or less than 1% by weight sulfur for other fuels.

(g) Combustion source, of less than one million Btu/hr. if using kerosene, No. 1 or No. 2 fuel oil.

(h) Combustion source, not greater than five hundred thousand Btu/hr. if burning used oil and not greater than four hundred thousand Btu/hr. if burning waste wood or waste paper.

(i) Welding using not more than one ton per day of welding rod.

(j) Foundry sand molds, unheated and using binders with less than 0.25% free phenol by sand weight.

(k) "Parylene" coaters using less than five hundred gallons of coating per year.

(l) Printing and silkscreening, using less than two gallon/day of any combination of the following: Inks, coatings, adhesives, fountain solutions, thinners, retarders, or nonaqueous cleaning solutions.

(m) Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than ten thousand gpm, not in direct contact with gaseous or liquid process streams containing regulated air pollutants.

(n) Combustion turbines, of less than 500 HP.

(o) Batch solvent distillation, not greater than fifty-five gallons batch capacity.

(p) Municipal and industrial water chlorination facilities of not greater than twenty million gallons per day capacity. The exemption does not apply to waste water treatment.

(q) Surface coating, using less than two gallons per day.

(r) Space heaters and hot water heaters using natural gas, propane or kerosene and generating less than five million Btu/hr.

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

(i) 99% or greater H_2SO_4 or H_3PO_4

(ii) 70% or greater HNO_3

(iii) 30% or greater HCl

(iv) More than one liquid phase where the top phase is more than one percent VOCs.

(t) Equipment used exclusively to pump, load, unload or store high boiling organic material, material with initial boiling point (IBP) not less than 150°C. or vapor pressure (vp) not more than 5mm Hg at 21°C. with lids or other appropriate closure.

(u) Smokehouses under twenty square feet.

(v) Milling and grinding activities, using paste-form compounds with less than one percent VOCs.

(w) Rolling, forging, drawing, stamping, shearing, or spinning hot or cold metals.

(x) Dip-coating operations, using materials with less than one percent VOCs.

(y) Surface coating, aqueous solution or suspension containing less than one percent VOCs.

(z) Cleaning and stripping activities and equipment, using solutions having less than one percent VOCs by weight. On metallic substrates, acid solutions are not considered for listing as insignificant.

(aa) Storage and handling of water based lubricants for metal working where the organic content of the lubricant is less than ten percent.

(bb) Municipal and industrial waste water chlorination facilities of not greater than one million gallons per day capacity.

(3) The following units or activities may be determined to be insignificant on a case-by-case basis by the permitting authority:

(a) Pilot plants.

(b) Cold feed aggregate bins for asphalt and concrete production equipment.

(c) Chemical or physical analytical laboratory operations or equipment including fume hoods and vacuum pumps.

(d) NPDES permitted ponds and lagoons utilized solely for the purpose of settling suspended solids and skimming of oil and grease.

(e) Coffee roasters, under fifteen lbs./day of coffee.

(f) Tire buffing of less than six thousand six hundred tires per year.

[Statutory Authority: Chapter 70.94 RCW. 94-11-105 (Order 93-30), § 173-401-533, filed 5/17/94, effective 6/17/94.]

PART VI PERMIT CONTENT

WAC 173-401-600 Permit content. (1) Each permit shall contain terms and conditions that assure compliance with all applicable requirements at the time of permit issuance. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The FCAA and rules implementing that act, including provisions of the approved state implementation plan;

(b) Chapter 70.94 RCW and rules implementing that chapter. This includes requirements in regulatory orders issued by the permitting authority;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70.98 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

(2) Legal authority. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(3) Acid rain. Where an applicable requirement of the FCAA is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

(4) Where an applicable requirement based on the FCAA and rules implementing that act (including the approved state implementation plan) is less stringent than an applicable requirement promulgated under state or local legal authority, both provisions shall be incorporated into the permit in accordance with WAC 173-401-625.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-600, filed 10/4/93, effective 11/4/93.]

WAC 173-401-605 Emission standards and limitations. (1) General. Each permit shall contain emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(2) Alternative emission limits. If the Washington state implementation plan allows a determination of an alternative emission limit at a chapter 401 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, the permitting authority may elect to use such process. Any permit containing such equivalency determination shall contain

provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(3) Reasonably available control technology (RACT). Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under section 8, chapter 252, Laws of 1993, shall be incorporated into an operating permit as provided in WAC 173-401-730.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-605, filed 10/4/93, effective 11/4/93.]

WAC 173-401-610 Permit duration. The permitting authority shall issue permits for a fixed term of five years.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-610, filed 10/4/93, effective 11/4/93.]

WAC 173-401-615 Monitoring and related recordkeeping and reporting requirements. (1) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

(a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114 (a)(3) of the FCAA;

(b) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection (3) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and

(c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(2) Recordkeeping. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Records of required monitoring information that include the following:

- (i) The date, place as defined in the permit, and time of sampling or measurements;
- (ii) The date(s) analyses were performed;
- (iii) The company or entity that performed the analyses;
- (iv) The analytical techniques or methods used;
- (v) The results of such analyses; and
- (vi) The operating conditions existing at the time of sampling or measurement;

(b) A record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(c) Retention of records of all required monitoring data and support information for a period of five years from the date of the monitoring sample, measurement, report, or

application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(3) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(a) Submittal of reports of any required monitoring at least once every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with WAC 173-401-520.

(b) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in each individual permit in relation to the degree and type of deviation likely to occur and the applicable requirement. For deviations which represent a potential threat to human health or safety, "prompt" means as soon as possible, but in no case later than twelve hours after the deviation is discovered. The source shall maintain a contemporaneous record of all deviations. Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-615, filed 10/4/93, effective 11/4/93.]

WAC 173-401-620 Standard terms and conditions.

(1) Acid rain. Each permit for an affected source shall contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(2) Standard provisions. Each permit shall include the following standard provisions:

(a) Duty to comply. The permittee must comply with all conditions of this chapter 401 permit. Any permit noncompliance constitutes a violation of chapter 70.94 RCW and, for federally enforceable provisions, a violation of the FCAA. Such violations are grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) Permit actions. This permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(e) Duty to provide information. The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality. Permitting authorities shall maintain confidentiality of such information in accordance with RCW 70.94.205.

(f) Permit fees. The permittee shall pay fees as a condition of this permit in accordance with the permitting authority's fee schedule. Failure to pay fees in a timely fashion shall subject the permittee to civil and criminal penalties as prescribed in chapter 70.94 RCW.

(g) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in this permit.

(h) Severability. If any provision of this permit is held to be invalid, all unaffected provisions of the permit shall remain in effect and be enforceable.

(i) Permit appeals. This permit or any conditions in it may be appealed only by filing an appeal with the pollution control hearings board and serving it on the permitting authority within thirty days of receipt pursuant to RCW 43.21B.310. This provision for appeal in this section is separate from and additional to any federal rights to petition and review under § 505(b) of the FCAA.

(j) Permit continuation. This permit and all terms and conditions contained therein, including any permit shield provided under WAC 173-401-640, shall not expire until the renewal permit has been issued or denied if a timely and complete application has been submitted. An application shield granted pursuant to WAC 173-401-705(2) shall remain in effect until the renewal permit has been issued or denied if a timely and complete application has been submitted.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-620, filed 10/4/93, effective 11/4/93.]

WAC 173-401-625 Federally enforceable requirements. (1) Federal enforceability. All terms and conditions in a chapter 401 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the FCAA.

(2) Exceptions. Notwithstanding subsection (1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the FCAA any terms and conditions included in the permit that are not required under the FCAA or under any of its applicable

requirements. Terms and conditions so designated are not subject to the EPA and affected states review requirements of WAC 173-401-700 through 173-401-820.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-625, filed 10/4/93, effective 11/4/93.]

WAC 173-401-630 Compliance requirements. (1) General. Consistent with WAC 173-401-615, all chapter 401 permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a chapter 401 permit shall contain a certification by a responsible official that meets the requirements of WAC 173-401-520.

(2) Inspection and entry. Each permit shall contain inspection and entry requirements that require, that upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where a chapter 401 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by WAC 173-400-105 and the FCAA, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) Schedule of compliance. Each permit shall contain a schedule of compliance consistent with WAC 173-401-510 (2)(h)(iii).

(4) Progress reports. For those sources required to have a schedule of compliance, the permit shall require progress reports consistent with an applicable schedule of compliance and WAC 173-401-510 (2)(h) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Compliance certification. Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(a) A requirement that compliance certifications be submitted once per year. Permitting authorities may require that compliance certifications be submitted more frequently for those emission units not in compliance with permit terms

and conditions or where more frequent certification is specified in the applicable requirement;

(b) In accordance with WAC 173-401-615(1), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with WAC 173-401-615 (3)(a); and

(v) Such other facts as the authority may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the permitting authority; and

(e) Such additional requirements as may be specified pursuant to sections 114 (a)(3) and 504(b) of the FCAA.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-630, filed 10/4/93, effective 11/4/93.]

WAC 173-401-635 Temporary sources. The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least ten days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions in WAC 173-401-600 through 173-401-650.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-635, filed 10/4/93, effective 11/4/93.]

WAC 173-401-640 Permit shield. (1) Shield requirement. Each chapter 401 permit shall include a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that such applicable requirements are included and are specifically identified in the permit.

(2) Inapplicable requirements. Upon request, the permitting authority shall include in the permit or in a separate written finding issued with the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its application for such a determination the requirements as to which the determination is requested. If the determination is issued in a separate finding, that finding shall be summarized in the permit. The permit shall state that the permit shield applies to any requirements so identified. A request to extend the permit shield to requirements deemed inapplicable to the source

may be made either in the original permit application or in an application for a permit modification.

(3) Omissions. A chapter 401 permit that does not expressly state that a permit shield extends to specific applicable requirements shall be presumed not to provide such a shield for those requirements.

(4) Exclusions. Nothing in this section or in any chapter 401 permit shall alter or affect the following:

(a) The provisions of section 303 of the FCAA (emergency orders), including the authority of the administrator under that section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408(a) of the FCAA;

(d) The ability of EPA to obtain information from a source pursuant to section 114 of the FCAA; or

(e) The ability of the permitting authority to establish or revise requirements for the use of reasonably available control technology (RACT) as provided in chapter 252, Laws of 1993.

(5) The agency may exclude all or a portion of a permit from the permit shield upon a finding that the shield would substantially impede implementation or enforcement of applicable requirements. Such a finding shall identify the portions of the permit excluded from the shield, the requirements that have led to the exclusion, and the reason for the exclusion.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-640, filed 10/4/93, effective 11/4/93.]

WAC 173-401-645 Emergency provision. (1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of subsection (3) of this section are met.

(3) Criteria. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the permitting authority within two working days of the time

when emission limitations were exceeded due to the emergency or shorter periods of time specified in an applicable requirement. This notice fulfills the requirement of WAC 173-401-615 (3)(b) unless the excess emissions represent a potential threat to human health or safety. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) Relationship to other rules. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-645, filed 10/4/93, effective 11/4/93.]

WAC 173-401-650 Operational flexibility. (1) Reasonably anticipated operating scenarios. Each permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield described in WAC 173-401-640 to all terms and conditions under each such operating scenario; and

(c) Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this chapter.

(2) Emissions trading. Each permit shall contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under WAC 173-401-600 through 173-401-630 to determine compliance;

(b) Shall extend the permit shield described in WAC 173-401-640 to all terms and conditions that allow such increases and decreases in emissions;

(c) Shall meet all applicable requirements and requirements of this chapter; and

(d) Shall require the source, contemporaneously with making a change, to record in a log at the permitted source the emission increases and decreases.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-650, filed 10/4/93, effective 11/4/93.]

Part VII PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

WAC 173-401-700 Action on application. (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under WAC 173-401-750;

(b) The permit has been reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority and, in the latter case, signed, dated, and stamped by the supervising professional engineer;

(c) The permitting authority has complied with the requirements for public participation under WAC 173-401-800;

(d) The permitting authority has complied with the requirements for notifying and responding to affected states under WAC 173-401-820;

(e) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(f) The administrator has received a copy of the proposed permit and any notices required under WAC 173-401-810 and 173-401-820, and has not objected in writing to issuance of the permit within forty-five days of receipt of the proposed permit and all necessary supporting information; and

(g) Where EPA has objected to issuance of a permit or modification, the permittee has consented in writing to the changes required by the EPA.

(2) Deadlines. Except as provided in subsections (1)(g), (3), and (4) of this section or under regulations promulgated under Title IV or Title V of the FCAA for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within eighteen months of receiving a complete application.

(3) Transition plan. The permitting authority shall take final action on at least one-third of all operating permit applications received from chapter 401 sources in existence on the date on which EPA authorizes the permitting authority to issue operating permits within one year after EPA authorization. Final action shall be taken on at least one third of such applications annually over a period not to exceed three years after the effective date of EPA authorization.

(4) Early reduction submittals. The permitting authority shall take final action on a complete permit application containing an early reduction demonstration under section 112 (i)(5) of the FCAA within nine months of receiving the complete application.

(5) Notice of construction applications. Except as provided in WAC 173-401-500(10) processing of notice of construction applications received under RCW 70.94.152 shall take priority over processing of operating permit applications.

(6) Completeness. The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in WAC 173-401-725 (2)(a)

and (3), the permitting authority does not have to provide a completeness determination.

(7) Draft permit. Within one hundred eighty days of the date upon which an application is deemed to be complete, the permitting authority should generally issue either a draft permit or a notice of intent to deny the permit application. Notice of issuance of a draft permit shall be published and provided to affected states in accordance with the procedures in WAC 173-401-800 through 173-401-820. The deadline provided in this subsection shall not apply to the initial round of permit applications filed pursuant to subsection (3) of this section.

(8) Statement of basis. At the time the draft permit is issued, the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA, the applicant, and to any other person who requests it.

(9) Proposed permit. Upon completion of the public comment period provided in WAC 173-401-800, the permitting authority shall issue a proposed permit, along with a response to any comments received during the comment period. The permitting authority shall transmit the proposed permit and its response to any comments to the applicant and to EPA for review, as provided in WAC 173-401-810.

(10) Preconstruction approval. The submittal of a complete application shall not affect any requirement of a source to have a preconstruction permit under Title I of the FCAA or a notice of construction approval under RCW 70.94.152.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-700, filed 10/4/93, effective 11/4/93.]

WAC 173-401-705 Requirement for a permit. (1) Requirement for a permit. Except as provided in subsection (2) of this section, WAC 173-401-722 and 173-401-725, no chapter 401 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under this chapter.

(2) Application shield. If a chapter 401 source submits a complete application for permit issuance (including for renewal) within twelve months of the time the source becomes subject to the permit program, operation of the source without a chapter 401 permit is not a violation of this chapter until the permitting authority takes final action on the permit application, except as noted in this section. Chapter 401 sources in existence on the date of EPA approval of the state permit program shall become subject to the program on the effective date of EPA approval. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to WAC 173-401-700(6), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-705, filed 10/4/93, effective 11/4/93.]

WAC 173-401-710 Permit renewal, revocation and expiration. (1) Renewal application. The source shall submit a complete permit renewal application to the permit-

ting authority no later than the date established in the permit. This date shall be no less than six months prior to the expiration of the permit. The permitting authority may specify a longer time period in writing to the permitted source at least one year before the new application due date to ensure that the terms of the permit will not lapse before the permit is renewed. In no event shall the application due date be earlier than eighteen months prior to the expiration of the permit. The permitting authority shall send a permit application to each source at least six months before a complete application is due.

(2) Permit issuance. Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance.

(3) Expired permits. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subsection (1) of this section and WAC 173-401-500. All terms and conditions of the permit shall remain in effect after the permit itself expires if a timely and complete permit application has been submitted.

(4) Revocation of permits. The permitting authority may revoke a permit only upon the request of the permittee or for cause. The permitting authority shall provide at least thirty days written notice to the holder of a current operating permit prior to revocation of the permit or denial of a permit renewal application. Such notice shall include an explanation of the basis for the proposed action and afford the permittee/applicant an opportunity to meet with the permitting authority prior to the authority's final decision. A revocation issued under this section may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date. Nothing in this subsection shall limit the permitting authority's authority to issue emergency orders.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-710, filed 10/4/93, effective 11/4/93.]

WAC 173-401-720 Administrative permit amendments. (1) Definition. An "administrative permit amendment" is a permit revision that:

- (a) Corrects typographical errors;
- (b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (c) Requires more frequent monitoring or reporting by the permittee;
- (d) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(e) Incorporates into the chapter 401 permit the terms, conditions, and provisions from orders approving notice of construction applications processed under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of

WAC 173-401-700, 173-401-725, and 173-401-800 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in WAC 173-401-600 through 173-401-650.

(2) Acid rain provisions. Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the permitting authority consistent with the following:

(a) The permitting authority shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(b) The permitting authority shall submit a copy of the revised permit to the administrator.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) Permit shield. The permitting authority shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in WAC 173-401-640 for administrative permit amendments made pursuant to subsection (1)(e) of this section.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-720, filed 10/4/93, effective 11/4/93.]

WAC 173-401-722 Changes not requiring permit revisions. (1) General.

(a) A chapter 401 source is authorized to make the changes described in this section without a permit revision, providing the following conditions are met:

(i) The proposed changes are not Title I modifications;

(ii) The proposed changes do not result in emissions which exceed those allowable under the permit, whether expressed as a rate of emissions, or in total emissions;

(iii) The proposed changes do not alter permit terms that are necessary to enforce limitations on emissions from units covered by the permit; and

(iv) The facility provides the administrator and the permitting authority with written notification at least seven days prior to making the proposed changes except that written notification of a change made in response to an emergency shall be provided as soon as possible after the event.

(b) Permit attachments. The source and permitting authority shall attach each notice to their copy of the relevant permit.

(2) Section 502 (b)(10) changes. Pursuant to the conditions in subsection (1) of this section, a chapter 401 source is authorized to make section 502 (b)(10) changes (as defined in WAC 173-401-200(28)) without a permit revision.

(a) For each such change, the written notification required under subsection (1)(a)(iv) of this section shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change

in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(b) The permit shield authorized under WAC 173-401-640 shall not apply to any change made pursuant to this paragraph.

(3) SIP authorized emissions trading. Pursuant to the conditions in subsection (1) of this section, a chapter 401 source is authorized to trade increases and decreases in emissions in the permitted facility, where the Washington state implementation plan provides for such emissions trades without requiring a permit revision. This provision is available in those cases where the permit does not already provide for such emissions trading.

(a) Under this subsection (3), the written notification required under subsection (1)(a)(iv) of this section shall include such information as may be required by the provision in the Washington state implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Washington state implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(b) The permit shield described in WAC 173-401-640 shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(4) Emission caps. Upon the request of the permit applicant, the permitting authority shall issue permits that contain terms and conditions, including all terms required under WAC 173-401-600 through 173-401-630 to determine compliance, allowing for the trading of emissions increases and decreases in the chapter 401 source solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The emissions trading provisions shall not be applied to any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(a) Under this paragraph, the written notification required under subsection (1)(a)(iv) of this section shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(b) The permit shield described in WAC 173-401-640 shall extend to terms and conditions that allow such increases and decreases in emissions.

(5) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-722, filed 10/4/93, effective 11/4/93.]

WAC 173-401-724 Off-permit changes. (1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.

(2) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under Appendix A of this chapter. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(4) The change shall not qualify for the permit shield under WAC 173-401-640.

(5) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(6) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-724, filed 10/4/93, effective 11/4/93.]

WAC 173-401-725 Permit modification. (1) Definition. A permit modification is any revision to a chapter 401 permit that cannot be accomplished under provisions for administrative permit amendments under WAC 173-401-720. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(2) Minor permit modification procedures.

(a) Criteria.

(i) Minor permit modification procedures shall be used for those permit modifications that:

(A) Do not violate any applicable requirement;

(B) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the FCAA; and

(II) An alternative emissions limit approved pursuant to regulations promulgated under section 112 (i)(5) of the FCAA;

(E) Are not modifications under any provision of Title I of the FCAA;

(ii) Notwithstanding (a)(i) of this subsection, and subsection (3)(a) of this section, the permitting authority may allow the use of minor permit modification procedures for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that the use of such minor permit modification procedures are explicitly provided for in the Washington state implementation plan or in applicable requirements promulgated by EPA and in effect on April 7, 1993.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of WAC 173-401-510 and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with WAC 173-401-520, of the truth, accuracy, and completeness of the application and that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(iv) Completed forms for the permitting authority to use to notify the administrator and affected states as required under WAC 173-401-810 and 173-401-820.

(c) EPA and affected state notification. Within five working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under WAC 173-401-810 and 173-401-820 to notify the administrator and affected states of the requested permit modification. The permitting authority promptly shall send any notice required under WAC 173-401-820(2) to the administrator.

(d) Notice requirements. Concurrent with the notice to the administrator and affected states, the permitting authority shall submit to the permit register notice of each proposed minor permit modification. Publication in the next available issue of the permit register will signal the beginning of a public comment period of twenty-one days. Each notice must describe the proposed revisions and specify the deadline to file comments with the permitting authority on the proposed modification.

(e) Timetable for issuance. The permitting authority may not issue a final permit modification until after the public comment period ends. The permitting authority may not issue a final permit modification until after EPA's forty-five day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within ninety days of the permitting authority's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five day review period under WAC 173-401-810, whichever is later, the permitting authority shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by WAC 173-401-810.

(f) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files such application provided that those changes requiring the submissions of a notice of construction application have been reviewed and approved by the permitting authority. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in (d) of this subsection, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under WAC 173-401-640 shall not extend to minor permit modifications.

(3) Group processing of minor permit modifications. Consistent with this subsection, the permitting authority may process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under subsection (2)(a) of this section; and

(ii) That collectively are below ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in WAC 173-401-200, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of WAC 173-401-510 and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with WAC 173-401-520, of the truth, accuracy, and completeness of the application and that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under (a)(ii) of this subsection;

(v) Certification, consistent with WAC 173-401-520, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification; and

(vi) Completed forms for the permitting authority to use to notify the administrator and affected states as required under WAC 173-401-810 and 173-401-820.

(c) EPA and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (a)(ii) of this subsection, whichever is earlier, the permitting authority promptly shall meet its obligation under paragraphs WAC 173-401-810 and 173-401-820 to notify the administrator and affected states of the requested permit modifications. The permitting authority shall send any notice required under WAC 173-401-820(2) to the administrator.

(d) Notice of requirements. Concurrent with the notice to the administrator and affected states, the permitting authority shall submit to the permit register notice of group processing of minor permit modifications. Publication in the next available issue of the permit register will signal the beginning of a public comment period of at least twenty-one days. Each notice must describe the proposed revisions and specify the deadline to file comments with the permitting authority on the proposed modification.

(e) Timetable for issuance. The provisions of subsection (2)(e) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in subsection (2)(e) of this section within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five day review period, whichever is later.

(f) Source's ability to make change. The provisions of subsection (2)(f) of this section shall apply to modifications eligible for group processing.

(g) Permit shield. The permit shield under WAC 173-401-640 shall not extend to minor permit modifications eligible for group processing.

(4) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative permit amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-725, filed 10/4/93, effective 11/4/93.]

WAC 173-401-730 Reopening for cause. (1) Standard provisions. Each issued permit shall include provisions stating that the permit shall be reopened and revised under any of the following circumstances:

(a) Additional applicable requirements become applicable to a major chapter 401 source with a remaining permit term of three or more years. Such a reopening shall be

completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to WAC 173-401-620 (2)(j);

(b) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(c) The permitting authority or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(d) The administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Procedures. Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Notice. Reopenings under this section shall not be initiated before a notice of such intent is provided to the chapter 401 source by the permitting authority at least thirty days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-730, filed 10/4/93, effective 11/4/93.]

WAC 173-401-735 Permit appeals. (1) A decision to issue or to deny a final permit, or the terms or conditions of such a permit, may be appealed to the pollution control hearings board under chapter 43.21B RCW and RCW 70.94.161(9). Any appealable decision or determination shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed by filing an appeal with the pollution control hearings board and serving the appeal on the permitting authority within thirty days of receipt, pursuant to RCW 43.21B.310. The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the FCAA, including petitions filed pursuant to 40 CFR 70.8(c) and 70.8(d).

(2) Appealing parties. Parties that may file the appeal referenced in subsection (1) of this section include any person who participated in the public participation process pursuant to WAC 173-401-800.

(3) As provided in chapter 7.16 RCW, a person may seek a writ of mandamus in the event that a permitting authority fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-735, filed 10/4/93, effective 11/4/93.]

Part VIII

THE PERMIT PROCESS FOR GENERAL PERMITS

WAC 173-401-750 General permits. (1) Permit issuance. The permitting authority may, after notice and opportunity for public participation provided under WAC 173-401-800, issue a general permit covering numerous similar sources or emissions units. Any general permit shall comply with all requirements applicable to other chapter 401 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of WAC 173-401-640, the source shall be subject to enforcement action for operation without a chapter 401 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program.

(2) Applications. Chapter 401 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a chapter 401 permit consistent with WAC 173-401-500. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of WAC 173-401-510, provided that such applications meet the requirements of this chapter, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under WAC 173-401-800, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(3) Renewal. General permits being renewed are subject to the same procedural requirements, including public participation, that apply to initial permit issuance. If the general permit is renewed without change, sources covered by the general permit do not need to submit new applications to operate under the authority of the general permit.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-750, filed 10/4/93, effective 11/4/93.]

Part IX

PUBLIC INVOLVEMENT AND PERMIT REVIEW BY EPA AND AFFECTED STATES

WAC 173-401-800 Public involvement. (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a state-wide process to be followed by all permitting authorities.

(2) Public notice.

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

(i) Issuance of a draft permit or permit renewal;

- (ii) Intended denial of a permit application;
- (iii) Issuance of a draft permit modification;
- (iv) Issuance of a draft general permit;
- (v) Scheduling of a public hearing under subsection (4) of this section; and

(vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) Public notice shall be provided by the permitting authority in the newspaper of largest general circulation in the area of the facility applying for a permit. Publication includes paid advertisement, legal notice, or other appropriate format, as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive such notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

- (i) Name and address of the permitting authority;
- (ii) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;
- (iii) A brief description of the business conducted at the facility and activity involved in the permit action;
- (iv) Name, address, and telephone number of a person from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

(v) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and

(vi) A description of the emission change involved in any permit modification.

(e) The permitting authority must make available for public inspection, in at least one location near the chapter 401 source, all nonproprietary information contained in the permit application, draft permit and supporting materials. Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section. This comment period begins on the date of publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later. No proposed permit shall be issued until the public comment period has ended and the

permitting authority has prepared a response to the comments received.

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

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

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-800, filed 10/4/93, effective 11/4/93.]

WAC 173-401-805 Permit register. (1) Permit register. Ecology shall regularly publish and maintain a *Permit Register* that will be distributed to all interested parties that request to be on the mailing list. All permitting authorities will work to ensure the information published in the register is timely.

(2) Content. Besides the actions listed in WAC 173-401-800(2), the register will give notice of the following, as pertains to sources covered under this rule:

- (a) Public meetings or hearings on a draft operating permit;
- (b) Receipt of complete permit applications;
- (c) Permit appeals to the pollution control hearings board;
- (d) Issuance or denial of final permit, permit modifications, or renewals;
- (e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit.

(f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

(3) Mailing list. Ecology shall periodically notify the public of the opportunity to be put on the mailing list for the permit register.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-805, filed 10/4/93, effective 11/4/93.]

WAC 173-401-810 EPA review. (1) Information transfer. The permitting authority shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final chapter 401 permit. The applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the administrator. Upon agreement with the administrator, the permitting authority may submit to the administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding

information shall be provided in computer-readable format compatible with EPA's national data base management system.

(2) Records. Each permitting authority shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the state program complies with the requirements of the FCAA or of 40 CFR part 70.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-810, filed 10/4/93, effective 11/4/93.]

WAC 173-401-820 Review by affected states. (1)

Notice. The permitting authority shall give notice of each draft permit, permit revision, or permit renewal to any affected state on or before the time that the permitting authority provides this or permit revision notice to the public under WAC 173-401-800 and 173-401-805, except to the extent WAC 173-401-725 (2) or (3) requires the timing of the notice to be different.

(2) Response. The permitting authority, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under WAC 173-401-725 (2) and (3), shall notify the administrator and any affected state in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this chapter.

(3) British Columbia notification. The permitting authority shall notify British Columbia of draft permits, permit revisions, or permit renewals at sources located within 100 kilometers of the Washington-British Columbia border. Such notice shall be concurrent with notification of EPA and affected states.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-820, filed 10/4/93, effective 11/4/93.]

WAC 173-401-830 Appendix A—Insignificant activities and emission units. (1) The following activities and emissions units at a chapter 401 source will be considered insignificant by their name or type and do not have to be listed in the permit application:

(a) Retail establishments preparing food for human consumption including cafeterias and kitchen facilities located at a source for providing food service on premises;

(b) Internal combustion engines for propelling or powering a vehicle;

(c) Natural gas or LPG-fired or electrically heated ceramics kilns;

(d) Cleaning and stripping activities and equipment, using solutions having less than one percent VOCs by weight. On metallic substrates, acid solutions not exempted;

(e) Dip-coating operations, using materials with less than one percent VOCs;

(f) Foundry sand molds, unheated and using binders with less than 0.25% free phenol by sand weight;

(g) Chemical or physical analytical laboratory operations or equipment including fume hoods and vacuum pumps;

(h) Comfort air conditioning, not used to remove air contaminants from specific equipment;

(i) Refrigeration systems, not in air pollution control applications;

(j) Housekeeping activities and equipment;

(k) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks;

(l) Natural and forced air vents and stacks for bathroom/toilet facilities;

(m) Brazing, soldering and welding equipment and cutting torches;

(n) Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents;

(o) Atmospheric generators used in connection with metal heat treating processes;

(p) Steam cleaning operations;

(q) Office activities;

(r) Personal care activities;

(s) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing;

(t) Lawn and landscaping activities;

(u) Flares used to indicate danger to the public;

(v) Fire fighting and similar safety equipment and equipment used to train fire fighters;

(w) Recreational fireplaces; and

(x) Materials and equipment used by, and activity related to operation of infirmary, infirmary is not the source's business activity.

(2) The following activities and emissions units at a chapter 401 source will be considered insignificant on the basis of size or production rate, provided that any activity or unit qualifying under this subsection shall be listed in the source's permit application:

(a) Space heaters and nonprocess hot water heaters, natural gas, less than twenty million Btu/hr. or electric;

(b) Internal combustion engines for use as standby power, less than one hundred hrs./yr;

(c) Portable internal combustion engines, used less than thirty-two days/yr. at one facility; and

(d) Printing, using less than two gallon/day of inks, coatings, adhesives, fountain solutions, thinners, retarders, or cleaning solutions.

[Statutory Authority: Chapter 70.94 RCW. 93-20-075 (Order 91-68), § 173-401-830, filed 10/4/93, effective 11/4/93.]

PART X

FEE DETERMINATION AND CERTIFICATION

WAC 173-401-900 Fee determination—Ecology. (1) Fee determination. Ecology shall develop a fee schedule, consistent with the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover ecology's permit administration costs and its share of ecology's development and oversight costs. The fee schedule shall also indicate the shares of ecology's development and oversight costs that are to be collected by each delegated local authority. Opportunities for public participation shall

be afforded throughout the fee determination process, as provided in WAC 173-401-920(1).

(2) Fee eligible activities. The costs of the permit administration and development and oversight activities are fee eligible.

(a) Permit administration. Permit administration costs are those incurred by each permitting authority, including ecology, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Permit administration costs are those enumerated in WAC 173-401-940(1).

(b) Development and oversight. Development and oversight costs are those incurred by ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are those enumerated in WAC 173-401-940(2).

(3) Workload analysis. Ecology shall conduct a workload analysis projecting resource requirements, organized by categories of fee-eligible activities, for the purpose of preparing the budget. Ecology shall, for the two-year period corresponding to each biennium, identify the permit administration and development and oversight activities that it will perform during that biennium. The workload analysis shall include resource requirements for both the direct and indirect costs of the permit administration activities enumerated in WAC 173-401-940(1) and the development and oversight activities enumerated in WAC 173-401-940(2). Ecology shall publish a draft workload analysis together with the draft budget for the following biennium on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). Ecology shall publish a final workload analysis together with the final budget for the following biennium on or before June 30 of each even-numbered year.

(4) Budget development. Ecology shall, for the two-year period corresponding to each biennium, prepare an operating permit program budget for that biennium. The budget shall be based on the resource requirements identified in the workload analysis for the biennium and shall take into account the projected operating permit program account balance at the start of the biennium. Ecology shall publish a draft budget for the following biennium together with the draft workload analysis on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1).

The draft budget shall include data on unit costs (e.g., salary schedules and the indirect cost rate) used in preparing budget projections. Ecology shall publish a final budget together with the final workload analysis for the following biennium on or before June 30 of each even-numbered year.

(5) Allocation methodology.

(a) Development and oversight costs. Ecology shall allocate its development and oversight costs among all permitting authorities, including ecology, based upon the number of permit program sources under the jurisdiction of each permitting authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed by that authority.

(b) Permit administration costs and ecology's share of development and oversight costs. Ecology shall allocate its

permit administration costs and its share of ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered structure based upon:

- (i) The number of sources under its jurisdiction;
- (ii) The complexity of the sources under its jurisdiction; and
- (iii) The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant (for fee calculation) emitted.

The complexity of each source shall be determined based on a ranking system under which ecology assigns to each source a complexity value of 1, 2 or 3, corresponding to ecology's assessment of the relative difficulty of issuing and maintaining an operating permit for that source. The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers shall be equally weighted.

(c) WAC 173-401-300(7) Sources. Ecology shall allocate to permit program sources that qualify for an exemption pursuant to WAC 173-401-300(7) after the effective date of the date of the state operating permit program the portion of ecology's permit administration costs and ecology's share of its development and oversight costs that results from including such sources in the first tier of the allocation structure described in (b)(i) of this subsection. After federally enforceable limits have been established and for so long as a source continues to meet the requirements for exemption under WAC 173-401-300(7), that source shall pay registration program fees pursuant to RCW 70.94.015(2) in lieu of paying operating permit program fees.

(6) Fee schedule. Ecology shall issue annually a fee schedule reflecting the permit administration fee and the share of the development and oversight fee to be paid by each permit program source under its jurisdiction and reflecting the development and oversight assessment to be paid by each permitting authority. The fee schedule shall be based on the information contained in the final source data statements, as provided in WAC 173-401-925(3), for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with WAC 173-401-925. Ecology shall publish the fee schedule for the following year on or before October 31 of each year.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-900, filed 12/30/93, effective 1/30/94.]

WAC 173-401-905 Fee determination—Delegated local authorities. Each delegated local authority shall establish a process for developing, assessing, and collecting fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover its permit administration costs and its share of ecology's development and oversight costs. The fee determination process shall provide opportunity for public participation.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-905, filed 12/30/93, effective 1/30/94.]

WAC 173-401-910 General permit fee determination. Reserved.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-910, filed 12/30/93, effective 1/30/94.]

WAC 173-401-915 Fee collection—Ecology and delegated local authorities. (1) Collection from sources. Ecology and each delegated local authority shall collect fees sufficient to cover the costs of their respective permit administration activities and their share of ecology's development and oversight activities from the permit program sources under their respective jurisdictions.

(2) Dedicated account. All receipts from fees collected by or on behalf of ecology from permit program sources pursuant to RCW 70.94.162 shall be deposited in the air operating permit account created under RCW 70.94.015. All receipts from fees collected by delegated local authorities from permit program sources pursuant to RCW 70.94.162 shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-915, filed 12/30/93, effective 1/30/94.]

WAC 173-401-920 Accountability—Ecology and delegated local authorities. (1) Public participation during fee determination process. Ecology shall provide for public participation in the fee determination process described under WAC 173-401-900, which provision shall include but not be limited to the following:

(a) Ecology shall provide opportunity for public review and comment on each biennial workload analysis and budget.

(b) Ecology shall publish in the *Permit Register* notice of issuance of its draft biennial workload analysis and draft biennial budget and issuance of its annual fee schedule.

(c) Ecology shall make available for public review, on or before February 28 of each even-numbered year, copies of its draft biennial workload analysis and draft biennial budget. Ecology shall make available for public review, on or before October 31 of each year, copies of its annual fee schedule. Ecology shall maintain a mailing list of persons requesting opportunity for review under this subsection or under WAC 173-401-925(1). Ecology may, from time to time, inform the public of the opportunity to be placed on the mailing list and may delete from the list persons who fail to respond to an inquiry regarding continued interest in receiving materials.

(d) Ecology shall provide at least sixty days for public comment on the draft biennial workload analysis and draft biennial budget. Such sixty-day period for comment shall run from the date ecology mails the draft workload analysis and draft budget as provided in (c) of this subsection.

(2) Tracking of revenues, time and expenditures.

(a) Revenues. Ecology shall track revenues on a source-specific basis.

(b) Time and expenditures. Ecology shall track time and expenditures on the basis of source categories and functional categories, except that, as part of a demonstration project undertaken pursuant to RCW 70.94.162, ecology will track time and expenditures on a source-specific basis for at least three but no more than five sources.

(i) Sources will be grouped into five categories, as follows:

- (A) Kraft pulping mills;
- (B) Sulfite pulping mills;
- (C) Metal processing and related industries;
- (D) Sources located on the Hanford Reservation; and
- (E) Other sources, including those sources under the jurisdiction of ecology's central and eastern regional offices.

(ii) Functions will be grouped into several categories and subcategories, as follows:

- (A) Program management and support;
- (B) Program development;
- (C) Permit processing;
- (I) Application assistance and review;
- (II) Preparing draft and final permits;
- (D) Permit management and compliance activities;
- (E) Technical assistance; and
- (F) Outreach and education.

(c) Use of information obtained from tracking revenues, time and expenditures.

(i) Ecology shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during the biennial review provided for under WAC 173-401-900.

(ii) The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(3) Periodic fiscal audits, reports and performance audits. A system of regular, periodic fiscal audits, reports and performance audits shall be conducted in order to evaluate the implementation of the operating permit program by ecology and delegated local authorities. Ecology and each delegated local authority shall gather baseline data, where appropriate, to which the various evaluation criteria will be compared.

(a) Fiscal audits. Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a standard fiscal audit of ecology's and each delegated local authority's operating permit program every other year.

(b) Annual routine performance audits. Ecology and each local authority shall be subject to annual routine performance audits, except that the routine performance audit shall be incorporated into the extensive performance audit, conducted pursuant to subsection (3)(d) of this section, in each year during which an extensive performance audit is conducted. Ecology shall conduct the audits of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible, and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The annual routine performance audits shall incorporate by reference information contained in the relevant annual report and, every other year, in the relevant fiscal audit. The

annual routine performance audits shall address the following questions and measures of performance:

- (i) How many permits lapsed?
 - (A) Explanation of lapse;
 - (B) Comments;
- (ii) What is the total number of permit applications or applications for permit modifications?
 - (A) Average application processing time;
 - (B) Number of disapproved applications and reason for disapproval;
 - (C) Number of permit applications regarding which permitting authority had to return to source to request additional information. Number of times permitting authority had to return to source before permit deemed complete;
- (iii) To how many permits did the EPA object? To what percentage of permits did EPA object (including objection upon petition from public)?
 - (A) Grounds for objection;
 - (B) Agency response;
 - (I) Deficiency remedied;
 - (II) Timeliness (that is to say, within ninety days? Did administrator issue permit?)
- (iv) How many permits were subject to legal/administrative challenge? What percentage of permits were subject to legal/administrative challenge?
 - (A) Challenging party;
 - (B) Grounds for challenge;
 - (I) Substantive;
 - (II) Procedural;
 - (C) Outcome of challenge/prevailing party;
 - (D) Agency response;
- (v) How many administrative enforcement actions were taken for failure to meet permit requirements? How many notices of violation were issued?
 - (A) Date issued; time elapsed since violation discovered;
 - (B) Reason;
 - (C) Result (that is to say, penalties? Orders of agreement? Legal challenge?)
 - (D) Source returned to compliance; date; (if not, explain);
- (vi) What was the frequency of inspections at each facility?
 - (A) Announced;
 - (B) Unannounced;
 - (C) Comparison with baseline data;
- (vii) How many accidental releases, as defined in Section 112(r) of the Federal Clean Air Act, occurred?
 - (A) Reason identified;
 - (B) Agency response;
 - (C) Resulting changes to terms of permit, if any;
 - (D) Comparison with baseline data;
- (viii) What was the amount of the expenditures per permit issuance?
 - (A) Average for program;
 - (B) Average for source category;
- (c) Annual random individual permit review. Five percent of the permits issued by each permitting authority, or if five percent of the permits issued by a permitting authority is equal to or less than one, at least one permit issued by the permitting authority shall be subject to review each year in conjunction with the annual routine performance audit. The permit to be reviewed shall be selected at

random. Ecology shall conduct the review in the case of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The annual random individual permit review shall address the following questions and measures of performance:

- (i) Can reviewer, from information available in permit, determine all requirements to which the source is subject?
- (ii) Does permit include all applicable requirements?
- (iii) Can reviewer, from information available in file, determine compliance status for each emission point? For facility?
- (iv) Does the file include technical reviews, source tests, CEM performance specification tests, permit applications, record of citizen complaints, correspondence with facility and other supporting documentation?
- (v) Are all major emissions points identified in permit?
- (vi) Are all pieces of control equipment identified in permit?
- (vii) Does the permit specify operation and maintenance requirements?
- (viii) Does the permit specify all monitoring, recording, reporting and certification requirements to which source is subject?
- (ix) Are alternative operating scenarios specified in permit? Are the conditions adequately specified?
- (x) Is the permit expiration date noted?
- (xi) Does the permit indicate which requirements are enforceable by federal/state mechanisms? Does the permit state the existence of opportunity for PCHB and other judicial review and opportunity to petition EPA?
- (xii) Were all procedural requirements, including notice to public and affected states, satisfied in issuing/modifying permit?
- (xiii) Did permit writer work with source to identify and consider opportunities for pollution prevention? Were any pollution prevention measures implemented?
- (xiv) Evaluation of overall performance:
 - (A) Is permit complete and understandable? Assess completeness, clarity, etc.;
 - (B) Assess procedural adequacy of permit issuance process.
- (d) Periodic extensive performance audits. Ecology and each local authority shall be subject to extensive performance audits every five years. In addition, ecology or a delegated local authority may be subject to an extensive performance audit more frequently under the conditions of WAC 173-401-920 (3)(e). Ecology shall conduct the audits of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of

any conflicts of interest, to the extent possible and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The extensive performance audits shall incorporate by reference the information contained in the annual reports and the routine performance audits for the relevant period and shall take the place of the routine performance audit every fifth year (that is to say, they gather the routine performance audit information in addition to the information indicated below). The extensive performance audits shall address the following questions and measures of performance:

- (i) What was the number of modifications?
 - (A) Comparison with projection;
 - (B) Applicable to how many sources;
- (ii) Did the permitting authority have personnel adequate to complete workload in timely fashion?
 - (iii) Were the total fees assessed adequate to fund program?
 - (A) Amount of shortfall or overcharge;
 - (B) Explanation;
 - (iv) Were the total fees collected equal to total fees assessed?
 - (A) Amount/percentage of shortfall;
 - (B) Reason for shortfall;
 - (v) Was there a program budget increase or decrease over period?
 - (A) Percentage increase or decrease;
 - (B) Explanation (for example, sources no longer part of operating permit program; new federal requirements implemented through permit program);
 - (vi) What was the number of instances of late fee payment?
 - (A) Agency response;
 - (B) Result (that is to say, was the fee paid? Penalty assessed? Time interval between payment and date fee amount due?)
 - (vii) How many sources were in compliance with all applicable requirements? What percentage of sources were in compliance with all applicable requirements? How do the number and percentage of sources in compliance with all applicable requirements compare with baseline compliance data?
 - (viii) What was the number of businesses availing themselves of services offered by state or local business assistance programs? What level of effort was required to provide assistance?
 - (ix) Were inspection results adequately documented?
 - (x) Were the methods used to ascertain compliance and the frequency of required reporting and related activities appropriate for each facility?
 - (A) Frequency of inspections appropriate for relevant facility;
 - (B) Monitoring requirements appropriate for relevant facility;
 - (xi) Were the operation and maintenance plans adequate?
 - (xii) Were public information efforts adequate?

(A) Public notice for actions relating to permitted sources meets/exceeds statutory requirements;

(B) Agency/permit writers accessible to regulated community, to environmental community, and to stakeholders and general public;

(C) Other outreach efforts;

(xiii) Evaluation of overall performance:

(A) Is permitting authority issuing quality permits?

(B) Is permitting authority issuing/renewing permits in timely fashion?

(C) Is permitting authority ensuring that sources are in compliance with terms and conditions of permit?

(D) Is permitting authority effectively using operating permit as a tool for securing environmental improvements?

(E) Is permitting authority efficiently administering program (includes, in the case of ecology, state-wide program)? Indicate inefficiencies, where these exist;

(F) Evaluation of particular questions identified in annual report/routine performance audit for further examination;

(e) Finding of inadequate administration or need for further evaluation. If, in the process of conducting a fiscal audit, annual routine performance audit, or annual random individual permit review, the entity conducting the audit finds that ecology or a delegated local authority is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit shall be conducted, as provided in WAC 173-401-920 (4)(d).

(f) Preaudit public meeting with auditor. Ecology and each delegated local authority shall provide the opportunity for interested individuals to provide comment to the entity conducting an annual routine performance audit, annual random permit review or extensive performance audit prior to the audit. Such opportunity shall consist of a single, informal meeting at which at least one representative from the regulated community and at least one representative of the environmental community are present. Ecology and each delegated local authority shall provide notice of the preaudit meeting in the *Permit Register*.

(g) Annual reports. Ecology and each delegated local authority shall prepare an annual report evaluating its operating permit program administration. Such report shall include any findings resulting from the relevant fiscal audits, annual routine performance audits, annual random individual permit reviews or periodic extensive performance audits. Ecology shall submit its annual report to the appropriate standing committees of the legislature. Each delegated local authority shall submit its report to its board of directors and to ecology.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-920, filed 12/30/93, effective 1/30/94.]

WAC 173-401-925 Source data statements and petition for review of statements—Ecology and delegated local authorities. (1) Preliminary source data statements. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-401-920 (1)(c), or to those requesting receipt of source data statements under this subsection a preliminary statement of emissions and

other data from that source upon which ecology intends to base its allocation determination under WAC 173-401-900(5) as well as a preliminary statement of emissions and other data from each of the permit program sources under ecology's jurisdiction upon which ecology intends to base its allocation determination. Such preliminary statement shall be provided to the permit program sources and to other persons on the mailing list on or before July 31 of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under subsection (2) of this section regarding the accuracy of the data contained therein.

(2) Petition for review of statement. A permit program source or other individual may petition ecology to review for accuracy the data contained in any preliminary source data statement provided for under subsection (1) of this section. Such petition shall be lodged on or before August 31 of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom ecology may direct inquiries regarding the request. Upon receipt of such a petition, ecology must issue its written response to the petitioner and any other affected party on or before September 30 of each year. Such response shall state the conclusions of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by ecology's response.

(3) Final source data statement. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-491-920 (1)(c), or to those requesting receipt of source data statements under this subsection a final statement of emissions and other data from that source upon which ecology will base its allocation determination under WAC 173-401-900 on or before October 31 of each year. In addition, the final source data statements shall include a final statement of emissions and other data upon which ecology intends to base its allocation determination from each of the permit program sources under its jurisdiction. The final source data statement will be accompanied by a fee schedule reflecting the fee to be paid by each source. Ecology may include with the fee schedule an invoice, or a notice stating that fees listed in the fee schedule must be paid by February 28th of the following year.

(4) Delegated local authorities. Delegated local authorities shall establish procedures for administrative dispute resolution for disputes pertaining to fees.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-925, filed 12/30/93, effective 1/30/94.]

WAC 173-401-930 Fee payment and penalties—Ecology. (1) Fee payment. Each permit program source under ecology's jurisdiction shall pay a fee in the amount reflected in the fee schedule or invoice issued under WAC

173-401-925(3). Such fee shall be due on or before February 28 of each year.

(2) Failure to pay fees. Ecology shall charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee after ninety days past the due date for fee payment. Ecology may charge such penalty in an amount up to three times the source's total original assessed fee.

(3) Other penalties. The penalties authorized in subsection (2) of this section are additional to and in no way prejudice ecology's or a local air authority's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

(4) Facility closure. Sources that permanently cease operations will be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant fiscal year at the time the source ceases operations by the total of three hundred sixty-five calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant fiscal year, had it not ceased operations.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-930, filed 12/30/93, effective 1/30/94.]

WAC 173-401-935 Development and oversight remittance by local authorities—Ecology and delegated local authorities. (1) Collection. On or before October 31 of each year, ecology shall provide to each delegated local authority a statement of the share of ecology's development and oversight costs for which the authority is responsible for collecting from sources under its jurisdiction.

(2) Remittance. Each delegated local authority shall remit to ecology one-half of the share of ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and shall remit to ecology the balance of its share of ecology's development and oversight costs on or before June 30 of each year.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-935, filed 12/30/93, effective 1/30/94.]

WAC 173-401-940 Fee eligible activities—Ecology and delegated local authorities. (1) Permit administration activities shall include:

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspections, testing and other data-gathering activities necessary for the development or a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management; and

(p) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

(2) Development and oversight activities shall include:

(a) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(b) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(c) Administering enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(d) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(e) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(f) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(g) State codification of federal rules or standards for inclusion in operating permits;

(h) Preparation of delegation package and other activities associated with submittal of the state permit program to

the United States Environmental Protection Agency for approval, including ongoing coordination activities;

(i) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(j) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(k) Tracking of time, revenues and expenditures, and accounting activities;

(l) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(m) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(n) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(o) Provision of assistance to small business as required under Section 507 of the Federal Clean Air Act as it exists on the effective date of this act or its later enactment as adopted by reference by the director by rule;

(p) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(q) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(r) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

[Statutory Authority: Chapter 70.94 RCW. 94-02-041 (Order 93-19), § 173-401-940, filed 12/30/93, effective 1/30/94.]

**Chapter 173-405 WAC
KRAFT PULPING MILLS**

WAC

173-405-012	Statement of purpose.
173-405-021	Definitions.
173-405-033	Standards of performance.
173-405-035	Emission standards for sources emitting hazardous air pollutants.
173-405-040	Emission standards.
173-405-045	Creditable stack height and dispersion techniques.
173-405-061	More restrictive emission standards.
173-405-072	Monitoring requirements.
173-405-077	Report of startup, shutdown, breakdown or upset conditions.
173-405-078	Emission inventory.
173-405-086	New source review (NSR).
173-405-087	Prevention of significant deterioration (PSD).
173-405-091	Special studies.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

173-405-011	Statement of policy and purpose. [Order DE 76-35, § 173-405-011, filed 12/28/76. Formerly WAC 18-36-011.] Repealed by 80-11-060 (Order DE 80-15), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-405-031	Specific emission standards. [Order DE 76-35, § 173-405-031, filed 12/28/76. Formerly WAC 18-36-031.] Re-

- pealed by 80-11-060 (Order DE 80-15), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
- 173-405-036 General emission standards and nuisance control measures. [Order DE 76-35, § 173-405-036, filed 12/28/76. Formerly WAC 18-36-036.] Repealed by 80-11-060 (Order DE 80-15), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
- 173-405-041 Emission requirements of prior jurisdictions. [Statutory Authority: RCW 70.94.331, 85-06-048 (Order 84-50), § 173-405-041, filed 3/6/85.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
- 173-405-071 Monitoring and reporting. [Order DE 76-35, § 173-405-071, filed 12/28/76. Formerly WAC 18-36-071.] Repealed by 80-11-060 (Order DE 80-15), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
- 173-405-076 Report of startup, shutdown, breakdown or upset condition. [Order DE 76-35, § 173-405-076, filed 12/28/76. Formerly WAC 18-36-076.] Repealed by 80-04-049 (Order DE 80-7), filed 3/21/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331.
- 173-405-081 Notice of construction. [Order DE 76-35, § 173-405-081, filed 12/28/76. Formerly WAC 18-36-081.] Repealed by 80-04-049 (Order DE 80-7), filed 3/21/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331.
- 173-405-090 Operating permit. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-090, filed 8/20/80.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.
- 173-405-101 Exemption. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-101, filed 8/20/80; Order DE 76-35, § 173-405-101, filed 12/28/76. Formerly WAC 18-36-101.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

WAC 173-405-012 Statement of purpose. These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from kraft pulping mills to provide for the systematic control of air pollution in this industry and for the proper development of the state's natural resources; and

(2) Establish technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-012, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-012, filed 8/20/80.]

WAC 173-405-021 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

(1) "Kraft mill" means any manufacturing facility which uses an alkaline solution containing sodium hydroxide and/or sodium sulfide, and any other chemical pulping facility, except those covered by chapter 173-410 WAC, to produce pulp and/or paper products from wood fibers. For the purposes of this regulation "kraft mill" is equivalent to "source."

(2) "Noncondensibles" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

(3) "Recovery furnace stack" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-021, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 85-06-048 (Order 84-50), § 173-405-021, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-405-021, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-021, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-049 (Order DE 80-7), § 173-405-021, filed 3/21/80; Order DE 76-35, § 173-405-021, filed 12/28/76. Formerly WAC 18-36-021.]

WAC 173-405-033 Standards of performance. The provisions of WAC 173-400-115 "Standards of performance for new sources" shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-033, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-405-033, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-033, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-049 (Order DE 80-7), § 173-405-033, filed 3/21/80.]

WAC 173-405-035 Emission standards for sources emitting hazardous air pollutants. The provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants" shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-035, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-18-010 (Order DE 83-22), § 173-405-035, filed 8/26/83.]

WAC 173-405-040 Emission standards. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no kraft pulp mill shall cause or permit air contaminant emissions in excess of the limits listed below. Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(1) Recovery furnaces.

(a) The particulate emissions from each recovery furnace stack shall not exceed 0.23 grams of particulate per dry cubic meter at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen averaged over three one hour tests.

(b) The TRS emissions from each recovery furnace stack constructed before January 1, 1970, and for recovery furnaces that have direct contact evaporators, shall not exceed 17.5 ppm corrected to eight percent oxygen for a daily average.

(c) The TRS emissions from each recovery furnace constructed after January 1, 1970, which does not have a contact evaporator, shall not exceed 5.0 ppm corrected to eight percent oxygen for a daily average.

(2) Smelt dissolver tank vent. The particulate emissions from smelt dissolver tank vents shall not exceed 0.15 grams

per kilogram (0.30 pounds per ton) of solids fired at the associated recovery furnace.

(3) Lime kilns.

(a) The particulate emission from each lime kiln stack shall not exceed 0.30 grams of particulate per dry cubic meter (0.13 grains/dscf) at standard conditions corrected to ten percent oxygen.

(b) The TRS emissions from any lime kiln stack shall not exceed eighty ppm expressed as hydrogen sulfide for more than two consecutive hours in any one day.

(c) The average daily emission of TRS from any lime kiln stack shall not exceed fifty ppm. After January 1, 1985, TRS emissions from each lime kiln stack shall not exceed twenty ppm corrected to ten percent oxygen for a daily average.

(4) Other TRS emissions units. Noncondensibles from digesters, multiple-effect evaporators and condensate stripper system shall at all times be treated to reduce the emissions of TRS equal to the reduction achieved by thermal oxidation in a lime kiln. A backup treatment system or equivalent approved by ecology must be installed to assure continual treatment.

(5) Other particulate emissions units. The emission of particulates from emissions units other than kraft recovery furnaces, lime kilns, or smelt dissolving tank vents, shall not exceed the following maximums:

(a) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood and wood residue to produce steam and which commenced construction prior to January 1, 1983.

(b) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood and wood residue to produce steam, and which commenced construction after January 1, 1983.

(c) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under (a) or (b) of this subsection.

(6) Opacity. No person shall cause or allow the emission of a plume from any kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than thirty-five percent for more than six consecutive minutes in any sixty minute period, except as described in WAC 173-405-040(7).

No person shall cause or allow the emission of a plume, from any emissions unit other than a kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than twenty percent for more than six consecutive minutes in any sixty minute period, except that these provisions do not apply when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit soot blowing and grate cleaning necessary to the operation of the boiler facility. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ecology shall be advised of the schedule.

There shall be no more than one violation notice issued in any sixty minute period.

These provisions (of WAC 173-405-040(6)) shall not apply when the presence of uncombined water is the only reason for the opacity of the plume to exceed the applicable maximum.

(7) Each mill may petition for, and ecology may establish by regulatory order, alternate opacity limits for a specific kraft recovery furnace or lime kiln, providing:

(a) The mill can demonstrate compliance; with all other applicable emission limits; and

(b) Best practicable operation and maintenance procedures, as approved by ecology, are continuously employed.

(8) Any person electing to apply for exceptions per the provisions of WAC 173-405-040(7) shall submit a program acceptable to ecology. The program shall include the following information: The amount and concentration of suspended particulate material emitted during best practicable operating procedures, opacity recorded at such emission level, the type of equipment and procedures which will be used to demonstrate compliance and the time required for installation of the equipment.

(9) The opacity provisions of this chapter shall apply until an application is received by ecology, petitioning for a revised limit as allowed by WAC 173-405-040(7). After a petition is received, enforcement of the opacity provisions will be stayed until the application is rejected or a new limit is established.

(10) Operation and maintenance. At all times, including periods of abnormal operation and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(11) SO₂.

(a) The emission of sulfur dioxide from any recovery furnace or lime kiln shall not exceed five hundred ppm for an hourly average, corrected to eight percent oxygen for a recovery furnace or to ten percent oxygen for a lime kiln.

(b) The emission of sulfur dioxide from any emissions unit other than a recovery furnace or lime kiln shall not exceed one thousand ppm for an hourly average, corrected to seven percent oxygen for combustion units.

(12) Source testing. To demonstrate compliance with this chapter, the provisions of WAC 173-400-105 shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-405-040, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-040, filed 8/20/80.]

WAC 173-405-045 Creditable stack height and dispersion techniques. The provisions of WAC 173-400-200 shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-045, filed 2/19/91, effective 3/22/91. Statutory Authority:

Chapters 70.94 and 43.21A RCW. 88-01-057 (Order 87-50), § 173-405-045, filed 12/16/87.]

WAC 173-405-061 More restrictive emission standards. Ecology may establish more restrictive emission standards for new mills or for mills expanding existing facilities pursuant to WAC 173-400-110.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-061, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-405-061, filed 4/15/83; Order DE 76-35, § 173-405-061, filed 12/28/76. Formerly WAC 18-36-061.]

WAC 173-405-072 Monitoring requirements. Each mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ecology. Results of the monitoring shall be reported within fifteen days of the end of each calendar month and shall include data as follows:

(1) Particulate: The results of particulate measurements made on each source during the month.

(2) TRS:

(a) The average TRS concentration expressed in units of the standard for each recovery furnace and lime kiln stack.

(b) The date, time and concentration of TRS for each TRS emissions violation and the total numbers of hours that exceed the standard.

(3) Opacity or other continuous monitor:

(a) The date and time of opacity in excess of the standard.

(b) If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required by a regulatory order as an alternate. If an alternate is approved, the date and time of each occurrence in excess of the regulatory order must be reported.

(4) Production: The average daily production of air-dried unbleached pulp.

(5) Other data: Each kraft mill shall furnish, upon request of ecology, such other pertinent data required to evaluate the mill's emissions or emission control program.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-072, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-072, filed 8/20/80.]

WAC 173-405-077 Report of startup, shutdown, breakdown or upset conditions. The provisions of WAC 173-400-105(5) shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-077, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-405-077, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-077, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-049 (Order DE 80-7), § 173-405-077, filed 3/21/80.]

WAC 173-405-078 Emission inventory. The provisions of WAC 173-400-105(1) shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-078, filed 2/19/91, effective 3/22/91. Statutory Authority:

Chapters 43.21A and 70.94 RCW. 89-02-055 (Order 88-39), § 173-405-078, filed 1/3/89; 83-09-036 (Order DE 83-13), § 173-405-078, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-078, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-049 (Order DE 80-7), § 173-405-078, filed 3/21/80.]

WAC 173-405-086 New source review (NSR). The provisions of WAC 173-400-110 shall apply to all new sources and emissions units to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-086, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-405-086, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-060 (Order DE 80-15), § 173-405-086, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-049 (Order DE 80-7), § 173-405-086, filed 3/21/80.]

WAC 173-405-087 Prevention of significant deterioration (PSD). The provisions of WAC 173-400-141 shall apply to all new major sources and major modifications to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-087, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-057 (Order 87-50), § 173-405-087, filed 12/16/87.]

WAC 173-405-091 Special studies. Ecology may require such additional special studies relevant to process emissions and establish completion dates as it determines necessary.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-405-091, filed 2/19/91, effective 3/22/91; Order DE 76-35, § 173-405-091, filed 12/28/76. Formerly WAC 18-36-091.]

Chapter 173-406 WAC ACID RAIN REGULATION

WAC

PART I GENERAL PROVISIONS

173-406-100	Acid rain program general provisions.
173-406-101	Definitions.
173-406-102	Measurements, abbreviations, and acronyms.
173-406-103	Applicability.
173-406-104	New units exemption.
173-406-105	Retired units exemption.
173-406-106	Standard requirements.

PART II DESIGNATED REPRESENTATIVE

173-406-200	Designated representative.
173-406-201	Submissions.
173-406-202	Objections.

PART III APPLICATIONS

173-406-300	Acid rain permit applications.
173-406-301	Requirement to apply.
173-406-302	Information requirements for acid rain permit applications.
173-406-303	Permit application shield and binding effect of permit application.

PART IV
COMPLIANCE PLAN

173-406-400	Acid rain compliance plan and compliance options.
173-406-401	General.
173-406-402	Repowering extensions.

PART V
PERMIT CONTENTS

173-406-500	Acid rain permit.
173-406-501	Contents.
173-406-502	Permit shield.

PART VI
PERMIT ISSUANCE

173-406-600	Acid rain permit issuance procedures.
173-406-601	General.
173-406-602	Completeness.
173-406-603	Statement of basis.
173-406-604	Issuance of acid rain permits.
173-406-605	Acid rain permit appeal procedures.

PART VII
PERMIT REVISIONS

173-406-700	Permit revisions.
173-406-701	General.
173-406-702	Permit modifications.
173-406-703	Fast-track modifications.
173-406-704	Administrative permit amendment.
173-406-705	Automatic permit amendment.
173-406-706	Permit reopenings.

PART VIII
COMPLIANCE CERTIFICATION

173-406-800	Compliance certification.
173-406-801	Annual compliance certification report.
173-406-802	Units with repowering extension plans.

PART IX
NITROGEN OXIDES

173-406-900	Nitrogen oxides emission reduction program.
-------------	---

PART X
SULFUR DIOXIDE OPT-IN

173-406-950	Sulfur dioxide opt-ins.
-------------	-------------------------

PART I
GENERAL PROVISIONS

WAC 173-406-100 Acid rain program general provisions.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-100, filed 11/23/94, effective 12/24/94.]

WAC 173-406-101 Definitions. The terms used in this regulation shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq. as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. 7651, et seq. (November 15, 1990,) and in this section as follows:

(1) "Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with WAC 173-406-400 or regulations implementing section 407 of the act.

(2) "Acid Rain emissions limitation" means:

(a) For the purposes of sulfur dioxide emissions:

(i) The tonnage equivalent of the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year;

(ii) As adjusted:

(A) By allowances allocated by the administrator pursuant to section 403, section 405 (a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and section 406 of the act;

(B) By allowances allocated by the administrator pursuant to subpart D of 40 CFR part 72; and thereafter

(C) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline pursuant to 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

(b) For purposes of nitrogen oxides emissions, the applicable limitation established by regulations promulgated by the administrator pursuant to section 407 of the act, as modified by an acid rain permit application submitted to the permitting authority, and an acid rain permit issued by the permitting authority, in accordance with regulations implementing section 407 of the act.

(3) "Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

(4) "Acid rain permit or permit" means the legally binding written document, or portion of such document, issued by the permitting authority (following an opportunity for appeal pursuant to 40 CFR part 78, chapter 43.21 RCW or other administrative appeals procedures established by the permitting authority), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(5) "Acid rain program" means the National Sulfur Dioxide and Nitrogen Oxides Air Pollution Control and Emissions Reduction Program established in accordance with Title IV of the act, WAC 173-406-100 through 173-406-1000, 40 CFR parts 72, 73, 75, 77, and 78, and regulations implementing sections 407 and 410 of the act.

(6) "Act" means the Clean Air Act, 42 U.S.C. § 7401, et seq. as amended by Public Law No. 101-549 (November 15, 1990).

(7) "Actual SO₂ emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the National Allowance Data Base, the "1985 actual SO₂ emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

(8) "Administrator" means the Administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

(9) "Affected source" means a source that includes one or more affected units.

(10) "Affected state" means a state whose boundary is within fifty statute miles of an affected source within the state of Washington.

(11) "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.

(12) "Affiliate" shall have the meaning set forth in section 2 (a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b (a)(11), as of November 15, 1990.

(13) "Allocate or allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

(14) "Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

(15) "Allowance deduction, or deduct when referring to allowances," means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount to account for the number of the tons of SO₂ emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data pursuant to 40 CFR part 75, or for any other allowance surrender obligations of the acid rain program.

(16) "Allowances held or hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

(17) "Allowance tracking system or ATS" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

(18) "Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

(19) "Allowance transfer deadline" means midnight of January 30th or, if January 30th is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

(20) "Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

(21) "Auxiliary firing" means the combustion of additional fuel downstream of a gas turbine for the purpose of adding thermal energy to the exhaust gases which can be recovered in a waste heat recovery unit.

(22) "Basic Phase II allowance allocations" means:

(a) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j).

(b) For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j).

(23) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

(24) "Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters under the acid rain program.

(25) "Certifying official" means:

(a) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(b) For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

(c) For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

(26) "Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank."

(27) "Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

(28) "Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL."

(29) "Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

(30) "Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

(31) "Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within eighteen months, a continuous program of construction. The permitting authority may, upon application by the owner or operator, extend the period for completion at its discretion.

(32) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

(33) "Common stack" means the exhaust of emissions from two or more units through a single flue.

(34) "Compliance certification" means a submission to the administrator or the permitting authority that is required by WAC 173-406-100 through 173-406-1000, by 40 CFR part 72, 73, 75, 77, or 78, or by regulations implementing sections 407 or 410 of the act to report an affected source's or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and

verified by the designated representative in accordance with subpart B of 40 CFR part 72, WAC 173-406-800, and the acid rain program regulations generally.

(35) "Compliance plan, for purposes of the acid rain program," means the document submitted for an affected source in accordance with WAC 173-406-301 and 173-406-302 specifying the method(s) (including one or more acid rain compliance options under WAC 173-406-402 or regulations implementing section 407 of the act) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

(36) "Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31 (a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31st, allowances available for use by the unit in the current calendar year and, after December 31st until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

(37) "Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

(38) "Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

(39) "Control officer" means the air pollution control officer of a local air pollution control authority which is constituted under chapter 70.94 RCW.

(40) "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in 40 CFR part 70 or in any other regulations implementing Title V of the act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program. An alternate designated representative is also included in this definition.

(41) "Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials ASTM D975-91, "*Standard Specification for Diesel Fuel Oils.*"

(42) "Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

(43) "Director" means the director of the Washington department of ecology.

(44) "Draft acid rain permit or draft permit" means the version of the acid rain permit, or the acid rain portion of an operating permit, that the permitting authority offers for public comment.

(45) "Ecology" means the Washington department of ecology.

(46) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR part 75.

(47) "EPA" means the United States Environmental Protection Agency.

(48) "Excess emissions" means:

(a) Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and

(b) Any tonnage of nitrogen oxides emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

(49) "Executive director" means the executive director of a local air pollution control authority which is constituted under chapter 70.94 RCW.

(50) "Existing unit" means a unit (including a unit subject to section 111 of the act) that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than twenty-five MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of twenty-five MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an "existing unit."

(51) "Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

(52) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(53) "Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year.

(54) "Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-90a, "*Standard Specification for Fuel Oils,*" and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

(55) "Gas-fired" means the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least ninety percent of the average annual heat input during the previous three calendar years and for at least eighty-five percent of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any.

(56) "General account" means an allowance tracking system account that is not a unit account.

(57) "Generator" means a device that produces electricity and was or would have been required to be reported as a

generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

(58) "Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

(59) "Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(60) "Independent power production facility (IPP)" means a source that:

(a) Is nonrecourse project financed, as defined by the Secretary of Energy at 10 CFR part 715;

(b) Is used for the generation of electricity, eighty percent or more of which is sold at wholesale; and

(c) Is a new unit required to hold allowances under Title IV of the act;

(d) Provided that direct public utility ownership of the equipment comprising the facility does not exceed fifty percent.

(61) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(a) For the life of the unit;

(b) For a cumulative term of no less than thirty years, including contracts that permit an election for early termination; or

(c) For a period equal to or greater than twenty-five years or seventy percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(62) "Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

(63) "National Allowance Data Base or NADB" means the data base established by the administrator under section 402 (4)(C) of the act.

(64) "Natural person" means an individual human being and not a firm, public or private corporation, association, partnership, political subdivision, municipality, or governmental agency corporate entity or partnership.

(65) "Natural gas" means a naturally occurring fluid mixture of hydrocarbons containing little or no sulfur (e.g., methane, ethane, or propane), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure conditions under ordinary conditions of sixty-eight degrees Fahrenheit and one atmosphere (seven hundred sixty millimeters of mercury).

(66) "New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of twenty-five MWe or less or that is a simple combustion turbine.

(67) "Offset plan" means a plan pursuant to 40 CFR part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

(68) "Oil-fired" means the combustion of: Fuel oil for more than ten percent of the average annual heat input during the previous three calendar years or for more than fifteen percent of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel, other than coal or any other coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), for the remaining heat input, if any.

(69) "Operating permit" means a permit issued under 40 CFR part 70 and any other regulations implementing Title V of the act.

(70) "Owner" means any of the following persons:

(a) Any holder of any portion of the legal or equitable title in an affected unit;

(b) Any holder of a leasehold interest in an affected unit; or

(c) Any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

(d) With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

(71) "Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit or affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected source.

(72) "Permit revision" means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in WAC 173-406-700.

(73) "Permitting authority" means the Washington department of ecology, the Washington energy facility site evaluation council, local air authority or other agency authorized under chapter 70.94 RCW and approved by EPA to carry out a permit program under this chapter.

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

(75) "Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

(76) "Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to thirty-three percent of the maximum design heat input

capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR part 72.

(77) "Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

(78) "Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

- (a) A power sales agreement;
- (b) A state regulatory authority order requiring a utility

to:

- (i) Enter into a power sales agreement with the facility;
- (ii) Purchase from the facility; or
- (iii) Enter into arbitration concerning the facility for the

purpose of establishing terms and conditions of the utility's purchase of power;

(c) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992, or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source is executed on or before November 15, 1992; or

(d) A utility competitive bid solicitation that has resulted in the selection of the qualifying facility of independent power production facility as the winning bidder.

(79) "Power sales agreement" means a legally binding agreement between a qualifying facility, an independent power production facility, or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

(80) "Primary fuel or primary fuel supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

(81) "Proposed acid rain permit or proposed permit" means the version of an acid rain permit that the permitting authority submits to the administrator after the public comment period, but prior to completion of the EPA permit review period under 40 CFR 70.8(c).

(82) "Qualifying facility (QF)" means a "qualifying small power production facility" within the meaning of section 3 (17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of section 3 (18)(B) of the Federal Power Act.

(83) "Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990, without regard to changes to that commitment so long as:

(a) The identity of the electric output purchaser, the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and

(b) The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

(84) "Qualifying repowering technology" means:

(a) Replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or

pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or

(b) Any oil-fired or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(85) "Receive or receipt of" means the date the administrator or the permitting authority comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the permitting authority in the regular course of business.

(86) "Recordation, record, or recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

(87) "Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct noncompliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

(88) "Secretary of Energy" means the Secretary of the United States Department of Energy or the secretary's duly authorized representative.

(89) "Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

(90) "Solid waste incinerator" means a source as defined in section 129 (g)(1) of the act.

(91) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the act. For purposes of section 502(c) of the act, a "source," including a "source" with multiple units, shall be considered a single "facility."

(92) "Stack" means a structure that includes one or more flues and the housing for the flues.

(93) "State" means one of the forty-eight contiguous states and the District of Columbia and includes any nonfederal authorities, including local agencies, interstate associations, and state-wide agencies with approved state operating permit programs. The term "state" shall have its conventional meaning where such meaning is clear from the context.

(94) "State operating permit program" means an operating permit program that the administrator has approved as meeting the requirements of Titles IV and V of the act and 40 CFR parts 70 and 72.

(95) "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(a) In person;

(b) By United States Postal Service certified mail with the official postmark or, if service is by the administrator or the permitting authority, by any other mail service by the United States Postal Service; or

(c) By other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(96) "Ton or tonnage" means any "short ton" (i.e., two thousand pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR part 75, with any remaining fraction of a ton equal to or greater than one-half ton deemed to equal one ton and any fraction of a ton less than one-half ton deemed not to equal any ton.

(97) "Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

(98) "Total installed net output capacity" means the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

(99) "Unit" means a fossil fuel-fired combustion device.

(100) "Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

(101) "Utility" means any person that sells electricity.

(102) "Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

(103) "Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local-level, state-level, or federal-level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

(104) "Utility unit" means a unit owned or operated by a utility:

(a) That serves a generator that produces electricity for sale; or

(b) That during 1985, served a generator that produced electricity for sale.

(c) Notwithstanding (a) and (b) of this subsection, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after Novem-

ber 15, 1990, is not a utility unit for purposes of the acid rain program.

(d) Notwithstanding (a) and (b) of this subsection, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electrical output capacity and more than twenty-five MWe output to any power distribution system for sale.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-101, filed 11/23/94, effective 12/24/94.]

WAC 173-406-102 Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in this regulation are defined as follows:

ASTM - American Society for Testing and Materials.

ATS - Allowance Tracking System.

Btu - British thermal unit.

CAAA - Clean Air Act Amendments.

CFR - Code of Federal Regulations.

DOE - Department of Energy.

IPP - Independent power production facility.

mmBtu - million Btu.

MWe - megawatt electrical.

NADB - National Allowance Data Base.

QF - Qualifying facility.

RCW - Revised Code of Washington.

SO₂ - sulfur dioxide.

WAC - Washington Administrative Code.

WDOE - Washington Department of Ecology, hereinafter referred to as ecology.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-102, filed 11/23/94, effective 12/24/94.]

WAC 173-406-103 Applicability. (1) The provisions of this chapter apply in all areas of the state of Washington. An authority may enforce this chapter and may also adopt more stringent 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. Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

(a) A unit listed in Table 1 of 40 CFR 73.10(a).

(b) An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under subsection (2) of this section.

(c) A utility unit, except a unit under subsection (2) of this section, that:

(i) Is a new unit;

(ii) Did not serve a generator with a nameplate capacity greater than twenty-five MWe on November 15, 1990, but serves such a generator after November 15, 1990;

(iii) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;

(iv) Was an exempt cogeneration facility under subsection (2)(d) of this section but during any three calendar year period after November 15, 1990, sold, to a utility power

distribution system, an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs (i.e., twenty-five MWe times eight thousand seven hundred sixty hours) electric output, on a gross basis;

(v) Was an exempt qualifying facility under subsection (2)(e) of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(vi) Was an exempt independent power production facility under subsection (2)(f) of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(vii) Was an exempt solid waste incinerator under subsection (2)(g) of this section but during any three calendar year period after November 15, 1990, consumes twenty percent or more (on a Btu basis) fossil fuel.

(2) The following types of units are not affected units, and are not subject to the requirements of the acid rain program:

(a) A simple combustion turbine that commenced operation before November 15, 1990.

(b) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than twenty-five MWe.

(c) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(d) A cogeneration facility which:

(i) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

(ii) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

(e) A qualifying facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least fifteen percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding one hundred thirty percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

(f) An independent power production facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least fifteen percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding one hundred thirty percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

(g) A solid waste incinerator, if more than eighty percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than eighty percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than eighty percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes twenty percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.

(h) A nonutility unit which is not a utility unit as defined at WAC 173-406-101.

(3) A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the permitting authority, unless the petition is found to have contained significant errors or omissions.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-103, filed 11/23/94, effective 12/24/94.]

WAC 173-406-104 New units exemption. (1) Applicability. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of twenty-five MWe or less and burns only fuels with a sulfur content of five hundredths of one percent or less by weight, as determined in accordance with subsection (4)(a) of this section.

(2) Petition for written exemption. The designated representative, authorized in accordance with subpart B of 40 CFR part 72, of a source that includes a unit under subsection (1) of this section may petition the permitting authority for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program. The petition shall be submitted on a form approved by the permitting authority which includes the following elements:

- (a) Identification of the unit.
- (b) The nameplate capacity of each generator served by the unit.
- (c) A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection (1) of this section.
- (d) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.
- (e) The special provisions in subsection (4) of this section.
- (f) The name of the designated representative, his or her signature, and the date of signature.

(3) The permitting authority's action.

(a)(i) The permitting authority will issue, for any unit meeting the requirements of subsections (1) and (2) of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR 72.7 (c)(1)(i) and (d)(1).

(ii) The exemption shall take effect on January 1st of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subsection (3)(b) of this section; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

(b) The permitting authority will consider and either issue or deny a written exemption under subsection (3)(a) of this section by applying the procedures for acid rain permit issuance in WAC 173-406-600 as if the petition for written exemption were a permit application, with regard to completeness determination, draft written exemption, administrative record, statement of basis, public notice and comment period, public hearing, proposed written exemption, written exemption issuance, exemption revision and appeal procedures as provided by WAC 173-406-600 and 173-406-700. No provision under WAC 173-406-600 concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

(c) A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subsection (4)(c) of this section.

(4) Special provisions.

(a) The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

(i) For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods

ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90.

(ii) For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be documented to be five hundredths of one percent or less by weight.

(iii) For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92; provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90.

(b) The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under (a)(i) and (iii) of this subsection, a copy of documentation produced under (a)(ii) of this subsection, and a copy of the purchase agreements for the fuel under (a) of this subsection, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

(c) On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of five hundredths of one percent by weight (as determined in accordance with (a) of this subsection), or twenty-four months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of twenty-five MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:

(i) Notwithstanding WAC 173-406-301 (2) and (3), the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this section.

(ii) For purposes of applying monitoring requirements under 40 CFR part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection (1) of this section.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-104, filed 11/23/94, effective 12/24/94.]

WAC 173-406-105 Retired units exemption. (1) Applicability. This section applies to any affected unit that is retired prior to the issuance (including renewal) of an acid rain permit for the unit as a final agency action.

(2) Petition for written exemption.

(a) The designated representative, authorized in accordance with subpart B of 40 CFR part 72, of a source that includes a unit under subsection (1) of this section may petition the permitting authority for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program.

(b) A petition under this section shall be submitted on or before:

(i) The deadline for submitting an acid rain permit application for Phase II; or

(ii) If the unit has a Phase II acid rain permit, the deadline for reapplying for such permit.

(c) The petition under this section shall be submitted on a form approved by the permitting authority which includes the following elements:

(i) Identification of the unit;

(ii) The applicable deadline under (b) of this subsection;

(iii) The actual or expected date of retirement of the unit;

(iv) The following statement: "I certify that this unit ('is' or 'will be', as applicable) permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date";

(v) A description of any actions that have been or will be taken and provide the basis for the certification in (c)(iv) of this subsection; and

(vi) The special provisions in subsection (4) of this section.

(vii) The name of the designated representative, his or her signature, and the date of signature.

(3) Permitting authority's action.

(a)(i) The permitting authority will issue, for any unit meeting the requirements of subsections (1) and (2) of this section, a written exemption from the requirements of WAC 173-406-100 through 173-406-800 and 40 CFR part 72 except for the requirements specified in this section and 40 CFR 72.1 through 72.6, 40 CFR 72.8, and 40 CFR 72.10 through 72.13.

(ii) The exemption shall take effect on January 1st of the year following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with (b) of this subsection; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of WAC 173-406-100 through 173-406-800 and 40 CFR part 72 concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

(b) The permitting authority will consider and either issue or deny a written exemption under (a) of this subsection by applying the procedures for acid rain permit issuance in WAC 173-406-600 as if the petition for written exemption were a permit application, with regard to completeness determination, draft written exemption, administrative record, statement of basis, public notice and comment period, public hearing, proposed written exemption, written exemption issuance, exemption revision and appeal procedures as provided by WAC 173-406-600 and 173-406-700. No provision under WAC 173-406-600 concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

(c) A written exemption issued under this section shall have a term of five years, except as provided in subsection (4)(c) of this section.

(4) Special provisions.

(a) A unit exempted under this section shall not emit any sulfur dioxide and nitrogen dioxide starting on the date it is exempted.

(b) The owners and operators of a unit exempted under this section shall comply with monitoring requirements in accordance with 40 CFR part 75 and will be allocated allowances in accordance with 40 CFR part 73.

(c) A unit exempted under this section shall not resume operation unless the designated representative of the source that includes the unit submits an acid rain permit application for the unit not less than twenty-four months prior to the later of January 1, 2000, or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an acid rain permit application is submitted or is required to be submitted under this paragraph, the unit shall no longer be exempted under this section and shall be subject to all requirements of WAC 173-406-100 through 173-406-800 and 40 CFR part 72.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-105, filed 11/23/94, effective 12/24/94.]

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 CFR 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 CFR 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 CFR 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 CFR 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 CFR 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 CFR 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 CFR part 77; and

(ii) Comply with the terms of an approved offset plan, as required by 40 CFR 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 CFR 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 CFR 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 CFR 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 CFR part 75 (including 40 CFR 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 CFR 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. 94-23-127 (Order 94-23), § 173-406-106, filed 11/23/94, effective 12/24/94.]

PART II DESIGNATED REPRESENTATIVE

WAC 173-406-200 Designated representative.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-200, filed 11/23/94, effective 12/24/94.]

WAC 173-406-201 Submissions. (1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with subpart B of 40 CFR part 72 and, concurrently, shall submit a copy to the permitting authority. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

(2) Each submission under the acid rain program shall be submitted, signed, certified and dated by the designated representative for all sources on behalf of which the submission is made.

(3) In each submission under the acid rain program, the designated representative shall certify, by his or her signature:

(a) The following statement, which shall be included verbatim in such submission: "I am authorized to make this

submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

(b) The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) The permitting authority will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subsections (2) and (3) of this section.

(5)(a) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

(i) By the date of submission, of any acid rain program submissions by the designated representative;

(ii) Within ten business days of receipt of a determination, of any written determination by the administrator or the permitting authority; and

(iii) Provided that the submission or determination covers the source or the unit.

(b) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under (a) of this subsection, unless the owner or operator expressly waives the right to receive such a copy.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-201, filed 11/23/94, effective 12/24/94.]

WAC 173-406-202 Objections. (1) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the permitting authority concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the permitting authority, under the acid rain program. In the event of such communication, the permitting authority is not required to stay any submission or the effect of any action or inaction under the acid rain program.

(2) The permitting authority will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-202, filed 11/23/94, effective 12/24/94.]

**PART III
APPLICATIONS**

WAC 173-406-300 Acid rain permit applications.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-300, filed 11/23/94, effective 12/24/94.]

WAC 173-406-301 Requirement to apply. (1) Duty to apply. The designated representative of any source with an affected unit shall submit a complete acid rain permit application by the applicable deadline in subsections (2) and (3) of this section, and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its Acid Rain Program requirements.

(2) Deadlines.

(a) For any source with an existing unit described under WAC 173-406-103 (1)(b), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority on or before January 1, 1996.

(b) For any source with a new unit described under WAC 173-406-103 (1)(c)(i), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority at least twenty-four months before the later of January 1, 2000, or the date on which the unit commences operation.

(c) For any source with a unit described under WAC 173-406-103 (1)(c)(ii), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority at least twenty-four months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than twenty-five MWe.

(d) For any source with a unit described under WAC 173-406-103 (1)(c)(iii), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority at least twenty-four months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

(e) For any source with a unit described under WAC 173-406-103 (1)(c)(iv), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority before the later of January 1, 1998, or March 1st of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand MWe-hrs actual electric output (on a gross basis).

(f) For any source with a unit described under WAC 173-406-103 (1)(c)(v), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority before the later of January 1, 1998, or March 1st of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

(g) For any source with a unit described under WAC 173-406-103 (1)(c)(vi), the designated representative shall submit a complete acid rain permit application governing

such unit to the permitting authority before the later of January 1, 1998, or March 1st of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

(h) For any source with a unit described under WAC 173-406-103 (1)(c)(vii), the designated representative shall submit a complete acid rain permit application governing such unit to the permitting authority before the later of January 1, 1998, or March 1st of the year following the three calendar year period in which the incinerator consumed twenty percent or more fossil fuel (on a Btu basis).

(3) Duty to reapply. The designated representative shall submit a complete acid rain permit application for each source with an affected unit at least six months or more but not to exceed eighteen months, as may be approved by the permitting authority, prior to the expiration of an existing acid rain permit governing the unit to ensure that the existing acid rain permit does not expire prior to renewal.

(4) The original and three copies of all permit applications shall be submitted to the permitting authority.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-301, filed 11/23/94, effective 12/24/94.]

WAC 173-406-302 Information requirements for acid rain permit applications. Complete permit application. A complete acid rain permit application shall be submitted on a form approved by the permitting authority, which includes the following elements:

(1) Identification of the affected source for which the permit application is submitted;

(2) Identification of each affected unit at the source for which the permit application is submitted;

(3) A complete compliance plan for each unit, in accordance with WAC 173-406-400;

(4) The standard requirements under WAC 173-406-106;

(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification; and

(6) The name of the designated representative, his or her signature, and the date of signature.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-302, filed 11/23/94, effective 12/24/94.]

WAC 173-406-303 Permit application shield and binding effect of permit application. Permit application shield.

(1) Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under WAC 173-406-106 (1)(b) and 173-406-301(1); provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the permitting authority, necessary to issue a permit.

(2) Prior to the date on which an acid rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid

rain permit application shall be deemed to be operating in compliance with the acid rain program.

(3) A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-303, filed 11/23/94, effective 12/24/94.]

PART IV COMPLIANCE PLAN

WAC 173-406-400 Acid rain compliance plan and compliance options.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-400, filed 11/23/94, effective 12/24/94.]

WAC 173-406-401 General. (1) For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

(a) For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance sub-account (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with WAC 173-406-400, one or more of the acid rain compliance options.

(b) For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by regulations implementing section 407 of the act or shall specify one or more acid rain compliance options, in accordance with section 407 of the act and regulations implementing section 407.

(2) The compliance plan may include a multi-unit compliance option under WAC 173-406-402 or section 407 of the act or regulations implementing section 407.

(a) A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(i) Such plan is signed, certified and dated by the designated representative for each source with an affected unit governed by such plan; and

(ii) A complete permit application is submitted covering each unit governed by such plan.

(b) The permitting authority's approval of a plan under (a) of this subsection that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

(3) Conditional approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with WAC 173-406-400, any acid rain compliance option for conditional approval; provided that an acid rain compliance option under section 407 of the act may be conditionally proposed only to the extent provided in regulations implementing section 407 of the act.

(a) To activate a conditionally approved acid rain compliance option, the designated representative shall notify

the permitting authority in writing that the conditionally approved compliance option will actually be pursued beginning January 1st of a specified year. Such notification shall be subject to the limitations on activation under WAC 173-406-402 and regulations implementing section 407 of the act. If the conditionally approved compliance option includes a plan described in subsection (2)(a) of this section, the designated representative of each source governed by the plan shall sign and certify the notification.

(b) The notification under subsection (3)(a) of this section shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall not be activated after the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

(c) Upon submission of a notification meeting the requirements of (a) and (b) of this subsection, the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

(d) A notification meeting the requirements of (a) and (b) of this subsection will revise the unit's permit in accordance with WAC 173-406-704 (administrative permit amendment).

(4) Termination of compliance option.

(a) The designated representative for a unit may terminate an acid rain compliance option by notifying the permitting authority in writing that an approved compliance option will be terminated beginning January 1st of a specified year. Such notification shall be subject to the limitations on termination under WAC 173-406-402 and regulations implementing section 407 of the act. If the compliance option includes a plan described in subsection (2)(a) of this section, the designated representative for each source governed by the plan shall sign and certify the notification.

(b) The notification under (a) of this subsection shall specify the calendar year for which the termination will take effect.

(c) Upon submission of a notification meeting the requirements of (a) and (b) of this subsection, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

(d) A notification meeting the requirements of (a) and (b) of this subsection will revise the unit's permit in accordance with WAC 173-406-704 (administrative permit amendment).

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-401, filed 11/23/94, effective 12/24/94.]

WAC 173-406-402 Repowering extensions. (1) Applicability.

(a) This section shall apply to the designated representative of:

(i) Any existing affected unit that is a coal-fired unit and has a 1985 actual SO₂ emissions rate equal to or greater than one and two tenths lbs/mmBtu; or

(ii) Any new unit that will be a replacement unit, as provided in subsection (2)(b) of this section, for a unit meeting the requirements of (a)(i) of this subsection; or

(iii) Any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Secretary of Energy.

(b) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emissions limitations for sulfur dioxide.

(2) The designated representative of any unit meeting the requirements of subsection (1)(a)(i) of this section may include in the unit's acid rain permit application a repowering extension plan that includes a demonstration that:

(a) The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or

(b) The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

(3) In order to apply for a repowering extension, the designated representative of a unit under subsection (1) of this section shall:

(a) Submit to the permitting authority, by January 1, 1996, a complete repowering extension plan;

(b) Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the permitting authority; and

(c) If the repowering extension plan is submitted for conditional approval, submit to the permitting authority by December 31, 1997, a notification to activate the plan in accordance with WAC 173-406-401(3).

(4) Contents of repowering extension plan. A complete repowering extension plan shall include the following elements:

(a) Identification of the existing unit governed by the plan.

(b) The unit's federally approved state implementation plan sulfur dioxide emissions limitation.

(c) The unit's 1995 actual SO₂ emissions rate, or best estimate of the actual emissions rate; provided that the actual emissions rate is submitted to the permitting authority by January 30, 1996.

(d) A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:

(i) Completion of design engineering;

(ii) For a plan under subsection (2)(a) of this section, removal of the existing unit from operation to install the qualified repowering technology;

(iii) Commencement of construction;

(iv) Completion of construction;

(v) Start-up testing;

(vi) For a plan under subsection (2)(b) of this section, shutdown of the existing unit; and

(vii) Commencement of commercial operation of the repowering technology.

(e) For a plan under subsection (2)(b) of this section:

(i) Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

(ii) Certification that the new unit will replace the existing unit.

(iii) Certification that the new unit has the same designated representative as the existing unit.

(iv) Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

(f) The special provisions of subsection (7) of this section.

(5) The permitting authority's action on repowering extension plan.

(a) The permitting authority will not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the permitting authority approves such plan subject to the conditional determination of the administrator.

(b) Permit issuance.

(i) Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the permitting authority that such plan meets the requirements of this section, the permitting authority will issue the acid rain portion of the operating permit including:

(A) The approved repowering extension plan; and

(B) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

(ii) Except as otherwise provided in subsection (6) of this section, the repowering extension shall be in effect starting January 1, 2000, and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology; provided that the repowering extension shall end no later than December 31, 2003.

(iii) The portion of the operating permit specifying the repowering extension and other requirements under (b)(i) of this subsection shall be subject to the administrator's final determination, under 40 CFR 72.44 (d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

(c) Allowance allocation. Allowances will be allocated in accordance with 40 CFR 72.44 (f)(3) and (g).

(6) Failed repowering projects.

(a)(i) If, at any time before the end of the repowering extension under subsection (5)(b)(ii) of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under WAC 173-406-802(4) that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan

before completion of construction or start-up testing, the designated representative may submit to the permitting authority a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the administrator, the unit shall not be deemed in violation of the act because of such a termination and the permitting authority will revise the operating permit in accordance with (a)(ii) of this subsection.

(ii) Regardless of whether notification under (a)(i) of this subsection is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under WAC 173-406-802(4).

(b) The designated representative of a unit governed by an approved repowering extension plan may submit to the permitting authority a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the administrator.

(i) The unit shall not be deemed in violation of the act because of such failure to achieve the emissions reduction limitations;

(ii) The permitting authority will revise the acid rain portion of the operating permit in accordance with the following:

(A) The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

(B) The repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003.

(7) Special provisions.

(a) Emissions limitations.

(i) Sulfur dioxide. Allowances allocated during the repowering extension under subsections (5)(c) and (6) of this section to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

(ii) Nitrogen oxides. Any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with section 407 of the act and regulations implementing section 407 of the act beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

(iii) No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under section 111(j) of the act.

(iv) No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under section 111 of the act.

(b) Reporting requirements. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of WAC 173-406-802.

(c) Liability.

(i) The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan.

(ii) The units governed by the plan under subsection (2)(b) of this section shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

(d) Terminations. Except as provided in subsection (6) of this section, a repowering extension plan shall not be terminated after December 31, 1999.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-402, filed 11/23/94, effective 12/24/94.]

PART V PERMIT CONTENTS

WAC 173-406-500 Acid rain permit.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-500, filed 11/23/94, effective 12/24/94.]

WAC 173-406-501 Contents. (1) Each acid rain permit (including any draft or proposed acid rain permit) will contain the following elements:

(a) All elements required for a complete acid rain permit application under WAC 173-406-302, as approved or adjusted by the permitting authority;

(b) The applicable acid rain emissions limitation for sulfur dioxide; and

(c) The applicable acid rain emissions limitation for nitrogen oxides.

(2) Each acid rain permit is deemed to incorporate the definitions of terms under WAC 173-406-101 unless expressly otherwise defined in the permit.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-501, filed 11/23/94, effective 12/24/94.]

WAC 173-406-502 Permit shield. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the act, as provided in WAC 173-406-100 through 173-406-800, 40 CFR parts 72, 73, 75, 77, and 78, and the regulations implementing section 407 of the act, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in WAC 173-406-106 (7)(f).

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-502, filed 11/23/94, effective 12/24/94.]

PART VI PERMIT ISSUANCE

WAC 173-406-600 Acid rain permit issuance procedures.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-600, filed 11/23/94, effective 12/24/94.]

WAC 173-406-601 General. The permitting authority will issue or deny all acid rain permits in accordance with chapter 173-401 WAC, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as provided by WAC 173-406-600 and 173-406-700.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-601, filed 11/23/94, effective 12/24/94.]

WAC 173-406-602 Completeness. The permitting authority will submit a written notice of application completeness to the administrator and the designated representative within ten working days following a determination by the permitting authority that the acid rain permit application is complete.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-602, filed 11/23/94, effective 12/24/94.]

WAC 173-406-603 Statement of basis. (1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the permitting authority relied in issuing or denying the draft permit.

(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

(3) The permitting authority will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the operating permit that may affect the draft acid rain permit.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-603, filed 11/23/94, effective 12/24/94.]

WAC 173-406-604 Issuance of acid rain permits.

(1) Proposed permit. After the close of the public comment period and within eighteen months of receipt of a complete application, the permitting authority will incorporate all necessary changes and issue or deny a proposed acid rain permit.

(2) The permitting authority will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with WAC 173-401-810 and WAC 173-401-820, the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

(3)(a) Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the permitting authority will incorporate any required changes and issue, or deny the acid rain permit in accordance with WAC 173-406-500.

(b) No acid rain permit (including a draft or proposed permit) shall be issued unless the administrator has received a certificate of representation for the designated representative of the source as provided in WAC 173-406-201 in accordance with subpart B of 40 CFR part 72.

(4) Permit issuance deadline and effective date.

(a) On or before December 31, 1997, the permitting authority will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with WAC 173-406-201 and meets the requirements of WAC 173-406-600 and chapter 173-401 WAC.

(b) Nitrogen oxides. Not later than January 1, 1999, the permitting authority will reopen the acid rain permit to add the Acid Rain Program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with WAC 173-406-201. Such reopening shall not affect the term of the acid rain portion of an operating permit.

(c) Each acid rain permit issued in accordance with (a) of this subsection shall take effect by the later of January 1, 2000, or, where the permit governs a unit under WAC 173-406-103 (1)(c), the deadline for monitor certification under 40 CFR part 75.

(d) Each acid rain permit shall have a term of five years commencing on its effective date, except to the extent provided under 40 CFR part 72 that the initial issuance may have a shorter period in order to provide coordination with chapter 173-401 WAC permit requirements.

(e) An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(5)(a) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

(b) Invalidation of the acid rain portion of an operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the acid rain portion of the permit.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-604, filed 11/23/94, effective 12/24/94.]

WAC 173-406-605 Acid rain permit appeal procedures.

(1) Appeals of the acid rain portion of an operating permit issued by the permitting authority that do not challenge or involve decisions or actions of the administrator under 40 CFR part 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 43.21 RCW. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(2) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the

acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(3) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(a) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(b) Any standard requirement under WAC 173-406-106;

(c) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR part 75;

(d) Uncontested provisions of the decision on appeal; and

(e) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 CFR part 72.

(5) The permitting authority will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(6) The permitting authority will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-605, filed 11/23/94, effective 12/24/94.]

PART VII PERMIT REVISIONS

WAC 173-406-700 Permit revisions.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-700, filed 11/23/94, effective 12/24/94.]

WAC 173-406-701 General. (1) WAC 173-406-700 shall govern revisions to any acid rain permit issued by the permitting authority.

(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(3) The terms of the acid rain permit shall apply while the permit revision is pending.

(4) Any determination or interpretation by state (including the permitting authority or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with WAC 173-401-810 and 173-401-820 as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with WAC 173-406-704.

(5) The standard requirements of WAC 173-406-106 shall not be modified or voided by a permit revision.

(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under WAC 173-406-402 and section 407 of the act and regulations implementing section 407 of the act.

(7) For permit revisions not described in WAC 173-406-702 and 173-406-703, the permitting authority may, in its discretion, determine which of these sections is applicable.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-701, filed 11/23/94, effective 12/24/94.]

WAC 173-406-702 Permit modifications. (1)(a) Permit modifications shall follow the permit issuance requirements of WAC 173-406-600, 173-401-810 and 173-401-820.

(b) For purposes of applying (a) of this subsection, a permit modification shall be treated as an acid rain permit application, to the extent consistent with WAC 173-406-700.

(2) The following permit revisions are permit modifications:

(a) Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;

(b) Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period;

(c) Determinations concerning failed repowering projects under WAC 173-406-402 (6)(a)(i) and (b); and

(d) At the option of the designated representative submitting the permit revision, the permit revisions listed in WAC 173-406-703(2).

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-702, filed 11/23/94, effective 12/24/94.]

WAC 173-406-703 Fast-track modifications. (1) Fast-track modifications shall follow the following procedures:

(a) The designated representative shall serve a copy of the fast-track modification on the administrator, the permitting authority, and any person entitled to a written notice under WAC 173-401-800. Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice.

(b) The public shall have a period of thirty days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the permitting authority and to the designated representative.

(c) The designated representative shall submit the fast-track modification to the permitting authority on or before commencement of the public comment period.

(d) Within thirty days of the close of the public comment period, the permitting authority will consider the fast-track modification and the comments received and approve or disapprove, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

A fast-track modification shall be effective immediately upon issuance, in accordance with WAC 173-401-810 as applied to significant modifications.

(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications under WAC 173-406-702:

(a) Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;

(b) Addition of a nitrogen oxides averaging plan to a permit; and

(c) Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-703, filed 11/23/94, effective 12/24/94.]

WAC 173-406-704 Administrative permit amendment. (1) Administrative amendments shall follow the procedures set forth at WAC 173-401-720. The permitting authority will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

(2) The following permit revisions are administrative amendments:

(a) Activation of a compliance option conditionally approved by the permitting authority; provided that all requirements for activation under WAC 173-406-401(3) and 173-406-402 are met;

(b) Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with subpart B of 40 CFR part 72;

(c) Correction of typographical errors;

(d) Changes in names, addresses, or telephone or facsimile numbers;

(e) Changes in the owners or operators; provided that a new certificate of representation is submitted within thirty days to the administrator in accordance with subpart B of 40 CFR part 72;

(f) Termination of a compliance option in the permit; provided that all requirements for termination under WAC 173-406-401(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

(g) Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with WAC 173-406-106;

(h) The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing section 407 of the act are met; and

(i) Incorporation of changes that the administrator has determined to be similar to those in (a) through (h) of this subsection.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-704, filed 11/23/94, effective 12/24/94.]

WAC 173-406-705 Automatic permit amendment.

The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

(1) Upon recordation by the administrator under 40 CFR part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and

(2) Incorporation of an offset plan that has been approved by the administrator under 40 CFR part 77.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-705, filed 11/23/94, effective 12/24/94.]

WAC 173-406-706 Permit reopenings. (1) As provided in WAC 173-401-730, the permitting authority will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

(2) In reopening an acid rain permit for cause, the permitting authority will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of WAC 173-406-500 and 173-406-600.

(3) Any reopening of an acid rain permit shall not affect the term of the permit.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-706, filed 11/23/94, effective 12/24/94.]

**PART VIII
COMPLIANCE CERTIFICATION**

WAC 173-406-800 Compliance certification.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-800, filed 11/23/94, effective 12/24/94.]

WAC 173-406-801 Annual compliance certification report. (1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the permitting authority, within sixty days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

(2) The submission of complete compliance certifications in accordance with subsection (1) of this section and 40 CFR part 75 shall be deemed to satisfy the requirement to submit compliance certifications under WAC 173-401-600 with regard to the acid rain portion of the source's operating permit.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-801, filed 11/23/94, effective 12/24/94.]

WAC 173-406-802 Units with repowering extension plans. (1) Design and engineering and contract requirements. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the permitting authority:

(a) Satisfactory documentation of a preliminary design and engineering effort.

(b) A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the administrator under 40 CFR 72.44 (d)(3).

(c) The letter agreement under (b) of this subsection shall be signed and dated by each party and specify:

- (i) The parties to the contract;
- (ii) The date each party executed the contract;
- (iii) The unit to which the contract applies;
- (iv) A brief list identifying each provision of the contract;
- (v) Any dates to which the parties agree, including construction completion date;
- (vi) The total dollar amount of the contract; and
- (vii) A statement that a copy of the contract is on site at the source and will be submitted upon written request of the administrator or the permitting authority.

(2) Removal from operation to repower. The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the permitting authority in writing at least sixty days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

(3) Commencement of operation. Not later than sixty days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the permitting authority, comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR part 75.

(4) Decision to terminate. If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the permitting authority by the earlier of the end of the repowering extension or a date within thirty days of such decision, stating the date on which the decision was made.

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-802, filed 11/23/94, effective 12/24/94.]

PART IX NITROGEN OXIDES

WAC 173-406-900 Nitrogen oxides emission reduction program. (Reserved.)

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-900, filed 11/23/94, effective 12/24/94.]

PART X SULFUR DIOXIDE OPT-IN

WAC 173-406-950 Sulfur dioxide opt-ins. (Reserved.)

[Statutory Authority: Chapter 70.94 RCW. 94-23-127 (Order 94-23), § 173-406-950, filed 11/23/94, effective 12/24/94.]

Chapter 173-410 WAC SULFITE PULPING MILLS

WAC	
173-410-012	Statement of purpose.
173-410-021	Definitions.
173-410-035	Emission standards for sources emitting hazardous air pollutants.
173-410-040	Emission standards.
173-410-045	Creditable stack height and dispersion techniques.
173-410-062	Monitoring requirements.
173-410-067	Report of startup, shutdown, breakdown or upset conditions.
173-410-071	Emission inventory.
173-410-086	New source review (NSR).
173-410-087	Prevention of significant deterioration (PSD).
173-410-100	Special studies.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-410-011	Statement of policy and purpose. [Order DE 76-36, § 173-410-011, filed 12/28/76. Formerly WAC 18-38-011.] Repealed by 80-11-061 (Order DE 80-16), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-410-031	Specific emission standards. [Order DE 76-36, § 173-410-031, filed 12/28/76. Formerly WAC 18-38-031.] Repealed by 80-11-061 (Order DE 80-16), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-410-036	General emission standards and nuisance control measures. [Order DE 76-36, § 173-410-036, filed 12/28/76. Formerly WAC 18-38-036.] Repealed by 80-11-061 (Order DE 80-16), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-410-041	More restrictive emission standards. [Order DE 76-36, § 173-410-041, filed 12/28/76. Formerly WAC 18-38-041.] Repealed by 80-11-061 (Order DE 80-16), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-410-042	Emission requirements of prior jurisdictions. [Statutory Authority: RCW 70.94.331. 85-06-048 (Order 84-50), § 173-410-042, filed 3/6/85.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-410-051	Compliance. [Order DE 76-36, § 173-410-051, filed 12/28/76. Formerly WAC 18-38-051.] Repealed by 80-11-061 (Order DE 80-16), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-410-061	Monitoring and reporting. [Order DE 76-36, § 173-410-061, filed 12/28/76. Formerly WAC 18-38-061.] Repealed by 80-11-061 (Order DE 80-16), filed 8/20/80. Statutory Authority: RCW 70.94.331 and 70.94.395.
173-410-066	Report of startup, shutdown, breakdown or upset condition. [Order DE 76-36, § 173-410-066, filed 12/28/76. Formerly WAC 18-38-066.] Repealed by 80-04-050 (Order DE 80-8), filed 3/21/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331.
173-410-081	Notice of construction. [Order DE 76-36, § 173-410-081, filed 12/28/76. Formerly WAC 18-38-091.] Repealed by 80-04-050 (Order DE 80-8), filed 3/21/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331.
173-410-090	Operating permit. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-

090, filed 8/20/80.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-410-091 Exemptions. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-091, filed 8/20/80; Order DE 76-36, § 173-410-091, filed 12/28/76. Formerly WAC 18-38-081.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

WAC 173-410-012 Statement of purpose. These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from sulfite pulping mills to provide for the systematic control of air pollution in this industry and for the proper development of the state's natural resources; and

(2) Establish technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-012, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-012, filed 8/20/80.]

WAC 173-410-021 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

(1) "Acid plant" means the facility in which the cooking liquor is either manufactured or fortified when not associated with a recovery system.

(2) "Average daily emission" means total weight of an air contaminant emitted in each month, divided by the number of days of production that month.

(3) "Average daily production" means air dried tons of unbleached pulp produced in a month, divided by the number of days of production in that month.

(4) "Blow system" includes the storage chest, tank or pit to which the digester pulp is discharged following the cook.

(5) "Recovery system" means the process by which all or part of the cooking chemicals may be recovered, and cooking liquor regenerated from spent cooking liquor, including evaporation, combustion, dissolving, fortification, storage facilities, and emission control equipment associated with the recovery cycle.

(6) "Sulfite pulping mill" means any manufacturing facility which uses a cooking liquor consisting of sulfurous acid, a sulfite or bisulfite salt alone or in any combination, with or without additional mechanical refining or delignification to produce pulp, pulp products or cellulose from wood fibers. For the purposes of this regulation "sulfite pulping mill" is equivalent to "source."

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-021, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331. 85-06-048 (Order 84-50), § 173-410-021, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-410-021, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-021, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-050 (Order DE 80-8), § 173-410-021, filed 3/21/80; Order DE 76-36, § 173-410-021, filed 12/28/76. Formerly WAC 18-38-021.]

WAC 173-410-035 Emission standards for sources emitting hazardous air pollutants. The provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants" shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-035, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-18-010 (Order DE 83-22), § 173-410-035, filed 8/26/83.]

WAC 173-410-040 Emission standards. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no sulfite pulping mill shall cause or permit air contaminant emissions in excess of the limits listed below. Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(1) Sulfur dioxide.

(a) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill which practices incineration of the spent sulfite liquor, shall not exceed ten grams of sulfur dioxide per kilogram (twenty pounds per ton) of air dried, unbleached pulp produced.

(b) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill that does not incinerate the spent sulfite liquor, shall not exceed two grams of sulfur dioxide per kilogram (four pounds per ton) of air dried, unbleached pulp produced.

(c) The blow system emissions shall not exceed 0.1 grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram (0.2 pounds per ton) of air dried, unbleached pulp discharged from the digester.

(d) Emissions from the recovery system and acid plant shall not exceed 800 ppm of sulfur dioxide for any hourly average.

(e) Emissions from recovery systems constructed after January 24, 1972, shall not exceed 300 ppm of sulfur dioxide for any hourly average.

(f) Emissions from any emissions unit, other than a recovery system, a blow system or an acid plant, shall not exceed 1000 ppm of sulfur dioxide, corrected to seven percent oxygen in the case of combustion unit, for any hourly average.

(2) Particulate.

(a) Emissions of particulate from recovery systems constructed before January 24, 1972, shall not exceed 0.23 grams per dry cubic meter of exhaust at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen.

(b) Emissions of particulate matter from recovery systems constructed after January 24, 1972, shall not exceed 0.14 grams per dry cubic meter of exhaust at standard conditions (0.06 grains/dscf) corrected to eight percent oxygen.

(c) The emission of particulates from emissions units other than acid plants or recovery systems shall not exceed the following maximums:

(i) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood and wood residue to produce steam and which commenced construction prior to January 1, 1983.

(ii) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood and wood residue to produce steam, and which commenced construction after January 1, 1983.

(iii) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under (c) (i) or (ii) of this subsection.

(3) Opacity. No person shall cause or allow the emission of a plume from a recovery system or acid plant which has an average opacity greater than thirty-five percent, for more than six consecutive minutes in any sixty minute period, except as allowed per RCW 70.94.331 (2)(c).

(4) Operation and maintenance. At all times, including periods of abnormal operations and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(5) No recovery system shall emit total reduced sulfur (TRS) gases in excess of 17.5 ppm for a daily average.

(6) More restrictive limits. Ecology may set more restrictive emissions limits than the specific limits set in this chapter (after public involvement and hearing), if there is reason to believe that the emission(s) from a source is a cause of public nuisance or a cause of violation of ambient air quality standards. The source shall, within ninety days from notification of the more restrictive limits, achieve operation that will prevent further recurrence of the nuisance or violation.

(7) Source testing. To demonstrate compliance with this chapter, the provisions of WAC 173-400-105 shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-410-040, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-040, filed 8/20/80.]

WAC 173-410-045 Creditable stack height and dispersion techniques. The provisions of WAC 173-400-200 shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-045, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-057 (Order 87-50), § 173-410-045, filed 12/16/87.]

WAC 173-410-062 Monitoring requirements. Each mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ecology. Results of monitoring shall be reported within fifteen days of the end of each calendar month and shall include data as follows:

(1) For the recovery system and acid plant:

(a) The average daily emissions of sulfur dioxide expressed as grams SO₂ per kilogram of air dried, unbleached pulp produced and the kilograms of SO₂ per day.

(b) Daily average concentration of sulfur dioxide.

(c) The date, time and concentration for each sulfur dioxide emission violation and the total number of hours that exceed the standard.

(d) The results of particulate tests conducted during the month.

(2) For the blow system:

(a) The grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram of air dried, unbleached pulp discharged from the digester.

(b) The average daily production of air dried, unbleached pulp.

(3) Each mill shall furnish, upon request of ecology, such other pertinent data required to evaluate the mill's emission control program.

(4) All measurements shall be made in accordance with WAC 173-400-105.

(5) Each mill shall be required to establish a program approved by ecology for continuous opacity monitoring to demonstrate compliance with WAC 173-410-040(3) and to report the results to ecology in a format and on a schedule set by regulatory order. If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required as an alternate until continuous opacity monitoring equipment is available.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-062, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-062, filed 8/20/80.]

WAC 173-410-067 Report of startup, shutdown, breakdown or upset conditions. The provisions of WAC 173-400-105(5) shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-067, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-410-067, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-067, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-050 (Order DE 80-8), § 173-410-067, filed 3/21/80.]

WAC 173-410-071 Emission inventory. The provisions of WAC 173-400-105(1) shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-071, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 89-02-055 (Order 88-39), § 173-410-071, filed 1/3/89; 83-09-036 (Order DE 83-13), § 173-410-071, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-071, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-050 (Order DE 80-8), § 173-410-071, filed 3/21/80.]

WAC 173-410-086 New source review (NSR). The provisions of WAC 173-400-110 shall apply to all new sources and emissions units to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-086, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-410-086, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-061 (Order DE 80-16), § 173-410-086, filed 8/20/80. Statutory Authority: RCW 43.21A.080, 70.94.011, 70.94.152, and 70.94.331. 80-04-050 (Order DE 80-8), § 173-410-086, filed 3/21/80.]

WAC 173-410-087 Prevention of significant deterioration (PSD). The provisions of WAC 173-400-141 shall apply to all new major sources and major modifications to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-087, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-057 (Order 87-50), § 173-410-087, filed 12/16/87.]

WAC 173-410-100 Special studies. Ecology may require such additional special studies relevant to process emissions and establish completion dates as it finds necessary.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-410-100, filed 2/19/91, effective 3/22/91.]

**Chapter 173-415 WAC
PRIMARY ALUMINUM PLANTS**

WAC

173-415-010	Statement of purpose.
173-415-020	Definitions.
173-415-030	Emission standards.
173-415-040	Standards of performance.
173-415-045	Creditable stack height and dispersion techniques.
173-415-050	New source review (NSR).
173-415-051	Prevention of significant deterioration (PSD).
173-415-060	Monitoring and reporting.
173-415-070	Report of startup, shutdown, breakdown or upset conditions.
173-415-080	Emission inventory.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

173-415-041	Emission requirements of prior jurisdictions. [Statutory Authority: RCW 70.94.331. 85-06-048 (Order 84-50), § 173-415-041, filed 3/6/85.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-415-090	Operating permit. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-090, filed 8/14/80.] Repealed by 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

WAC 173-415-010 Statement of purpose. These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395) to:

- (1) Assume state jurisdiction over emissions from primary aluminum reduction plants to provide for the systematic control of air pollution in this industry and for the proper development of the state's natural resources; and
- (2) Establish technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-010, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-010, filed 8/14/80. Formerly WAC 18-52-010.]

WAC 173-415-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

- (1) "Fluorides" means compounds of the element fluorine.
- (2) "Forage" means grasses, pasture and other vegetation that is normally consumed or is intended to be consumed by livestock.
- (3) "Primary aluminum plant" or "primary aluminum reduction plant" or "primary aluminum mill" means a plant which produces aluminum metal from aluminum oxide (alumina). For the purposes of this regulation "primary aluminum plant" is equivalent to "source."
- (4) "Potline primary emission control system" means the equipment and procedures designed to collect and remove contaminants from the exhaust gases which are captured at the pot.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-020, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331. 85-06-048 (Order 84-50), § 173-415-020, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-415-020, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-020, filed 8/14/80. Formerly WAC 18-52-021.]

WAC 173-415-030 Emission standards. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; all primary aluminum plants are required to meet the emission standards of this chapter. Specific emissions standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

- (1) Fluoride.
 - (a) The emission of gaseous and particulate fluorides for all emissions units within a primary aluminum plant shall be restricted so that the plant's emissions will not cause ambient air and forage standards for fluorides established by chapter 173-481 WAC to be exceeded outside the property controlled by the aluminum plant owner(s) or operator(s).
 - (b) Each potline primary emission control system shall be designed so that the control of fluoride emissions will be equivalent to a total fluoride collection efficiency of: (i) Eighty percent for vertical stud soderberg and side worked prebake pots, (ii) eighty-five percent for horizontal stud soderberg pots, and (iii) ninety-five percent for center worked prebake pots. A primary emission control system with a design removal efficiency of at least ninety-five percent of the fluoride collected is required.
- (2) Particulate. The total emission of particulate matter to the atmosphere from the reduction process (potlines) shall be reduced to the lowest level consistent with reasonably available control technology (RACT) for primary aluminum plants. The emission of solid particulate shall not exceed 7.5 grams per kilogram (fifteen pounds per ton) of aluminum produced on a daily basis.

(3) Visible emissions. Visible emissions from any emissions unit in a primary aluminum plant shall not exceed an average twenty percent opacity for more than six consecutive minutes in any sixty minute period. This provision shall not apply:

(a) When the presence of uncombined water is the only reason for the opacity of the plume to exceed twenty percent; or

(b) When an alternate opacity limit has been established under RCW 70.94.331 (2)(c).

(4) Fugitive emissions. Each primary aluminum plant shall use RACT to prevent fugitive emissions.

(5) Sulfur dioxide.

(a) Total emissions of sulfur dioxide from all emissions units shall not exceed thirty grams of sulfur dioxide per kilogram of aluminum produced on a monthly average (sixty pounds per ton). Those primary aluminum plants which were in excess of the above sulfur dioxide limit on January 1, 1978, will be allowed to emit at the January 1, 1978, level of emissions provided that the owners or operators did demonstrate to ecology by July 1, 1981, by use of modeling and ambient measurements, that the emissions will not cause the ambient standard to be exceeded, and that the limits are placed in a regulatory order(s).

(b) In no case shall any plant cause or permit the emission of a gas containing sulfur dioxide in excess of one thousand parts per million corrected to dry standard conditions for an hourly average.

(6) Operation and maintenance. At all times, including periods of abnormal operation and upset, owners and operators shall, to the extent practicable, maintain an affected facility, and operate and maintain air pollution control equipment associated with such facility in a manner consistent with good air pollution control practice. A plant may elect to establish a program, subject to the approval of ecology, for monitoring each potroom in order to demonstrate good operation and maintenance.

(7) Source testing. To demonstrate compliance with this chapter, the provisions of WAC 173-400-105 shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-030, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-415-030, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-030, filed 8/14/80. Formerly WAC 18-52-031.]

WAC 173-415-040 Standards of performance. The provisions of WAC 173-400-115 "Standards of performance for new sources" shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-020 (Order DE 82-21), § 173-415-040, filed 7/27/82. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-040, filed 8/14/80. Formerly WAC 18-52-051.]

WAC 173-415-045 Creditable stack height and dispersion techniques. The provisions of WAC 173-400-200 shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-045, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-057 (Order 87-50), § 173-415-045, filed 12/16/87.]

WAC 173-415-050 New source review (NSR). The provisions of WAC 173-400-110 shall apply to all new sources and emissions units to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-415-050, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-050, filed 8/14/80. Formerly WAC 18-52-056.]

WAC 173-415-051 Prevention of significant deterioration (PSD). The provisions of WAC 173-400-141 shall apply to all new major sources and major modifications to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-051, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-057 (Order 87-50), § 173-415-051, filed 12/16/87.]

WAC 173-415-060 Monitoring and reporting. (1) Each primary aluminum plant shall conduct routine monitoring of emissions, ambient air, and forage in accordance with a program that has been approved by ecology. Results of monitoring shall be reported within thirty days of the end of each calendar month and shall include data as follows:

(a) Ambient air: Twenty-four hour concentrations of gaseous fluoride in the ambient air expressed in micrograms of hydrogen fluoride per cubic meter of ambient air.

(b) Forage: Concentrations of fluoride in forage expressed in parts per million of fluoride on a dried weight basis.

(c) Particulate emissions: Results of all emission sampling conducted during the month for particulates, expressed in grains per standard dry cubic foot, in pounds per day, and in pounds per ton of aluminum produced. The method of calculating pounds per ton shall be as specified in the approved monitoring programs. Particulate data shall be reported as total particulates and percentage of fluoride ion contained therein.

Compliance with WAC 173-415-030(2) shall be determined by measurements of emissions from the potline primary control system plus measurements of emissions from the roof monitor.

(d) Fluoride emissions: Results of all sampling conducted during the month for fluoride emissions. All results shall be expressed as hydrogen fluoride in parts per million on a volume basis and pounds per day of hydrogen fluoride.

(e) Other emission and ambient air data as specified in the approved monitoring program.

(2) Other data: For ecology to evaluate a plant's emissions or emission control program, each primary aluminum plant shall furnish other data requested by ecology.

(3) Change in raw materials or fuel: Any change or series of changes in raw material or fuel which results in a cumulative increase in emissions of sulfur dioxide of five hundred tons per year or more over that stated in the 1979

inventory required by WAC 173-415-080 shall require the submittal of sufficient information to ecology so that the effect upon ambient concentrations of sulfur dioxide can be determined. Ecology may issue regulatory orders requiring controls to reduce the effect of such increases.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-060, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-060, filed 8/14/80. Formerly WAC 18-52-061 and 18-52-071.]

WAC 173-415-070 Report of startup, shutdown, breakdown or upset conditions. The provisions of WAC 173-400-105(5) shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 83-09-036 (Order DE 83-13), § 173-415-070, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-070, filed 8/14/80. Formerly WAC 18-52-077.]

WAC 173-415-080 Emission inventory. The provisions of WAC 173-400-105(1) shall apply to all sources to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-415-080, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 89-02-055 (Order 88-39), § 173-415-080, filed 1/3/89; 83-09-036 (Order DE 83-13), § 173-415-080, filed 4/15/83. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-028 (Order DE 80-17), § 173-415-080, filed 8/14/80. Formerly WAC 18-52-086.]

Chapter 173-420 WAC CONFORMITY OF TRANSPORTATION ACTIVITIES TO AIR QUALITY IMPLEMENTATION PLANS

WAC

173-420-010	Title.
173-420-020	Purpose and intent.
173-420-030	Scope.
173-420-040	Definitions.
173-420-050	General provisions.
173-420-060	General criteria.
173-420-070	Air quality analysis procedures.
173-420-080	Transportation plan conformity.
173-420-090	Transportation improvement program conformity.
173-420-100	Transportation project conformity.
173-420-110	Exempt projects.

WAC 173-420-010 Title. This chapter shall be known as the "Washington State Clean Air Conformity Act" hereinafter as "this chapter."

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-010, filed 1/22/93, effective 2/22/93.]

WAC 173-420-020 Purpose and intent. This chapter implements RCW 70.94.037 of the Washington Clean Air Act (chapter 70.94 RCW). The law requires the departments of ecology and transportation to develop criteria and guidance for demonstrating and assuring conformity of transportation plans, programs, and projects to the purpose of the state implementation plan for attaining and maintaining the national ambient air quality standards and meeting the

[Title 173 WAC—page 972]

requirements of the federal Clean Air Act (42 U.S.C. 7401) as amended. This chapter is jointly adopted by the departments of ecology and transportation and can be amended only by agreement between the departments. This chapter sets forth minimum requirements for evaluating transportation plans, programs, and projects for conformity with the purpose and intent of state implementation plans for air quality. This chapter clarifies state policy and procedures to achieve national ambient air quality standards, foster long-range planning for attainment and maintenance of those standards, provide a basis for evaluating conformity determinations, and guide state, regional, and local agencies in making conformity determinations.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-020, filed 1/22/93, effective 2/22/93.]

WAC 173-420-030 Scope. (1) Conformity determinations shall be made for all transportation plans, improvement programs, and projects located in or affecting nonattainment areas for any criteria pollutants.

(2) Regional transportation plans that contain either wholly or partially a nonattainment area for any criteria pollutant shall comply with this chapter. Transportation plans that do not contain either wholly or partially a nonattainment area are exempt from this chapter.

(3) Transportation improvement programs shall comply with this chapter. The regional transportation improvement program shall include projects on the regional transportation system; transportation control measures of local government six-year street and road programs developed pursuant to RCW 36.81.121 and 35.77.010; and transit management plans developed pursuant to RCW 35.58.2795. Transportation improvement programs for areas that do not contain either wholly or partially a nonattainment area for any criteria pollutants are exempt from this chapter.

(4) Projects contained in the regional transportation improvement program of a metropolitan area boundary that either wholly or partially contains a nonattainment area shall comply with this chapter. Projects not on the regional transportation system shall be considered to comply with the general provisions of this chapter; however they must be evaluated by the lead agency during compliance with the requirements of the State Environmental Policy Act (SEPA), (chapter 197-11 WAC), to determine if a conformity analysis and determination based upon this chapter is warranted. Preservation or maintenance projects in WAC 173-420-110 are exempt from the conformity requirements of this chapter.

(5) Projects on the regional transportation system that are located outside a nonattainment area but affect traffic or air quality of a nonattainment area shall comply with WAC 173-420-060 and 173-420-100.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-030, filed 1/22/93, effective 2/22/93.]

WAC 173-420-040 Definitions. The following definitions will apply unless a different meaning is clearly required by context:

"Criteria pollutants" means air pollutants for which a NAAQS has been promulgated under the federal Clean Air Act (40 C.F.R. 50) and, for this chapter, applies only to

those pollutants for which nonattainment areas have been designated.

"Lead agency" means the agency with primary responsibility for ensuring plan, program, or project compliance with SEPA, (chapter 197-11 WAC).

"Metropolitan area boundary" (MAB) means an area determined by an agreement between the governor and the MPO as defined in 23 U.S.C. 134.

"Metropolitan planning organization" (MPO) means an organization for each urbanized area of more than fifty thousand people as defined in 23 U.S.C. 134, whose responsibilities include development of transportation plans and improvement programs for those areas.

"National ambient air quality standards" (NAAQS) means air quality standards promulgated for criteria pollutants under the federal Clean Air Act (40 C.F.R. 50). The standard for carbon monoxide is thirty-five parts per million over a one-hour period or nine parts per million over an eight-hour period. The standard for ozone is 0.12 parts per million over a one-hour period. The standard for PM10 is fifty $\mu\text{g}/\text{m}^3$ annual arithmetic mean or 150 $\mu\text{g}/\text{m}^3$ maximum twenty-four hour average concentration.

"Nonattainment area" means the geographic area designated as not meeting the NAAQS for a criteria pollutant. The boundaries are proposed by the governor, approved by the federal environmental protection agency (EPA), and include that area required to implement plans and programs for attainment of the NAAQS published in the federal register.

"Regional transportation system" means the transportation system identified by an MPO in development of planning requirements under the federal Intermodal Surface Transportation Efficiency Act (ISTEA) (P.L. 102-240).

"State implementation plan" (SIP) means a plan that is intended to eliminate or reduce the severity and number of violations of the national ambient air quality standards and expeditiously achieve those standards.

"Transportation control measure" (TCM) means a transportation project, program, or action listed in the state implementation plan that will aid in elimination or reduction of the severity or number of violations of the national ambient air quality standards and help expeditiously attain and maintain those standards.

"Transportation improvement program" (TIP) means a schedule of intended transportation improvements (or continuation of current activities) as required in section 134 of Title 23 U.S.C. A TIP shall include projects within the MPO's area that are proposed for funding under Title 23 U.S.C. and the federal Transit Act, projects that are part of or consistent with the transportation plan as previously defined, and transportation control measures that are included in the state implementation plan for meeting NAAQS.

"Transportation plan" means a document that is required under the regulation implementing section 134 of Title 23 U.S.C., and section 8 of the federal Transit Act, and is intended to foster a continuing, cooperative, and comprehensive planning process.

"Transportation projects" means an action that expends funds on or approves physical and/or operational alterations to a transportation system.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-040, filed 1/22/93, effective 2/22/93.]

(1995 Ed.)

WAC 173-420-050 General provisions. (1) Conformity review will include transportation plans, improvement programs, and projects on the regional transportation system. The review utilizes requirements from the federal Clean Air Act, the Washington Clean Air Act (chapter 70.94 RCW), the Growth Management Act (GMA) (chapter 36.70A RCW), the State Environmental Policy Act (SEPA) (chapter 43.21C RCW), and the federal ISTEA (P.L. 102-240).

(2) Identification of transportation plans and improvement programs that affect nonattainment areas, identification of projects on the regional transportation system, and coordination and consistency among plans shall be accomplished through the planning processes required by the GMA and the ISTEA.

(3) Transportation plans and improvement programs on the regional transportation system within metropolitan area boundaries that contain nonattainment areas shall be coordinated through the MPO using the regional planning process required by ISTEA (P.L. 102-240).

(4) Transportation control measures shall be identified and incorporated into plans and programs through the SIP process required by the federal Clean Air Act.

(5) Early and continuous public participation shall be a component of the conformity process pursuant to requirements of the GMA (chapter 36.70A RCW) and ISTEA (P.L. 102-240). At least one public hearing shall be held on transportation plan and improvement program conformity determinations. Such hearings may be combined with general hearings required for the transportation plans or improvement programs. Public comment on project conformity shall be completed as part of the SEPA process (chapter 197-11 WAC).

(6) Disagreement over a conformity determination for a plan or program shall be presented in writing to the MPO and shall identify the changes considered necessary to achieve conformity. The MPO shall convene a meeting or meetings with the contesting party, parties of record, consulted agencies, and the state departments of ecology and transportation within fifteen working days of receipt of the written document contesting the determination. The meeting shall be to review the written reasons for contesting the determination. A written decision stating the changes, if any, in the conformity determination on the plan or program shall be provided to each of the meeting participants.

(7) Disagreements on project conformity findings shall be addressed through the SEPA process (chapter 197-11 WAC).

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-050, filed 1/22/93, effective 2/22/93.]

WAC 173-420-060 General criteria. (1) Transportation plans, improvement programs, and projects shall meet the purpose and intent of the current SIP of eliminating or reducing the severity and number of violations of the NAAQS and expeditiously achieving those standards and shall not preclude the implementation of any transportation control measures identified in the SIP.

(2) All transportation plans, improvement programs, and projects shall comply with the criteria in subsection (3) of this section, in addition to the specific criteria contained in

WAC 173-420-080, 173-420-090, and 173-420-100, respectively.

(3) Transportation plans, improvement programs, or projects shall not:

(a) Cause or contribute to any new violation of the NAAQS;

(b) Increase the frequency or severity of any existing violation of the NAAQS; or

(c) Delay the timely attainment of the NAAQS.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-060, filed 1/22/93, effective 2/22/93.]

WAC 173-420-070 Air quality analysis procedures.

(1) Air quality analysis for transportation plans, programs, and projects shall be modeled for criteria pollutants using EPA and the federal Department of Transportation approved methods.

(2) Air quality analysis procedures and methodology used in determining conformity for transportation plans and improvement programs shall be determined through consultation with the MPO, the United States Department of Transportation and the Environmental Protection Agency, the state departments of ecology and transportation, the local air authority, and other interested representatives of the public. The specific analysis procedures and methodology selected shall comply with this chapter and the applicable SIP. Agreement on the methods and assumptions including modeling parameters, model accuracy, and the base year against which alternatives are compared, shall be reached on all programs and plans prior to the conformity determination. Procedures, methodologies, and input parameters shall be reviewed and updated at least once every two years under the direction of the departments of ecology and transportation. Such review shall occur prior to conformity determination of transportation plan or TIP revisions.

(3) Procedures, methodologies, and assumptions for project analysis shall be consistent with those procedures, methodologies, and assumptions developed for analysis of transportation plans and improvement programs in subsection (2) of this section.

(4) Each MPO shall conduct conformity analyses of the transportation plan and improvement program developed in its region.

(5) The lead agency shall be responsible for project conformity analysis.

(6) The impact of preferred alternative transportation plans, improvement programs, and projects shall be quantified and compared to SIP requirements. When finding conformity during the period prior to attainment of the NAAQS, if analysis consistent with subsection (2) of this section demonstrates that within the area significantly affected by the preferred alternative the highest concentration exceeds the NAAQS, but the alternative makes progress towards attaining the NAAQS through overall decreases in concentration or emissions, the preferred alternative shall be found to conform with the purpose of the state implementation plan and the requirements of the Clean Air Act (42 U.S.C. 7506(c)), provided that the requirements of WAC 173-420-060(3) are met. Additionally, projects shall conform whenever analysis demonstrates that within the area significantly affected by the preferred alternative the highest

concentration is less than the NAAQS. After the date of the attainment demonstration, modeling of the preferred alternative shall not indicate any violations of the NAAQS. If modeling does not indicate that the requirements of this section are met, mitigating measures shall be required and the plan, improvement program, or project remodeled. All else being equal, the alternative with the lowest concentration shall be chosen over all other alternatives.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-070, filed 1/22/93, effective 2/22/93.]

WAC 173-420-080 Transportation plan conformity.

Transportation plans shall include policies and provisions that promote the reduction of criteria pollutants. Transportation plans shall identify those aspects of the existing transportation system whose modification offers the best opportunity for improving air quality. Plans shall be analyzed with regional emission analysis for criteria pollutants. Local plans that are consistent under RCW 47.80.030 with a conforming regional transportation plan are deemed to comply with this chapter provided that the requirements of WAC 173-420-050 are met. Upon a conformity finding by the MPO, the plan shall be submitted to the United States Department of Transportation for federal conformity determination.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-080, filed 1/22/93, effective 2/22/93.]

WAC 173-420-090 Transportation improvement program conformity.

(1) This section applies to all transportation improvement programs that authorize purchase of right of way or that fund construction of projects on the regional transportation system within a metropolitan area boundary of any region that is contained either wholly or partially in a nonattainment area for each criteria pollutant. The metropolitan planning organization that has responsibility for such a program shall complete all program modeling as required herein and shall conduct an analysis to determine conformity with the current SIP. After a conformity finding by the MPO, the TIP shall be submitted to the United States Department of Transportation for federal conformity determination.

(2) The current SIP is the plan that has been adopted by the department of ecology and submitted to the United States Environmental Protection Agency. Upon adoption of a new state implementation plan, a MPO may use the previous SIP for up to ninety days when making conformity determinations on new TIPs. Ninety days after adoption of a new SIP, MPOs shall use the current SIP when making conformity determinations for new TIPs.

(3) Transportation improvement programs shall comply with WAC 173-420-060. After the attainment year, projects contained in a transportation program shall not cause any violations of the NAAQS. Transportation improvement programs shall be consistent with a conforming transportation plan as described in WAC 173-420-080. Local improvement programs that are consistent with a conforming regional TIP are deemed to comply with this chapter provided that the requirements of WAC 173-420-050 are met.

(4) Metropolitan planning organizations shall update TIP conformity findings whenever the TIP is updated. Projects that are no longer current to the program, or that are no longer intended to begin construction within the period of the program, shall be removed from the conformity analysis.

(5) Transportation improvement programs that have been approved and found to conform to the state implementation plan before adoption of this chapter need not be updated until two years after the enactment of this chapter.

(6) The lead agency of each transportation project on the regional transportation system within the MPO's jurisdiction shall submit sufficient documentation to support the MPO's modeling efforts. This documentation shall include design speed, anticipated speed limit, number of lanes, and lane capacity as relevant for all transportation projects that must comply with WAC 173-420-100 and that are not exempted under WAC 173-420-110.

(7) The TIP shall include the status of each transportation control measure in the state implementation plan as an attached appendix. All transportation control measures shall be scheduled for implementation and funded for completion before the proposed attainment demonstration date for each criteria pollutant. Projects in the transportation improvement program shall not interfere with or cause a delay in the implementation of a transportation control measure. Those transportation control measures that are no longer viable shall be documented and removed from the status report.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-090, filed 1/22/93, effective 2/22/93.]

WAC 173-420-100 Transportation project conformity. (1) This section applies to all transportation projects on the regional transportation system regardless of funding base within a metropolitan area boundary of any region that is contained either wholly or partially in a nonattainment area. Projects that are exempted from these requirements because they are deemed to have neutral impact on air quality are listed in WAC 173-420-110.

(2) Transportation projects shall meet the analysis requirements of this section before approval of plans, specifications, and estimates; before acquisition of right of way not exempted under WAC 173-420-110; and before expenditure of funds for construction. In no instance shall funds be obligated nor approvals granted that will commit a lead agency to construction of a project if the requirements of this section have not been met.

(3) Transportation projects on the regional transportation system that are located outside a nonattainment area but affect a nonattainment area shall meet the requirements of this section and SEPA (chapter 197-11 WAC). Such transportation projects need not come from a conforming transportation improvement program.

(4) Any temporary construction-related measures shall not prevent a conformity determination, but shall be subject to permit conditions to minimize pollution during construction.

(5) Transportation projects shall be modeled by the lead agency with the methodology determined in WAC 173-420-070. The lead agency shall provide sufficient documentation to demonstrate to the MPO that the requirements of this section are met. Such transportation projects shall be

included in a conforming transportation improvement program as described in WAC 173-420-090.

(6) Transportation projects that are not on the regional transportation system and are located in a MAB with a conforming transportation plan and improvement program are deemed to comply with this chapter. Such projects may include, but are not limited to, intersection signalization and channelization, or construction of local or collector streets. In no instances shall the requirements of WAC 173-420-060 be contravened. Transportation projects that are not on a regional transportation system and are not located in a nonattainment area for criteria pollutants are deemed to comply with this chapter.

(7) Transportation projects that are included in a conforming transportation improvement program and that have completed the public comment period of the environmental review requirements of the SEPA or the NEPA before adoption of this chapter, are not required to comply with the conformity requirements of this chapter unless there are significant changes in the project scope.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-100, filed 1/22/93, effective 2/22/93.]

WAC 173-420-110 Exempt projects. The following types of projects because of their nature, will not affect the outcome of any air quality analyses nor add any substance to those analyses and are exempted from all conformity requirements.

(1) Safety, preservation, or maintenance projects of the following type:

- (a) Railroad/highway crossing signing;
- (b) Pavement marking that does not add lanes or capacity;
- (c) Hazard elimination program;
- (d) Off-system road safety;
- (e) Emergency relief;
- (f) Shoulder improvements;
- (g) Truck size and weight inspection stations;
- (h) Safety improvement program;
- (i) Railroad/highway crossing warning devices;
- (j) Increasing sight distance that does not require changes in horizontal or vertical alignments;
- (k) Guardrails, median barriers, crash cushions;
- (l) Pavement resurfacing or rehabilitation;
- (m) Widening narrow pavements or bridges (less than one travel lane);
- (n) Noise attenuation;
- (o) Fencing;
- (p) Skid treatments;
- (q) Safety roadside rest areas;
- (r) Truck climbing lanes;
- (s) Lighting improvements;
- (t) Median additions.

(2) Mass transit projects of the following type:

- (a) Purchase of office, shop, and operating equipment for existing facilities;
- (b) Purchase of operating equipment for vehicles, including ferries, trains, and buses;
- (c) Construction or renovation of power, signal, and communication systems;
- (d) Operating assistance;

- (e) Rehabilitation of transit vehicles, including buses, ferries, and trains;
 - (f) Reconstruction or renovation of transit buildings and structures;
 - (g) Construction of small passenger shelters and information/ticketing kiosks;
 - (h) Rehabilitation or reconstruction of track structures, track, and trackbed in existing right of way;
 - (i) Noise attenuation;
 - (j) Purchase of vehicles to replace existing vehicles or for minor expansions of fleets to provide new service (less than five percent per year);
 - (k) Construction of new vehicle storage and maintenance facilities.
- (3) Air quality projects of the following type:
- (a) Continuation of rideshare and vanpooling promotion activities at current levels;
 - (b) Bicycle projects;
 - (c) Pedestrian facilities.
- (4) Other projects of the following type:
- (a) Acquisition of scenic easements;
 - (b) Planting and landscaping;
 - (c) Sign removal;
 - (d) Wetland mitigation, fish passage mitigation, and other environmental mitigation not related to air quality;
 - (e) Historical and cultural markers;
 - (f) Preliminary engineering through design, provided that funds are not expended or assurance is not made that will commit to the construction of a project;
 - (g) Access permits except when there is a break in full, modified, or partial access control;
 - (h) Advanced land acquisitions that do not influence the environmental assessment of a project, the decision of the need to construct the project, or the selection of project design or location.

[Statutory Authority: Chapter 70.94 RCW and RCW 70.94.037. 93-04-006 (Order 92-07), § 173-420-110, filed 1/22/93, effective 2/22/93.]

**Chapter 173-421 WAC
MOTOR VEHICLE EMISSION CONTROL
SYSTEMS**

WAC	
173-421-010	Purpose.
173-421-020	Assumption of jurisdiction and applicability.
173-421-030	Definitions.
173-421-100	Emission control systems.

WAC 173-421-010 Purpose. This chapter promulgated under RCW 70.94.305 and 70.94.331 establishes requirements to preserve emission control equipment installed on motor vehicles.

[Statutory Authority: Chapter 70.94 RCW. 87-19-078 (Order 87-17), § 173-421-010, filed 9/16/87.]

WAC 173-421-020 Assumption of jurisdiction and applicability. The department finds that the prevention and control of air pollution from motor vehicles should be regulated on a state-wide basis and, hereby assumes jurisdiction over motor vehicles for the purpose of controlling air

contaminant emissions from the operation of such motor vehicles.

[Statutory Authority: Chapter 70.94 RCW. 87-19-078 (Order 87-17), § 173-421-020, filed 9/16/87.]

WAC 173-421-030 Definitions. Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings; general terms common with other chapters of Title 173 WAC as defined in chapter 173-403 WAC, and terms specific to motor vehicle emission control systems as follows:

"Motor vehicle" means a self-powered operating vehicle or one capable of operating, designed to transport people or property, and of a type required to be licensed for operation on public highways.

[Statutory Authority: Chapter 70.94 RCW. 87-19-078 (Order 87-17), § 173-421-030, filed 9/16/87.]

WAC 173-421-100 Emission control systems. A person shall not remove or render inoperable any component or change any element of design of a motor vehicle including adjustments outside the range of manufacturer's specifications that could affect the amount of air contaminants emitted from that vehicle subject to the following conditions:

(1) Components of emission control systems may be disassembled and assembled for the purpose of repair and maintenance. These components or elements of design shall be restored to proper working order when they are repaired or maintained.

(2) When components of emission control systems require replacement they may be removed and replaced with a part intended by the vehicle manufacturer as a replacement part for that specific vehicle. Under circumstances established by the United States Environmental Protection Agency, an aftermarket replacement part may be used. A replaced part shall be installed and adjusted so that it is in proper working order.

[Statutory Authority: Chapter 70.94 RCW. 87-19-078 (Order 87-17), § 173-421-100, filed 9/16/87.]

**Chapter 173-422 WAC
MOTOR VEHICLE EMISSION INSPECTION**

WAC	
173-422-010	Purpose.
173-422-020	Definitions.
173-422-030	Vehicle emission inspection requirement.
173-422-035	Registration requirements.
173-422-040	Noncompliance areas.
173-422-050	Emission contributing areas.
173-422-060	Gasoline vehicle emission standards.
173-422-065	Diesel vehicle exhaust emission standards.
173-422-070	Gasoline vehicle inspection procedures.
173-422-075	Diesel vehicle inspection procedure.
173-422-090	Exhaust gas analyzer specifications.
173-422-095	Exhaust opacity testing equipment.
173-422-100	Testing equipment maintenance and calibration.
173-422-120	Quality assurance.
173-422-130	Inspection fees.
173-422-145	Fraudulent certificates of compliance/acceptance.
173-422-160	Fleet and diesel owner vehicle testing requirements.
173-422-170	Exemptions.
173-422-175	Fraudulent exemptions.

- 173-422-190 Emission specialist certification.
 173-422-195 Listing of certified emission specialists.

**DISPOSITION OF SECTIONS FORMERLY
 CODIFIED IN THIS CHAPTER**

- 173-422-080 Vehicle inspection data handling procedures. [Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-080, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120, 82-02-027 (Order DE-81-32), § 173-422-080, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-080, filed 2/28/80.] Repealed by 93-10-062 (Order 91-46), filed 5/3/93, effective 6/3/93. Statutory Authority: Chapter 70.120 RCW.
- 173-422-110 Date system requirements. [Statutory Authority: RCW 70.120.120, 82-02-027 (Order DE 81-32), § 173-422-110, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-110, filed 2/28/80.] Repealed by 93-10-062 (Order 91-46), filed 5/3/93, effective 6/3/93. Statutory Authority: Chapter 70.120 RCW.
- 173-422-140 Inspection forms and certificates. [Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-140, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-140, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-140, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120, 82-02-027 (Order DE 81-32), § 173-422-140, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-140, filed 2/28/80.] Repealed by 94-05-039 (Order 93-10), filed 2/8/94, effective 3/11/94. Statutory Authority: Chapter 70.120 RCW.
- 173-422-150 Inspection personnel requirements. [Statutory Authority: RCW 70.120.120, 80-03-070 (Order DE 79-35), § 173-422-150, filed 2/28/80.] Repealed by 93-10-062 (Order 91-46), filed 5/3/93, effective 6/3/93. Statutory Authority: Chapter 70.120 RCW.
- 173-422-180 Air quality standards. [Statutory Authority: RCW 70.120.120, 80-03-070 (Order DE 79-35), § 173-422-180, filed 2/28/80.] Repealed by 93-10-062 (Order 91-46), filed 5/3/93, effective 6/3/93. Statutory Authority: Chapter 70.120 RCW.

WAC 173-422-010 Purpose. This chapter implements the Washington Clean Air Act, chapter 70.94 RCW, as supplemented by the motor vehicle emission inspection provisions codified as chapter 70.120 RCW.

Gasoline motor vehicles are the primary emitters of carbon monoxide and emit significant quantities of hydrocarbons and oxides of nitrogen. Diesel motor vehicles are emitters primarily of particulates, hydrocarbons, and oxides of nitrogen. Emission controls required by the federal government are designed to reduce motor vehicle related air pollution. However, the effectiveness of these controls is substantially reduced through deterioration, maladjustment and tampering. Motor vehicle emission inspection serves to identify high polluting vehicles and vehicles with tampered or missing emission controls and to reduce their emissions, when such reduction can be accomplished at reasonable cost. These rules establish the emission standards, testing procedures, and associated activities necessary to implement a program of air pollution prevention and control resulting from motor vehicle emission inspections.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-010, filed 5/3/93, effective 6/3/93. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-010, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120, 80-03-070 (Order DE 79-35), § 173-422-010, filed 2/28/80.]

WAC 173-422-020 Definitions. Unless a different meaning is clearly indicated by context, the following definitions will apply:

(1) "Accuracy" means the degree of correctness by which the true value of a measured sample is determined.

(2) "Calibration gases" mean a blend of hydrocarbon (propane), carbon monoxide (CO), and carbon dioxide using nitrogen as carrier gas. The concentrations are to be traceable to within two percent of NBS standards.

(3) "Certificate of acceptance" means an official form, issued by someone authorized by the department, which certifies that all of the following conditions have been met: The recipient's vehicle initially failed the emission inspection, the recipient has provided original receipts proving that more than one hundred dollars on a 1980 or earlier model year motor vehicle or one hundred fifty dollars on a 1981 or later model motor vehicle were spent after the first inspection and before the final inspection on repairs performed by a "certified emission specialist" solely to reduce emissions, the vehicle on final reinspection again failed to meet such standards, and the repair information section of the test report has been completed and the vehicle has been in use for more than five years or fifty thousand miles, and any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

After January 1, 1995, if needed to prevent federal sanctions, owners of vehicles registered in either the Puget Sound or Spokane emission contributing area must prove with original receipts that more than four hundred fifty dollars was spent.

(4) "Certificate of compliance" means an official form, issued by someone authorized by the department, which certifies that the recipient's vehicle on inspection complied with applicable emission inspection standards.

(5) "Certified emission specialist" means an individual who has been issued a certificate of instruction by the department as authorized in RCW 70.120.020 (2)(a) and has maintained the certification by meeting requirements of WAC 173-422-190(2).

(6) "Dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(7) "Department" means the department of ecology.

(8) "Drift" means the change in the reading of the analyzer to a given sample over a period of time with no adjustment to the analyzer having been made between the initial and final measurements.

(9) "Emission contributing area" means a land area within whose boundaries are registered motor vehicles that contribute significantly to the violation of motor vehicle related air quality standards in a noncompliance area.

(10) "Farm vehicle" means any vehicle other than a farm tractor or farm implement which is designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies, and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another.

(11) "Fleet" means a group of fifteen or more motor vehicles owned or leased concurrently by one owner assigned a fleet identifier code by the department of licensing.

(12) "Gross vehicle weight rating (GVWR)" means the manufacturer stated gross vehicle weight rating.

(13) "HC and CO emissions" means the concentration of hydrocarbons (measured as n-hexane) and carbon monoxide in the engine exhaust.

(14) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(15) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor.

(16) "NBS" means National Bureau of Standards.

(17) "Noncompliance area" means a land area within whose boundaries any air quality standard for any air contaminant from the emissions of motor vehicles will probably be exceeded.

(18) "PPM" means parts per million by volume.

(19) "Primary emission control components" means the components of the vehicle installed by the manufacturer for the purpose of reducing emissions or its replacement or modification which is acceptable to the United States Environmental Protection Agency. These components are the fuel inlet restrictor, the catalytic converter or thermal reactor, the air injection system components, the thermostatic air cleaner, the exhaust gas recirculation system components, the evaporative emission system components including the gas cap, the positive crankcase ventilation system components and the electronic control unit components that control the air/fuel mixture and/or ignition timing including all related sensors.

(20) "Repeatability" means the ability of an analyzer to report the same value for successive measurements of the same sample.

(21) "Response" means how quickly there is a change in reading following a change in concentration at the sample probe inlet.

(22) "Sensitivity" means the smallest change in the value of a measured sample that can be detected by the analyzer.

(23) "Zero calibration gases" means air or nitrogen in which total impurities do not exceed 0.01 percent.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-020, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-020, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-020, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-020, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 80-03-070 (Order DE 79-35), § 173-422-020, filed 2/28/80.]

WAC 173-422-030 Vehicle emission inspection requirement. All motor vehicles, not specifically exempted by WAC 173-422-170, which are registered or reregistered within the boundaries of an emission contributing area, as specified in WAC 173-422-050, are subject to the vehicle emission inspection requirements of this chapter. In addition, the department may require an emission inspection of a motor vehicle, except military tactical vehicles, operated for more than sixty days a year on a federal installation located within an emission contributing area, or a vehicle garaged at a location within an emission contributing area, or a vehicle which has previously passed an emission inspection but has been identified using on road testing as

likely to no longer comply with the inspection standards. Neither the department of licensing nor its agents may change the registered owner or may issue or renew a motor vehicle license for any vehicle registered in an emission contributing area, as that area is established under RCW 70.120.040, unless the application for issuance or renewal is: (1) Accompanied by a valid certificate of compliance issued pursuant to RCW 70.120.060, 70.120.080, or 70.120.090 or a valid certificate of acceptance issued pursuant to RCW 70.120.070; or (2) exempted from this requirement pursuant to RCW 46.16.015(2). The certificates must have a date of validation which is within six months of the date of application for the vehicle license, license renewal or registered owner change. Certificates for fleet or owner tested vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-030, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-030, filed 5/3/93, effective 6/3/93. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-030, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 80-03-070 (Order DE 79-35), § 173-422-030, filed 2/28/80.]

WAC 173-422-035 Registration requirements. (1) Persons residing in emission contributing areas as defined under WAC 173-422-050 shall register their motor vehicles within that area.

(2) Any person who violates this section is subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

(3) Any civil penalty imposed by the department hereunder shall be appealable to the pollution control hearings board as provided for in chapter 43.21B RCW.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-035, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-035, filed 3/6/90, effective 4/6/90.]

WAC 173-422-040 Noncompliance areas. The following areas are designated noncompliance areas for the air contaminants specified: Carbon monoxide

- (1) The city of Seattle.
- (2) The city of Bellevue.
- (3) The city of Spokane.
- (4) The city of Tacoma.
- (5) The city of Vancouver.
- (6) The city of Everett.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-040, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-040, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-040, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 82-02-027 (Order DE 81-32), § 173-422-040, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-040, filed 2/28/80.]

WAC 173-422-050 Emission contributing areas. Emission contributing areas within which the motor vehicle emission inspection program applies are designated by the following United States Postal Service ZIP codes as of January 1, 1993, set forth below:

(1) Puget Sound Region

98001	98036	98083
98002	98037	98093
98003	98038	98101 thru 98199,
98004	98039	inclusive except 98110
98005	98040	98201 thru 98208
98006	98041	98258
98007	98042	98270
98008	98043	98271
98009	98046	98275
98011	98047	98290
98012	98052	98291
98015	98053	98327
98020	98054	98332
98021	98055	98335
98023	98056	98338
98025	98057	98344
98026	98058	98352
98027	98059	98354
98028	98062	98371 thru 98374
98031	98063	98387
98032	98064	98388
98033	98071	98390
98034	98072	98401 thru 98499
98035	98073	

(2) Spokane Region

99001
99005
99014
99016
99019
99021
99025
99027
99037
99201 thru 99299

(3) Vancouver Region

98607
98660 thru 98668
98671 except Skamania County
98682-86

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-050, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-050, filed 5/3/93, effective 6/3/93; 84-09-087 (Order DE 84-7), § 173-422-050, filed 4/18/84. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-050, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120, 82-02-027 (Order DE 81-32), § 173-422-050, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-050, filed 2/28/80.]

WAC 173-422-060 Gasoline vehicle emission standards. Gasoline motor vehicles subject to this chapter shall:

(1) Beginning June 1, 1995, with the exception of vehicles whose model year is 1980 or earlier, have the "primary emission control components" installed and operative, and have an engine that is or was available from the vehicle manufacturer for use with that vehicle or a

vehicle of the same or newer model year with the same chassis; and

(2) Meet the following exhaust emission standards prior to receiving a certificate of compliance.

Exhaust Emission Standards

Model Year	CO(%)	HC (ppm)	Opacity (%)
68-74	6.0	900	30
75-80	3.0	600	30
81-93 (0-8500 GVWR)	1.2	220	30
81-93 (Greater than 8500 GVWR)	3.0	400	30
94-99	0.5	100	30

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-060, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-060, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-060, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120, 82-02-027 (Order DE 81-32), § 173-422-060, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-060, filed 2/28/80.]

WAC 173-422-065 Diesel vehicle exhaust emission standards. Diesel motor vehicles subject to this chapter shall meet the following opacity standards using the test procedures specified in WAC 173-422-075.

Model Year	Opacity (%)
1968 - 1973	70
1974 - 1991	60
1992 and later	40

Vehicles tested at locations over 1000 feet above sea level will be allowed an additional 10% opacity.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-065, filed 5/3/93, effective 6/3/93.]

WAC 173-422-070 Gasoline vehicle inspection procedures. All persons certified by, or under contract to, the department to conduct motor vehicle emission inspections shall use the following procedures. Variations to the procedures specified may be established by the department for all or certain vehicles. Vehicles, not repaired as required by an emission recall for which owner notification was attempted after January 1, 1995, shall not be inspected until compliance with the recall is established.

(1) The vehicle exhaust emissions of carbon monoxide, hydrocarbons, and carbon dioxide shall be measured using either a:

(a) Two-speed (idle and 2500 rpm) test with the transmission in neutral or park; or

(b) A loaded test with the transmission in drive for automatic transmissions or in second gear for manual transmissions for the loaded mode and in park or neutral for the idle mode. A vehicle with an automatic transmission may be tested in drive for the idle mode if the idle rpm in neutral or park exceeds 1100 rpm. However, the idle rpm as tested cannot exceed 1100 rpm unless allowed to do so by the vehicle manufacturer's specifications.

(2) The engine shall be at normal operating temperature during the emission test with all accessories off.

(3) Any vehicle causing an unsafe condition, such as the continuous leaking of any fluid onto the floor, may be rejected from the inspection site.

(4) Vehicles shall be approximately level during the test.

(5) Vehicles with more than one exhaust pipe shall be tested by sampling one exhaust pipe if the exhaust pipes originate from a common point in the exhaust system or simultaneously sampling each exhaust pipe.

(6) The following steps shall be taken to prevent excessive dilution. The exhaust sample probe must be inserted at least ten inches into the tail pipe. If this is not possible, an extension boot shall be used. The exhaust emission test results shall not be recorded if the sum of the carbon monoxide and the carbon dioxide concentration does not equal or exceed six percent.

(7) If the engine stalls during the test, the exhaust sample probe shall be removed, the engine restarted, and one additional attempt made to complete the test after reinserting the exhaust sample probe.

(8) Two speed test sequence.

(a) Insert the exhaust sample probe.

(b) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass determination shall be made for the vehicle and the idle mode terminated if:

(i) The vehicle shall pass the idle mode test and this mode terminated if, prior to an elapsed time of thirty seconds, exhaust gas concentrations are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode test and this mode terminated if, at any time between an elapsed time of thirty seconds and ninety seconds, the exhaust gas concentrations are less than or equal to the applicable emission standards.

(c) Increase the engine speed to 2500 ± 300 rpm.

(d) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass or fail determination shall be made for the vehicle and the 2500 rpm mode terminated for vehicles that passed the idle mode test as follows:

(i) The vehicle shall pass the 2500 rpm mode test and this mode terminated if, prior to an elapsed time of thirty seconds, exhaust gas concentrations are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the 2500 rpm mode test and this mode terminated if, at any time between an elapsed time of thirty seconds and one hundred eighty seconds, the exhaust gas concentrations are less than or equal to the applicable emission standards.

(e) A pass or fail determination shall be made for vehicles that failed the idle mode test and the 2500 rpm mode test terminated at the end of an elapsed time of one hundred eighty seconds.

(f) If the vehicle fails the initial idle mode test and passed the high-speed mode test, a second idle test will be conducted.

(9) Loaded test sequence.

(a) Insert the exhaust sample probe.

(b) The test shall start when the dynamometer speed is within the following limits:

Engine Cylinders	Speed (mph)	Brake Horsepower
4 or less	22-25	2.8-4.1
5-6	29-32	6.8-8.4
7 or more	32-35	8.4-10.8

If the dynamometer speed falls outside the limits for more than five seconds in one excursion, or fifteen seconds over all excursions, the test shall be restarted.

(c) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass determination shall be made for the loaded mode and this mode terminated if at any point between an elapsed time of thirty seconds and ninety seconds, the exhaust gas concentrations are less than or equal to the applicable emission standards.

(d) The idle mode shall start when the dynamometer speed is zero and the vehicle engine speed is less than 1100 rpm. If engine speed exceeds 1100 rpm the idle mode test shall be restarted.

(e) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass determination shall be made for the vehicle and the idle mode terminated if:

(i) Prior to an elapsed time of thirty seconds, exhaust gas concentrations are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) At any time between an elapsed time of thirty seconds and ninety seconds, exhaust gas concentrations are less than or equal to the applicable emission standards.

(10) Before failing a 1981-1987 model year Ford Motor Company vehicle with a gross vehicle weight of 8500 pounds or less, or a 1984-85 model year Honda Prelude, the engine shall be shut off for ten seconds and then restarted and the failing mode repeated.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-070, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-070, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-070, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-070, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120, 82-02-027 (Order DE 81-32), § 173-422-070, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-070, filed 2/28/80.]

WAC 173-422-075 Diesel vehicle inspection procedure. Diesel vehicles shall be tested using the following procedure:

(1) With the transmission in neutral, move the accelerator pedal from normal idle as rapidly as possible to the full power position, and hold in this position until the speed governor limits the engine speed or the engine might exceed the maximum speed allowed by the vehicle manufacturer.

(2) Fully release the accelerator pedal so the engine decelerates to normal idle.

(3) Measure the smoke opacity with an opacity meter which meets the requirements specified in WAC 173-422-095 continuously during the test.

(4) Record the peak opacity reading.

(5) Repeat the previous steps up to ten times if necessary to obtain a peak opacity reading and two peak readings immediately following it that are equal to or less than the standard established in WAC 173-422-065.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-075, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-075, filed 5/3/93, effective 6/3/93.]

WAC 173-422-090 Exhaust gas analyzer specifications. Only exhaust gas analyzers meeting the following specifications at the time of certification testing may be used for certification testing. Any person authorized by the department to certify vehicles is solely responsible for insuring that the testing equipment is operating within the following specifications at the time of certification testing.

(1) Accuracy: The readings or the printed test results of the exhaust analyzers compared to the true value of a measured sample shall have the following accuracy tolerances.

HC - Measured as n - hexane		
0 to	400 ppm	±12 ppm
401 to	1000 ppm	±30 ppm
1001 to	2000 ppm	±80 ppm
CO		
0 -	2.00	±0.06
2.01 -	5.00	±0.15
5.01 -	9.99	±0.40
CO ₂		
0 -	4.0	±0.6
4.1 -	14.0	±0.5

(2) Calibration: The analyzer shall have the capability of being calibrated electronically and by gas.

(3) Drift: The drift of the zero reading or any calibration reading of each analyzer shall not exceed 15 ppm HC, 0.1% CO or 0.5% CO₂ in one hour.

(4) Flow restriction indicator: The analyzer shall be operated within manufacturer's specifications for sample flow. The sampling system shall be equipped with a visual and/or audible warning that sample flow is not within operating requirements.

(5) Interference effects: Sampling the following concentrations of noninterest gases shall not cause the HC reading to change ±10 ppm: 15% CO₂ in N₂, 10% CO in N₂, 3000 ppm NO in N₂, 10% O₂ in N₂, and 3% H₂O vapor in air.

Sampling the following concentrations of noninterest gases shall not cause the CO reading to change ±0.05%: 15% CO₂ in N₂, 1600 ppm HC in N₂, 3000 ppm NO in N₂, 10% O₂ in N₂, and 3% H₂O vapor in air.

Sampling the following concentrations of noninterest gases shall not cause the CO₂ reading to change ±0.20%: 1600 ppm HC in N₂, 10% CO in N₂, 3000 ppm NO in N₂, 10% O₂ in N₂, and 3% H₂O vapor in air.

(6) Repeatability: The repeatability of the exhaust analyzers used shall be within the following tolerances during five successive measurements of the same sample:

HC, ppm	0 - 400	8
as hexane	401 - 1000	15
	1001 - 2000	30
CO, %	0 - 2.00	0.03
	2.01 - 5.00	0.08
	5.01 - 9.99	0.15
CO ₂ , %	0 - 14.0	0.3

(7) Response: The response of the exhaust analyzers shall be at least ninety percent of the final value within eight seconds.

(8) Sensitivity: The sensitivity of each analyzer shall be equal to or less than 10 ppm HC, 0.05% CO and 0.2% CO₂.

(9) Range of measurement: The analyzer shall have a range equal to or greater than 0-2000 ppm HC (n-Hexane), 0 to 10% CO, and 0 to 6% CO₂.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-090, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-090, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-090, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 82-02-027 (Order DE 81-32), § 173-422-090, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-090, filed 2/28/80.]

WAC 173-422-095 Exhaust opacity testing equipment. The exhaust opacity measurement shall be conducted using an opacity meter approved by the department.

The opacity meter shall:

(1) Automatically calibrates itself before each test.

(2) Provide for continuous measurement of exhaust opacity unaffected by rain or wind.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-095, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-095, filed 5/3/93, effective 6/3/93.]

WAC 173-422-100 Testing equipment maintenance and calibration. (1) Unless alternative procedures have been approved or required by the department all equipment used in the inspection shall be calibrated and maintained according to the manufacturer's specifications and recommendations. Complete logs as approved by the department shall be kept for maintenance, repair, and calibration.

(2) The following procedures shall be followed by all testing facilities unless equivalent procedures have been approved by the department. Exhaust analyzers and all electronic components that could affect the gas concentration results shall be warmed up for at least thirty minutes prior to performing any test on equipment, calibration, span, or zero checks:

(a) Each test. Before each test can start, the zero and span setting must be checked on the opacity meter and the exhaust gas analyzer readings must be less than 10 ppm HC, 0.1% CO and 0.5% CO₂. If during a test the sampling system flow restriction indicator becomes activated, the test shall be stopped and restarted after the necessary repairs to the analyzer have been completed.

(b) Hourly check. The exhaust analyzer shall not be used to test vehicles unless within an hour prior to the test it was spanned with a calibration gas. The following procedure shall be used:

(i) Adjust the exhaust analyzer to zero using ambient air or zero calibration gas.

(ii) Adjust the exhaust analyzer using the electronic span.

(iii) Check the calibration of the exhaust analyzer using a calibration gas of approximately twenty to forty percent of each range.

(iv) Adjust and repair as necessary to insure the accuracy specified in WAC 173-422-090.

(c) Weekly check. The exhaust analyzer shall not be used to test vehicles unless a multipoint calibration has been performed within the last seven days. The following procedure shall be used:

(i) Adjust the exhaust analyzer to zero using ambient air or zero calibration gas.

(ii) Adjust the exhaust analyzer using the electronic span.

(iii) Check the calibration of the exhaust analyzer using calibration gases of approximately twenty, forty, sixty, and eighty percent for each range. (CO₂ must be present at concentrations of at least 2.0%.)

(iv) Adjust and repair as necessary to insure the accuracy specified in WAC 173-422-090 at each calibration point.

(v) Check the calibration of the exhaust analyzer using a calibration gas with a CO concentration of 1.2 to 2.4%, a HC concentration of 150 to 300 ppm measured as n-hexane, and a CO₂ concentration of 4.0 to 6.0%.

(vi) Adjust and repair as necessary to insure the accuracy of the exhaust analyzer is within .05% CO and 6 ppm HC.

(d) Repair check. A multipoint calibration as specified in (c) of this subsection shall be performed before the analyzer is used for certification testing following the replacement of an optical or electronic component that can cause a variation in the analyzer reading.

The manufacturer's recommended procedures to determine any change in the correction factor from the propane calibration gas to n-hexane readings shall be followed.

(e) Leak check. The exhaust analyzer shall not be used to test vehicles unless within one week prior to the testing, CO readings have been taken while introducing calibration gas through the calibration port and through the probe. Discrepancies of over 3% in the readings shall require repair of leaks. No analyzer adjustments shall be permitted during this check. Other leak check procedures may be used if it can be shown to the department's satisfaction that the method identifies leaks as well as the method in this subsection.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-100, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-100, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-100, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 82-02-027 (Order DE 81-32), § 173-422-100, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-100, filed 2/28/80.]

WAC 173-422-120 Quality assurance. The department, or its designee, may monitor the operation of each authorized emission inspection facility with unidentified or unannounced and unscheduled inspections to check the calibration and maintenance of the exhaust analyzers, test procedures, and records.

The department (or its designee) may immediately require the suspension of vehicle inspections in all or part by the inspection facility if violations of this chapter are found during an inspection of the inspection facility.

[Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-120, filed 5/3/93, effective 6/3/93. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-120, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 80-03-070 (Order DE 79-35), § 173-422-120, filed 2/28/80.]

WAC 173-422-130 Inspection fees. At an inspection facility operated under contract to the state, the fee for the

first emission inspection on each vehicle applicable to a vehicle license year shall be twelve or less dollars. If the vehicle fails, one reinspection will be provided free of charge at any inspection station operated under contract to the state, provided that the reinspection is applicable to the same vehicle license year. Any additional reinspection of a failed vehicle applicable to the same vehicle license year will require the payment of twelve or less dollars.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-130, filed 2/8/94, effective 3/11/94. Statutory Authority: RCW 70.120.170 (4)(a). 93-20-010 (Order 93-15), § 173-422-130, filed 9/22/93, effective 10/23/93. Statutory Authority: Chapter 70.120 RCW. 93-10-062 (Order 91-46), § 173-422-130, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-130, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.040(7). 87-02-051 (Order DE 86-32), § 173-422-130, filed 1/7/87, effective 4/1/87. Statutory Authority: RCW 70.120.120. 82-02-027 (Order DE 81-32), § 173-422-130, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-130, filed 2/28/80.]

WAC 173-422-145 Fraudulent certificates of compliance/acceptance. (1)(a) Obtaining or attempting to obtain a certificate of compliance by (i) providing false information or (ii) any fraudulent means; or

(b) Obtaining or attempting to obtain a certificate of acceptance (i) through the use of receipts or other documentation containing false information, or (ii) any fraudulent means shall be construed as a violation of these rules implementing chapter 70.94 RCW as supplemented by chapter 70.120 RCW.

(2) Any person who commits such violation or who aids or abets another in committing the same shall be subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

(3) For the purposes of this section the term "expended" refers to the net actual cost to the vehicle owner in the purchase of repairs or parts derived after the amount of any rebate, discount or cash-return has been subtracted.

(4) Any civil penalty imposed by the department hereunder shall be appealable to the pollution control hearing board as provided for in chapter 43.21B RCW.

[Statutory Authority: Chapter 70.120 RCW. 90-06-062, § 173-422-145, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-145, filed 11/23/83, effective 1/2/84.]

WAC 173-422-160 Fleet and diesel owner vehicle testing requirements. The department may authorize emission inspections by fleet operators including government agencies and the owners of diesel motor vehicles with a gross vehicle weight rating in excess of 8500 pounds or by an automotive service or testing facility engaged by the vehicle owner for such activity. Authorizations to conduct emission tests and issue certificates of compliance under this section are limited to authorized fleet vehicles or diesel vehicles with a gross vehicle weight rating in excess of 8500 pounds.

(1) The exhaust analyzers used for certification testing of gasoline fleet vehicles shall meet the specifications in WAC 173-422-090.

(2) All persons engaged in testing of gasoline fleet or diesel vehicles must comply with all applicable provisions of this chapter except WAC 173-422-100 (2)(b)(iii) and (iv) and (c)(iii) and (iv). The checks specified in WAC 173-422-

100 (2)(c) except (c)(iii) and (iv), in addition to being required weekly, shall be performed after each relocation of the analyzer.

(3) All persons conducting tests for the purpose of issuing certificates for fleet or diesel vehicles shall be ecology certified emission specialists.

(4) Legibly completed forms will constitute certificates of compliance for licensing purposes. Any person conducting testing under this section shall forward to the department within ten working days after the end of each month, a copy of each certificate of compliance issued during that month. Copies of each certificate of compliance shall be retained by the person issuing the certificate for at least two years from date of issuance. Alternative arrangements for providing and/or storing this information using automated data storage devices may be approved or required by the department.

Forms must be purchased from the department in advance of issuance through payment of twelve or less dollars to the department for each certificate requested. Refunds or credit may be given for unused certificates returned to the department.

Payment for fleet forms is waived for government fleets.

Test forms provided under this section are official documents. Persons receiving the forms from the department are accountable for each form provided.

Voided forms must be handled the same as certificates of compliance. One copy shall be sent to the department within ten days after the end of the month in which the form was voided and one copy shall be retained by the person accountable for the forms for at least two years after date of voiding. Refunds will not be made for voided forms.

(5) All persons authorized to conduct fleet or government vehicle inspections under this section shall be subject to performance audits and compliance inspections by the department, during normal business hours.

(6) Fleet vehicles may be inspected any time between their scheduled license renewals.

(7) Certificates of acceptance may not be issued under this section.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-160, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-160, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-160, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-160, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 82-02-027 (Order DE 81-32), § 173-422-160, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-160, filed 2/28/80.]

WAC 173-422-170 Exemptions. The following motor vehicles are exempt from the inspection requirement:

(1) Vehicles proportionally registered pursuant to chapter 46.85 RCW.

(2) Vehicles whose model year is 1967 or earlier.

(3) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale; this does not exempt motor vehicles that are or have been leased.

(4) Motor vehicles that use propulsion units powered exclusively by electricity.

(5) Motor-driven cycles as defined by RCW 46.04.332.

(6) Farm vehicles as defined by RCW 46.04.181.

(7) Vehicles exempted from licensing pursuant to RCW 46.16.010.

(8) Mopeds as defined by RCW 46.04.304.

(9) Vehicles garaged and operated out of the emission contributing area.

(10) Vehicles registered with the state but not for highway use.

(11) Used vehicles sold by a Washington licensed motor vehicle dealer.

(12) Motor vehicles fueled by propane, compressed natural gas, or liquid petroleum gas and so recognized by the department of licensing.

(13) Motor vehicles whose manufacturer or engine manufacturer provides information that the vehicle cannot meet emission standards because of its design. In lieu of exempting these vehicles alternative standards and/or inspection procedures may be established.

(14) Motor vehicles whose registered ownership is being transferred between parents, siblings, grandparents, grandchildren, spouse or present co-owners and all transfers to the legal owner or a public agency.

(15) To ensure a biennial inspection of vehicles registered in the emission contributing areas, motor vehicles with model year matching (even to even, odd to odd) the expiration year of the license being purchased. This does not apply to vehicles being inspected because the registered owner is being changed.

[Statutory Authority: Chapter 70.120 RCW. 94-05-039 (Order 93-10), § 173-422-170, filed 2/8/94, effective 3/11/94; 93-10-062 (Order 91-46), § 173-422-170, filed 5/3/93, effective 6/3/93; 90-06-062, § 173-422-170, filed 3/6/90, effective 4/6/90. Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-170, filed 11/23/83, effective 1/2/84. Statutory Authority: RCW 70.120.120. 82-02-027 (Order DE 81-32), § 173-422-170, filed 12/31/81; 80-03-070 (Order DE 79-35), § 173-422-170, filed 2/28/80.]

WAC 173-422-175 Fraudulent exemptions. (1) Obtaining or attempting to obtain an exemption from emission inspection requirements by false statements, or failure to comply with the exemption procedures established to implement WAC 173-422-170, shall be construed as a violation of these rules implementing chapter 70.94 RCW as supplemented by chapter 70.120 RCW.

(2) Any person who commits such violation or who aids or abets another in committing the same shall be subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

(3) Any civil penalty imposed by the department hereunder shall be appealable to the pollution control board as provided for in chapter 43.21B RCW.

[Statutory Authority: RCW 70.120.120, 43.21A.080, 70.94.331 and 70.94.141(1). 83-23-115 (Order DE 83-31), § 173-422-175, filed 11/23/83, effective 1/2/84.]

WAC 173-422-190 Emission specialist certification. (1) To become a certified emission specialist an individual shall:

(a) Pass a course of study, approved by the department, on motor vehicle maintenance, engine and exhaust analysis equipment usage, and emission control system repair and maintenance; and

(b) Agree in writing to meet the requirements of subsection (2) of this section.

(2) To maintain certification, a certified emission specialist shall:

(a) Successfully complete a department approved course on emission repair within the second year after the date of certification, and within each second year thereafter;

(b) Sign, including the specialist identification number, all receipts for tune-up and emission repairs or adjustments performed;

(c) Record on all receipts the vehicle's emission readings after the work is completed when an exhaust analyzer is available;

(d) Not tamper with emission control systems, including adjusting an engine outside of the manufacturer's specifications (chapter 173-421 WAC);

(e) Not obtain or attempt to obtain a certificate of acceptance (repair waiver) by providing false information or by any fraudulent means (WAC 173-422-145); and

(f) Not aid or abet any individual in committing a violation of chapter 173-421 WAC or WAC 173-422-145.

(3) The certification of a certified emission specialist may be revoked for a first violation of chapter 173-421 WAC or WAC 173-422-145, for a period of no more than one year, and may be permanently revoked for a second violation of chapter 173-421 WAC or WAC 173-422-145.

The certification of a certified emission specialist may be temporarily revoked for violation of subsection (2) of this section and may be permanently revoked for continued willful violation of subsection (2) of this section.

A certified emission specialist whose certification is revoked permanently or temporarily may appeal to the pollution control hearings board as provided for in RCW 43.21B.310.

(4) A certified emission specialist whose certification has been temporarily revoked may reapply for certification twelve months after the date of revocation by applying to the department and meeting all requirements of subsection (1) of this section. An application for certification by a permanently revoked certified emission specialist will be denied.

[Statutory Authority: Chapter 70.120 RCW. 90-06-062, § 173-422-190, filed 3/6/90, effective 4/6/90.]

WAC 173-422-195 Listing of certified emission specialists. (1) A list of certified emission specialists will be available to the public. Specialists will be listed under their employer's shop name when the shop is approved for listing. The list will be updated by the department at least once every six months.

(2) The employer's name and address will be listed by the department, when the employer agrees in writing to:

(a) Use a properly maintained and correctly calibrated exhaust analyzer as a final check for all tune-up and emission repairs or adjustments;

(b) Have all tune-up and emission repairs or adjustments performed by a certified emission specialist;

(c) Require any person performing tune-up and emission repairs or adjustments to sign the customer's receipt for tune-up and emission repairs or adjustments, and to record the vehicle's emission readings on the receipt after the work is completed;

(d) Require that all employees not aid or abet any person to tamper with emission control systems, including adjusting a vehicle outside of the manufacturer's specifications (chapter 173-421 WAC); and

(e) Require that all employees not aid or abet any person to obtain a fraudulent certificate of compliance (repair waiver) (WAC 173-422-145).

(3) An employer may be removed from the certified emission specialist list for a first violation of chapter 173-421 WAC or WAC 173-422-145 for a period of no more than one year and may be permanently removed after a second violation of chapter 173-421 WAC or WAC 173-422-145.

An employer may be temporarily removed from the certified emission specialist list when failing to comply with the requirements of subsection (2) of this section and may be permanently revoked for continued and willful violation of subsection (2) of this section.

(4) An employer who has been temporarily removed from the certified emission specialist list may reapply for listing twelve months after the date of removal from the listing by applying to the department and meeting all requirements of subsection (2) of this section. An application for listing from an employer permanently removed from the certified emission specialist list will be denied.

(5) An employer who is removed from a certified emission specialist list or denied listing in a certified emission specialist list may appeal to the pollution control hearings board as provided for in RCW 43.21B.310.

(6) A certified emission specialist whose employer is not listed may request to be placed on a separate list available to the public. The employer's name will not be listed. The specialist may specify an address and phone number to be included in the list.

(7)(a) An employer approved for listing may display the "state certified emission specialist" sign available from the department. Any employer advertising or providing of information to the public based on the department's certification of a certified emission specialist must be able to be discontinued immediately upon revocation of the employer's listing or certification of the certified emission specialist.

(b) An employer violating (a) of this subsection shall be subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

(c) A civil penalty imposed by the department may be appealed to the pollution control hearings board as provided for in RCW 43.21B.310.

[Statutory Authority: Chapter 70.120 RCW. 90-06-062, § 173-422-195, filed 3/6/90, effective 4/6/90.]

**Chapter 173-425 WAC
OPEN BURNING**

WAC

173-425-010	Purpose.
173-425-020	Applicability.
173-425-030	Definitions.
173-425-040	Prohibited materials.
173-425-050	Curtaiment during episodes or impaired air quality.
173-425-060	Open burning program for the state.
173-425-070	Open burning permit requirements.
173-425-080	Violations.

173-425-090 Local air authority may issue variance.
 173-425-100 Penalties.
 173-425-110 Severability.

**DISPOSITION OF SECTIONS FORMERLY
 CODIFIED IN THIS CHAPTER**

173-425-035 Episodes. [Order DE 77-19, § 173-425-035, filed 10/24/77. Formerly WAC 18-12-035.] Repealed by 89-02-055 (Order 88-39), filed 1/3/89. Statutory Authority: Chapters 70.94 and 43.21A RCW.

173-425-036 Curtailment during episodes or impaired air quality. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-036, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-036, filed 1/3/89.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-045 Prohibited materials. [Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-045, filed 1/3/89; Order DE 77-19, § 173-425-045, filed 10/24/77. Formerly WAC 18-12-045.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-055 Exceptions. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-055, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-055, filed 10/24/77. Formerly WAC 18-12-055.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-065 Residential open burning. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-065, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-065, filed 1/3/89; Order DE 77-19, § 173-425-065, filed 10/24/77. Formerly WAC 18-12-065.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-075 Commercial open burning. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-075, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-075, filed 1/3/89; Order DE 77-19, § 173-425-075, filed 10/24/77. Formerly WAC 173-425-075.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-085 Agricultural open burning. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-085, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-085, filed 1/3/89; Order DE 77-19, § 173-425-085, filed 10/24/77. Formerly WAC 18-12-085.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-095 No burn area designation. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-095, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-095, filed 1/3/89; Order DE 77-19, § 173-425-095, filed 10/24/77. Formerly WAC 18-12-095.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-115 Land clearing projects. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-115, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-115, filed 10/24/77. Formerly WAC 18-12-115.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-120 Department of natural resources—Smoke management plan. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-120, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-120, filed 10/24/77. Formerly WAC 18-12-120.] Repealed by 92-24-077

(Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-130 Notice of violation. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-130, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-130, filed 1/3/89; Order DE 77-19, § 173-425-130, filed 10/24/77. Formerly WAC 18-12-130.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-140 Remedies. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-140, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-140, filed 10/24/77. Formerly WAC 18-12-140.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

WAC 173-425-010 Purpose. This chapter promulgated under chapter 70.94 RCW, the Washington Clean Air Act, authorizes the department of ecology to implement the provisions of that act. This rule establishes controls for open burning in the state in order to:

(1) Reduce open burning to the greatest extent practical by eliminating it in:

(a) Areas that exceed ambient air quality standards for PM-10 and/or carbon monoxide; and

(b) Urban growth areas or cities with a population of 10,000 or more by December 31, 2000;

(2) For areas where open burning is allowed, establish a limited burning program, including procedures by which open burning may be conducted;

(3) Encourage the development and use of alternate methods of debris disposal.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-010, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-010, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-010, filed 10/24/77. Formerly WAC 18-12-010.]

WAC 173-425-020 Applicability. (1) No outdoor burning shall occur during a declared period of impaired air quality.

(2) Except as described in subsection (1) of this section and WAC 173-425-050, this chapter applies to all forms of outdoor burning in the state except:

(a) Silvicultural burning (governed by chapter 332-24 WAC).

(b) Agricultural burning (governed by chapter 173-430 WAC).

(c) Recreational fires as defined in WAC 173-425-030(12).

(d) Ceremonial fires as defined in WAC 173-425-030(2).

(e) Burning to improve and maintain fire dependent ecosystems (pursuant to chapter 332-24 WAC).

(3) A local air authority, fire protection authority, county, or conservation district may enforce its own controls that are stricter than those set forth in this chapter.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-020, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-020, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-020, filed 10/24/77. Formerly WAC 18-12-020.]

WAC 173-425-030 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

(1) "Agricultural burning" means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.

(2) "Ceremonial fire" means a fire associated with a Native American ceremony or ritual.

(3) "Department" means department of ecology.

(4) "Episode" means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC.

(5) "Impaired air quality" means a condition declared by the department or a local air authority in accordance with the following criteria:

(a) Meteorological conditions are conducive to an accumulation of air contamination concurrent with:

(i) Particulate that is ten micron and smaller in diameter (PM-10) at or above an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four-hour average; or

(ii) Carbon monoxide at an ambient level of eight parts of contaminant per million parts of air by volume (ppm) measured on an eight-hour average.

(b) Air quality that threatens to exceed other limits established by the department or a local air authority.

(6) "Local air authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source.

(7) "Nonattainment area" means a clearly delineated geographic area which has been designated by the Environmental Protection Agency and promulgated as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants, which includes carbon monoxide, fine particulate matter (PM-10), sulfur dioxide, ozone, and nitrogen dioxide.

(8) "Nuisance" means an emission of smoke or other emissions from any open fire that unreasonably interferes with the use and enjoyment of the property deposited on.

(9) "Open burning" means all forms of outdoor burning except those listed as exempt in WAC 173-425-020.

(10) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(11) "Reasonable alternatives" means disposal alternatives to open burning that cost less than eight dollars fifty cents per cubic yard. After July 1993, this amount shall be adjusted periodically by department policy.

(12) "Recreational fire" means barbecues and campfires, using charcoal, natural gas, propane, or natural wood which occur in designated areas or on private property. Fires used for debris disposal purposes are not considered recreational fires.

(13) "Silvicultural burning" means burning on any land the department of natural resources protects per RCW

70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.

(14) "Urban growth area" means an area defined by RCW 36.70A.030.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-030, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-030, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-030, filed 1/3/89; Order DE 77-19, § 173-425-030, filed 10/24/77. Formerly WAC 18-12-030.]

WAC 173-425-040 Prohibited materials. (1) Except as provided in WAC 173-425-020(2), the following materials shall not be burned in any outdoor fire: Garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, metal or any substance (other than natural vegetation) which when burned releases toxic emissions, dense smoke, or odors.

(2) Prohibited materials may be burned in certain circumstances:

(a) Diseased animals and infested material. When ordered by a duly authorized health officer and authorized by the department or local air authority, diseased animals and other infested material may be burned, as required, to keep the infestation from spreading.

(b) Dangerous material. When ordered by a fire protection authority and when authorized by the department or local air authority, fires to dispose of materials presenting a danger to life, property, or public welfare may be burned, if no approved practical alternate method of disposal is available.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-040, filed 12/1/92, effective 1/1/93.]

WAC 173-425-050 Curtailment during episodes or impaired air quality. (1) No outdoor fire shall be ignited:

(a) Whenever the department declares an air pollution episode for the geographical area pursuant to chapter 173-435 WAC; or

(b) Whenever the department or a local air authority declares impaired air quality for the geographical area.

(2) A person responsible for an outdoor fire at the time an episode or impaired air quality is declared shall extinguish that fire. Outdoor burning conducted under the auspices of the department of natural resources for the purpose of burning forest slash pursuant to RCW 70.94.660 through 70.94.670 shall be extinguished by withholding new fuel and allowing the fire to burn down.

(3) Smoke visible from all types of outdoor burning, except silvicultural burning, after a time period of three hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.

(4) For department of natural resource silvicultural burning, smoke visible from outdoor burning after a time period of ten hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-050, filed 12/1/92, effective 1/1/93.]

WAC 173-425-060 Open burning program for the state. (1) General requirements:

(a) All burning requires a permit as covered in WAC 173-425-070.

(b) Permits shall not be issued, and thus open burning is not allowed, in areas where reasonable alternatives are available. Within ninety days of the effective date, the department shall develop uniform procedures for determining costs of alternatives to open burning.

(c) A fire protection authority may declare a fire hazard in areas where burning is banned and in areas where burning is allowed. If open burning is determined the most appropriate manner to abate the fire hazard, the request must be reviewed and permitted by the local air authority. Permits issued under this section shall provide that:

(i) Prohibited material shall not be burned in any fire;

(ii) No open burning shall be done during a declared period of impaired air quality;

(iii) No reasonable alternative is available.

(d) No open burning shall be allowed in areas that exceed federal or state ambient air quality standards. Such areas shall be defined as carbon monoxide and/or PM-10 nonattainment area, unless otherwise determined pursuant to subsection (2)(a) of this section.

(2) Additional requirements for nonattainment areas.

(a) Phase-out approach. A local air authority may petition the department to use a phase-out approach in portions of a federally designated nonattainment area for carbon monoxide and/or PM-10. The phase-out approach will focus on how to achieve the Washington Clean Air Act goals and eliminate burning in areas that exceed the standards. The department will review and determine if the petition should be approved. The department may partially approve petitions or approve petitions with conditions based on consideration of the following factors:

(i) Population and population density.

(ii) The ability of the air quality in the region to support open burning based upon geographical and meteorological conditions.

(iii) The presence of a permitting program.

(iv) The extent to which reasonable alternatives to open burning are being developed through solid waste management plans and the schedule for the availability of such reasonable alternatives.

(v) Other factors deemed appropriate by the local air authorities.

(b) Petition evaluation. The petition to use a phase-out approach is due to the department no later than one month after the effective date of this rule. A ban is not effective in areas identified in the petition until after the department makes a ruling on the petition. Upon receiving the petition, the department shall review and make a determination within thirty days. For all federally designated nonattainment areas, open burning shall be banned by the applicable attainment date.

(c) Permits. The department or local air authority may issue permits in banned areas for the following activities:

(i) Fire fighting instruction. Local air authorities or the department may issue permits for fire training fires, pursuant to guidelines and rules of the department of ecology.

(ii) Specific forms. The department or the local air authorities may permit, with conditions, fires set that are part

of a defined research project, weed abatement, and smoke training as part of a military training exercise.

(d) Responding to open burning calls. Each affected county shall identify a fire marshal or other appropriate county official for field response and to document open burning complaints or violations using appropriate field notices. In areas where the county has no jurisdiction, the department or the local air authorities will negotiate with the appropriate local agency on field response.

(3) Additional requirements for urban growth areas and cities with a population of ten thousand or more.

(a) Open burning will be banned when reasonable alternatives are available, no later than the end of the year 2,000.

(b) Until open burning is banned, it is allowed subject to the permitting provisions of this chapter.

(c) When open burning is banned, the provisions in subsection (2) of this section apply.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-060, filed 12/1/92, effective 1/1/93.]

WAC 173-425-070 Open burning permit requirements. (1) Permit program. For areas where burning is allowed, the department, local air authorities, fire protection authorities, conservation districts, or counties may issue permits. Those issuing permits are responsible for field response to open burning complaints. Within ninety days of the effective date, the department shall develop minimum standards for a field response program, which addresses training, staffing, funding, and any other elements deemed appropriate by the department.

(2) Permit program development and assistance.

(a) The department shall provide assistance for implementing a permitting program, including minimum standards which address training, staffing, funding, and any other elements deemed appropriate by the department.

(b) The department shall develop a model permit program and provide guidance on starting and implementing permit programs.

(c) In selecting a permit program, the options range from the minimum - a general rule burn, as described in subsection (5) of this section - to a written permit. A permit program must be in place eight months after the department issues guidelines. If at that time no agreement is reached, the area becomes a no-burn area and falls under the restrictions of WAC 173-425-060(2). The department will conduct a joint public hearing with the conservation districts, local air authorities, counties, and fire districts. The purpose of the hearing is to inform the public that no agreement has been reached.

(d) The department or the local air authorities shall coordinate with the agencies listed in subsection (1) of this section to determine the type of permitting program appropriate for the area.

(3) Fees. The department or the local air authority may charge a fee to cover the administrative cost of a permit program. Fire districts, counties, and conservation districts issuing open burning permits may collect a fee to cover administrative costs. (RCW 70.94.780)

(4) Additional restrictions. The local air authorities and the department may restrict conditions for burning under this section. Burning conditions may include, but are not limited to, restricting burning in sensitive areas per chapter 173-440 WAC, restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.

(5) General rule burn permits. For areas of the state where burning is allowed, agencies listed in subsection (1) of this section may use a general permit by rule. This section provides a minimum (general rule burn) permit. Persons not able to meet all of the requirements of (a) through (i) of this subsection must apply for and receive a written permit. General rule burn permits under this section may be used for the following number of days per year: 1992-1995 - twenty-one days/year; 1995-1998 - fourteen days/year; 1998-2000 - seven days/year; after 2000 -seven days/year. Failure to comply with all the requirements of (a) through (i) of this subsection voids the general rule burn permit and the person burning is subject to the penalty provisions of WAC 173-425-100. A person burning under this section must follow these requirements and any additional restrictions, including those established by cities, counties, or fire protection authorities:

(a) The fire must not include prohibited materials listed in WAC 173-425-040, except what paper is necessary to start the fire.

(b) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(c) No fires are to be within fifty feet of structures.

(d) The pile must not be larger than four feet by four feet by three feet.

(e) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(f) No outdoor fire is permitted in or within five hundred feet of forest slash without a written burning permit.

(g) Either the designated permitting authority must be called to confirm burning conditions for each day or current information on burning conditions must be obtained from another designated source.

(h) If the fire creates a nuisance, it must be extinguished.

(i) Permission from a landowner, or owner's designated representative, must be obtained before starting an open fire.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-070, filed 12/1/92, effective 1/1/93.]

WAC 173-425-080 Violations. (1) The local air authority or department may issue a notice of violation to the person responsible for the fire under any of the following:

(a) Conditions of a permit issued under this chapter are violated;

(b) Any open fire is ignited where, under this chapter, such fires are prohibited or where a permit is required and has not been obtained;

(c) Prohibited materials are burned in an open fire;

(d) Any open fire is ignited when a condition of impaired air quality or air pollution episode stage is declared;

(e) Any ignited open fire that is not extinguished when a condition of impaired air quality or air pollution episode is declared;

(f) The fire causes emissions detrimental to health;

(g) The fire causes emissions that unreasonably interfere with property use and enjoyment.

(2) A fire protection authority called to respond to, control, or extinguish an illegal or out-of-control fire may charge and recover from the person responsible for the fire the costs of its response and control action.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-080, filed 12/1/92, effective 1/1/93.]

WAC 173-425-090 Local air authority may issue variance. Local air authorities may adopt variance procedures in their rules. Variance procedures properly adopted comply with this regulation and satisfy the requirement of department review required by RCW 70.94.181. The department, at its discretion, may review variance petitions.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-090, filed 12/1/92, effective 1/1/93.]

WAC 173-425-100 Penalties. Any violation of this chapter may be subject to any penalty or other remedy authorized in chapter 70.94 RCW.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-100, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-100, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-100, filed 10/24/77. Formerly WAC 18-12-100.]

WAC 173-425-110 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of such provision to other circumstances and the remainder of the regulation shall not be affected.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-110, filed 12/1/92, effective 1/1/93.]

**Chapter 173-430 WAC
AGRICULTURAL BURNING**

WAC

173-430-010	Purpose.
173-430-020	Definitions.
173-430-030	Permits, conditions, and restrictions.
173-430-040	Mobile field burners.
173-430-050	Other approvals.
173-430-060	Study of alternatives.
173-430-070	Fees.
173-430-080	Certification of alternatives.

WAC 173-430-010 Purpose. (1) This chapter, promulgated under chapter 70.94 RCW, as amended, is to assume state jurisdiction over and to control emissions from agricultural burning including the burning of field and forage, and turf grasses grown for seed and for the proper development of the state's natural resources.

(2) Authority to enforce all provisions of this regulation, including establishing permit conditions and issuing permits, is delegated to and shall be carried out by all activated air

pollution control authorities or ecology for those areas not under the jurisdiction of an authority.

(3) The purpose of this chapter is to:

(a) Minimize adverse effects on air quality from agricultural burning;

(b) Provide for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning;

(c) Provide for interim regulation of such burning until practical alternatives are found.

[Statutory Authority: RCW 70.94.650, 93-14-022 (Order 92-58), § 173-430-010, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-010, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-010, filed 11/9/77. Formerly WAC 18-16-010.]

WAC 173-430-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

(1) **Agricultural burning:** Burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.

(2) **Field and forage grasses:** Canarygrass, bromegrass, oatgrass, timothy, wheatgrass, and orchardgrass, planted to produce seed.

(3) **Straw:** All material, other than seed, removed by swathing, combining, or cutting.

(4) **Tear-out:** Any operation that destroys the existing crop and prepares the area for next year's planting.

(5) **Turf grasses:** All blue grasses, fescues, bentgrass, and perennial ryegrass, planted to produce seed.

[Statutory Authority: RCW 70.94.650, 93-14-022 (Order 92-58), § 173-430-020, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-020, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-020, filed 11/9/77. Formerly WAC 18-16-020.]

WAC 173-430-030 Permits, conditions, and restrictions. (1) No agricultural burning including open burning of field or forage grasses, or turf grasses shall be undertaken unless a permit has been obtained from ecology or an authority, as appropriate. Local air agencies (and ecology where no local air agencies exist) may issue permits for appropriate agricultural burning activities in nonattainment and urban growth areas.

(2) For open burning of field or forage grasses, or turf grasses, the issuance, denial, or conditioning of permits shall be governed by consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the amount of straw removal required, the applicant's need to carry out such burning, and the public's interest in the environment. Permits will be conditioned to minimize air pollution interest in the environment. Permits will be conditioned to minimize air pollution. Until approved alternatives become available, ecology or the

authority may limit the number of acres, on a pro rata basis, among those affected for which permits to burn will be issued in order to control emissions.

Burning of acreage not previously under permit may be banned or subject to more restrictive conditions. Burning of field and forage grasses may be restricted, and other measures may be required to minimize air pollution.

Permits issued before 1978 will establish a permit history for the applicant. This permit history will apply to an applicant and not to specific parcels of land and is established only for the maximum amount of acreage included in any permit issued before 1978. Land transferred to a spouse, son, or daughter, will retain a permit history as established by the original applicant.

Any permit denial or restriction may first be applied to applicants without a permit history and to amounts of acreage not included in an applicant's permit history.

Applicants who received permits before 1978 may be given priority for burning the amount of acreage cited in the permit history.

(3) **Open burning of field and forage grasses** shall be prohibited. However, a permit using restrictions or conditions, may be issued to burn field and forage grasses for disease, pest, or weed control, if such need is certified by a county agent or other agricultural authority; or if such grasses were planted as part of a soil erosion control plan approved by a conservation district.

(4) **Open burning of all grasses** scheduled for tear-out shall be prohibited unless a permit specifically allows such burning.

(5) **Practical alternative production methods and disease controls** which would reduce or eliminate agricultural burning shall be used when reasonably available. These methods and controls shall be used regardless of specific provisions of the compliance program described in this section.

[Statutory Authority: RCW 70.94.650, 93-14-022 (Order 92-58), § 173-430-030, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-030, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-030, filed 11/9/77. Formerly WAC 18-16-030.]

WAC 173-430-040 Mobile field burners. Mobile field burners, and other methods of incineration not classified as outdoor burning, shall not be prohibited by the restrictions in WAC 173-430-030: *Provided*, That emissions do not exceed the following standards:

(1) Visible emissions shall not exceed an opacity of 20 percent for more than three minutes in any one hour;

(2) Particulate emissions shall not exceed 0.1 grains per standard dry cubic foot of exhaust gas, corrected to seven percent oxygen.

[Statutory Authority: RCW 70.94.650, 93-14-022 (Order 92-58), § 173-430-040, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-040, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-040, filed 11/9/77. Formerly WAC 18-16-040.]

WAC 173-430-050 Other approvals. A person applying for a permit under this chapter is still required to obtain permits, licenses, or approvals required by any other laws, regulations, or ordinances.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-050, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-050, filed 11/9/77. Formerly WAC 18-16-050.]

WAC 173-430-060 Study of alternatives. Ecology shall conduct, cause to be conducted, or approve of a study or studies to explore and identify economical and practical alternative practices to open burning of field and forage, and turf grasses. To conduct any such study, ecology may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible. Ecology shall annually review the progress of such studies, review provisions of this regulation and available alternatives to burning and determine if continuing open burning of field and forage, and turf grasses is justified.

[Statutory Authority: RCW 70.94.650. 93-14-022 (Order 92-58), § 173-430-060, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-060, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-060, filed 11/9/77. Formerly WAC 18-16-060.]

WAC 173-430-070 Fees. (1) To support the study or studies described in WAC 173-430-060, ecology or an authority shall collect a fee:

(a) For field and forage, and turf grasses grown for seed, the fee is one dollar per acre of crop. The fee is to be collected before any permit is issued under WAC 173-430-030. This fee shall be submitted with individual permit applications.

(b) For all other agricultural practices, a twenty dollar nonrefundable permit/application fee shall be assessed and submitted with the general agricultural burning permit application. This twenty dollar fee is effective for the interim period ending when the agricultural burning practices and research task force establishes a permanent fee level (pursuant to RCW 70.94.650), or January 1, 1995, whichever occurs first.

(2) When a permit is granted to burn fewer acres of field and forage, and turf grasses grown for seed than requested in the permit application, ecology or the authority shall refund to the permit applicant the unused part of the permit fee.

(3) No part of the permit fee will be refunded if a grower decides to burn fewer acres than the permit allows.

(4) After granting any permit and making any refund required under WAC 173-430-070(2), the authority shall transfer the permit fee to ecology.

(5) Ecology shall deposit all permit fees in the air pollution control account.

(6) Ecology shall allocate moneys annually from this account to support approved studies provided for in WAC 173-430-060, up to the amount appropriated to ecology for such purpose.

(7) When ecology concludes that enough reasonably available alternative practices to the open burning of field and forage, and turf grasses grown for seed have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved. Any money remaining in the account shall revert to the general fund.

[Statutory Authority: RCW 70.94.650. 93-14-022 (Order 92-58), § 173-430-070, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW

70.94.331. 90-19-062 (Order 90-10), § 173-430-070, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-070, filed 11/9/77. Formerly WAC 18-16-070.]

WAC 173-430-080 Certification of alternatives. When enough information on alternative practices to open burning of field and forage, and turf grasses grown for seed becomes available, ecology shall conduct public hearings to receive testimony from interested parties. If ecology then concludes that any procedure, program, technique, or device is a practical alternative to the open burning of field and forage and turf grasses grown for seed, ecology shall, by order, approve such alternative. After approval, any alternative that is reasonably available shall be used; and open burning of field and forage, and turf grasses grown for seed shall not be allowed.

[Statutory Authority: RCW 70.94.650. 93-14-022 (Order 92-58), § 173-430-080, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-080, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-080, filed 11/9/77. Formerly WAC 18-16-080.]

Chapter 173-433 WAC

SOLID FUEL BURNING DEVICES

WAC

173-433-010	Purpose.
173-433-020	Applicability.
173-433-030	Definitions.
173-433-100	Emission performance standards.
173-433-110	Opacity standards.
173-433-120	Prohibited fuel types.
173-433-130	General emission standards.
173-433-140	Impaired air quality criteria.
173-433-150	Curtailement.
173-433-170	Retail sales fee.
173-433-200	Regulatory actions and penalties.

WAC 173-433-010 Purpose. This chapter, promulgated under chapters 43.21A and 70.94 RCW, establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-056 (Order 87-44), § 173-433-010, filed 12/16/87.]

WAC 173-433-020 Applicability. The provisions of this chapter apply to solid fuel burning devices in all areas of the state of Washington.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-056 (Order 87-44), § 173-433-020, filed 12/16/87.]

WAC 173-433-030 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

- (1) "Adequate source of heat" means the ability to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a dwelling.
- (2) "Certified" means that a woodstove meets emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified

by the EPA in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990.

(3) "Coal-only heater" means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking, which has all of the following characteristics:

(a) An opening for emptying ash which is located near the bottom or the side of the appliance;

(b) A system which admits air primarily up and through the fuel bed;

(c) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and

(d) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

(4) "EPA" means United States Environmental Protection Agency.

(5) "New woodstove" means a woodstove that has not been sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer, and has not been so used as to become what is commonly known as "second hand" within the ordinary meaning of that term.

(6) "Nonaffected pellet stove" means that a pellet stove has an air-to-fuel ratio equal to or greater than 35.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 CFR 60 Appendix A, REFERENCE METHOD 28A - MEASUREMENT OF AIR TO FUEL RATIO AND MINIMUM ACHIEVABLE BURN RATES FOR WOOD-FIRED APPLIANCES" as amended through July 1, 1990.

(7) "Retailer" means any person engaged in the sale of solid fuel burning devices directly to the public. A contractor who sells dwellings with solid fuel burning devices installed or a mail order outlet which sells solid fuel burning devices directly to the public is considered to be a solid fuel burning device retailer.

(8) "Seasoned wood" means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

(9) "Solid fuel burning device" (same as solid fuel heating device) means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel except those prohibited by WAC 173-433-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour.

(10) "Treated wood" means wood of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.

(11) "Woodstove" (same as "wood heater") means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

(a) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

(b) A useable firebox volume of less than twenty cubic feet;

(c) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28;

(d) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: Doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

[Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-030, filed 3/20/91, effective 4/20/91. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-030, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-054 (Order 88-38), § 173-433-030, filed 1/3/89; 88-01-056 (Order 87-44), § 173-433-030, filed 12/16/87.]

WAC 173-433-100 Emission performance standards. (1) Woodstoves. On or before January 1, 1995, a person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a new woodstove in Washington unless it has been tested to determine its emission performance and heating efficiency and certified and labeled in accordance with procedures and criteria specified in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990. After January 1, 1995, woodstove sales shall comply with the requirements of subsection (3) of this section, Solid fuel burning devices.

(2) Fireplaces. After January 1, 1997, a person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a factory built fireplace unless it meets the 1990 United States Environmental Protection Agency standards for woodstoves or equivalent standard that may be established by the state building code council by rule. Subsection (3) of this section shall not apply to fireplaces, including factory built fireplaces, and masonry fireplaces.

(3) Solid fuel burning devices. After January 1, 1995, a person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a solid fuel burning device in Washington unless it has been certified and labeled in accordance with procedures and criteria specified in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990, and meets the following particulate air contaminant emission standards and the test methodology of the United States Environmental Protection Agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States Environmental Protection Agency subsequent to such date:

(a) Two and one-half grams per hour for catalytic woodstoves; and

(b) Four and one-half grams per hour for all other solid fuel burning devices.

(c) For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by ecology that relates the emission test results from the methodology established by the United States

Environmental Protection Agency prior to May 15, 1991, to the test results from the methodology subsequently adopted by that agency.

[Statutory Authority: Chapter 70.94 RCW and 501-506 ESHB 1028, 1991. 93-04-105 (Order 91-55), § 173-433-100, filed 2/3/93, effective 3/6/93. Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-100, filed 3/20/91, effective 4/20/91. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-100, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-054 (Order 88-38), § 173-433-100, filed 1/3/89; 88-01-056 (Order 87-44), § 173-433-100, filed 12/16/87.]

WAC 173-433-110 Opacity standards. (1) A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

(2) State-wide opacity standard. An authority shall not adopt or enforce an opacity level for solid fuel burning devices that is more stringent than the state-wide standard.

(3) Test method and procedures. Methods and procedures specified by the EPA in "40 CFR 60 Appendix A reference method 9 - VISUAL DETERMINATION OF THE OPACITY OF EMISSIONS FROM STATIONARY SOURCES" as amended through July 1, 1990, shall be used to determine compliance with subsection (1) of this section.

(4) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall:

(a) Be enforceable on a complaint basis.

(b) Not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

(5) Education. Any person or retailer providing information on the operation of solid fuel burning devices, such as brochures, demonstrations, and public education programs, should include information that opacity levels of ten percent or less are attainable through proper operation.

[Statutory Authority: Chapter 70.94 RCW and 501-506 ESHB 1028, 1991. 93-04-105 (Order 91-55), § 173-433-110, filed 2/3/93, effective 3/6/93. Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-110, filed 3/20/91, effective 4/20/91. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-110, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-056 (Order 87-44), § 173-433-110, filed 12/16/87.]

WAC 173-433-120 Prohibited fuel types. A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device:

- (1) Garbage;
- (2) Treated wood;
- (3) Plastic and plastic products;
- (4) Rubber products;
- (5) Animal carcasses;
- (6) Asphaltic products;
- (7) Waste petroleum products;
- (8) Paints and chemicals; or
- (9) Any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire, proper-

ly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal-only heater.

[Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-120, filed 3/20/91, effective 4/20/91. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-120, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-054 (Order 88-38), § 173-433-120, filed 1/3/89; 88-01-056 (Order 87-44), § 173-433-120, filed 12/16/87.]

WAC 173-433-130 General emission standards. In addition to the general applicability of chapter 173-400 WAC to all emission sources;

(1) Emissions detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from an identifiable solid fuel burning device, including any air contaminant whose emission is not otherwise prohibited by this chapter, if the air contaminant emission causes detriment to the health, safety, or welfare of a person, plant or animal, or causes damage to property or business.

(2) Odors. Any person who shall cause or allow the generation of any odor from any solid fuel burning device which may interfere with any other property owner's use or enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

[Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-130, filed 3/20/91, effective 4/20/91. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-130, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-054 (Order 88-38), § 173-433-130, filed 1/3/89.]

WAC 173-433-140 Impaired air quality criteria. Impaired air quality shall be determined by ecology or an authority in accordance with the following criteria:

(1) "First stage impaired air quality" - the first stage indicates the presence of:

(a) Particulate matter ten microns and smaller in diameter (PM_{10}) at or above an ambient level of seventy-five micrograms per cubic meter; or

(b) Carbon monoxide at or above an ambient level of eight parts of contaminant per million parts of air by volume (ppm).

(2) "Second stage impaired air quality" - the second stage indicates the presence of particulate matter ten microns and smaller in diameter (PM_{10}) at or above an ambient level of one hundred five micrograms per cubic meter.

(3) On or after July 1, 1995, if an authority has geographically limited the use of solid fuel burning devices as specified under WAC 173-433-150(6), a single stage of impaired air quality will apply within the geographical area defined by the authority. A single stage of impaired air quality indicates the presence of:

(a) Particulate matter ten microns and smaller in diameter (PM_{10}) at or above an ambient level of ninety micrograms per cubic meter; or

(b) Carbon monoxide at or above an ambient level of eight parts of contaminant ppm.

(4) Acceptable ambient air quality measurement methods.

(a) Particulate matter ten microns and smaller in diameter (PM_{10}).

(i) Procedures specified by the EPA in "40 CFR 50, APPENDIX J - REFERENCE METHOD FOR THE DETERMINATION OF PARTICULATE MATTER AS PM₁₀ IN THE ATMOSPHERE" as amended through July 1, 1990, shall be used to gather reference ambient PM₁₀ data on a twenty-four-hour average.

(ii) More timely ambient PM₁₀ measurement methods may be utilized to evaluate air quality impairment if accepted and approved by ecology. Any alternative method for evaluating air quality impairment for the purpose of curtailing solid fuel burning device use must be done at the same location and in parallel to the reference method, and must be related to the reference method by a mathematical relationship with a correlation coefficient of no less than 0.85.

(b) Carbon monoxide (CO) must be measured on an eight-hour average in accordance with procedures specified by the EPA in "40 CFR 50, APPENDIX C - REFERENCE METHOD FOR THE DETERMINATION OF CARBON MONOXIDE IN THE ATMOSPHERE (NON-DISPURISIVE INFRARED PHOTOMETRY)" as amended through July 1, 1990.

(c) All monitors used to measure PM₁₀ for evaluation of air quality impairment due to solid fuel burning device use must be sited in accordance with EPA siting criteria in or near affected residential areas.

[Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-140, filed 3/20/91, effective 4/20/91.]

WAC 173-433-150 Curtailment. (1) Whenever ecology or an authority has declared the first stage of impaired air quality for a geographical area a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device shall not operate any solid fuel burning device, unless the solid fuel burning device is one of the following:

(a) A nonaffected pellet stove; or

(b) A woodstove certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(c) A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(2) Whenever ecology or an authority has declared the second stage of impaired air quality for a geographical area a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device shall not operate any solid fuel burning device.

(3) Whenever ecology has declared an air pollution episode at a level above forecast a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device shall not operate any solid fuel burning device.

(4) The following matrix graphically illustrates the applicability of different types of solid fuel burning devices to the provisions of subsections (1) through (3) of this section:

Burn Condition Type of Device	Impaired Air Quality		Episode	
	First Stage	Second Stage	Forecast	Alert, Warning, or Emergency
Pellet Stove (non-affected)	OK	NO	OK	NO
EPA Certified Woodstove	OK	NO	OK	NO
DEQ Phase 2 Woodstove	OK	NO	OK	NO
EPA Exempted Device	NO	NO	OK	NO
All Other Devices	NO	NO	OK	NO

NOTES: "OK" indicates that the device may be operated
"NO" indicates that the device may not be operated

(5) On or after July 1, 1995, an authority may prohibit use of solid fuel burning devices within specific geographical areas:

(a) The following factors shall be considered in the exercise of this limitation:

(i) The contribution of solid fuel devices that do not meet the standards set forth in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990, to nonattainment of national ambient air quality standards;

(ii) The population density of the applicable geographical area; and

(iii) The public health effects of the use of solid fuel devices which do not meet the standards set forth in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990.

(b) The following solid fuel devices are exempted from this limitation:

(i) Fireplaces;

(ii) Woodstoves certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(iii) Nonaffected pellet stoves.

(c) An authority shall allow an exemption from this subsection for low-income persons who reside in the geographical area affected by this subsection.

(6) On or after July 1, 1995, whenever an authority has declared impaired air quality in accordance with criteria contained in WAC 173-433-140(3) for a geographical area defined under subsection (5) of this section, a person in a residence or commercial establishment within that geographical area shall not operate any solid fuel burning device.

(7) A person responsible for an applicable solid fuel burning device already in operation at the time an episode is declared shall withhold new solid fuel for the duration of the episode. A person responsible for an applicable solid fuel burning device already in operation at the time impaired air quality is declared shall withhold new solid fuel for the duration of the impaired air quality. Smoke visible from a chimney, flue or exhaust duct after three hours has elapsed from the declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(8) Ecology, authorities, health departments, fire departments, or local police forces having jurisdiction in the area may enforce compliance with the above solid fuel burning device curtailment rules after three hours has elapsed from the declaration of the episode or impaired air quality.

[Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-150, filed 3/20/91, effective 4/20/91. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-150, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-056 (Order 87-44), § 173-433-150, filed 12/16/87.]

WAC 173-433-170 Retail sales fee. (1) A person selling a solid fuel burning device at retail shall collect a fee from the buyer, pursuant to RCW 70.94.483.

(2) The fee shall be:

(a) Set at a minimum of thirty dollars on January 1, 1992. Thereafter, ecology may annually adjust the fee to account for inflation as determined by the office of the state economic and revenue forecast council. Adjustments in the fee should be rounded down to the nearest dollar.

(b) Applicable to all new and used solid fuel burning devices.

(c) Procedures for masonry fireplaces. Generally, contractors will collect, pay, and report the fee to the department of revenue on the combined excise tax return for the tax reporting period during which the retail sales tax is billed to the customer for the construction of the masonry fireplace. (See WAC 458-20-170 for a detailed explanation.) Collection and payment of the fee by contractors shall be in accordance with the following:

(i) A masonry contractor or other subcontractor who builds a masonry fireplace. The retail sale occurs at the time the general or prime contractor or customer is billed for the work. The masonry contractor or other subcontractor must collect the fee and pay it to the department of revenue, unless the masonry contractor or other subcontractor has received a resale certificate from the general or prime contractor. The fee shall be reported on the combined excise tax return.

(ii) A general or prime contractor building a custom building. The retail sale occurs at the time the customer is billed for the construction. The fee is charged and reported with the first progress payment after the masonry fireplace has been substantially completed. If a general or prime contractor subcontracts the work on a custom building to a masonry or other contractor, the general or prime contractor may give the masonry or other subcontractor a resale certificate. The general or prime contractor is responsible to collect the fee and pay it to the department of revenue. The fee is reported on the combined excise tax return.

(iii) A general or prime contractor building a speculation building. The fee is required to be paid at the time the fireplace is complete. The fee must be reported to the department of revenue on a combined excise tax return and paid to the department of revenue. If the prime or general contractor subcontracts the building of the masonry fireplace to a masonry contractor or other subcontractor, the general or prime contractor may not give a resale certificate to the masonry or other subcontractor. The masonry or other subcontractor must collect and pay the fee to the department of revenue as provided in (c)(i) of this subsection.

(d) Procedures for all other solid fuel burning devices. Collected by the retailer at the time of sale and remitted to the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW.

(3) If the retailer or contractor fails to collect and remit the fee to the department of revenue as prescribed in chapter 82.08 RCW, the retailer or contractor shall be personally liable to the state for the amount of the fee, with subsequent actions taken in accordance with the collection provisions of chapter 82.32 RCW.

(4) Beginning July 1, 1990, and each calendar quarter thereafter, the funds collected under RCW 70.94.483 shall be used solely for the purposes of public education and enforcement of the solid fuel burning device program. The department shall distribute the funds from the woodstove education and enforcement account as follows:

(a) Sixty-six percent of the funds shall be distributed to those local air authorities with enforcement programs, based upon the fraction of the total state population residing in the counties within their respective jurisdictions. Population figures used to establish this fraction shall be determined by the office of financial management. Where an activated local air authority does not exist or does not implement an enforcement program, or elects not to receive the funds, ecology shall retain the funds that would otherwise be distributed under this subsection; and

(b) Thirty-four percent of the funds shall be distributed to ecology for the purposes of enforcement and educating the public about:

(i) The effects of solid fuel burning device emissions upon health and air quality; and

(ii) Methods of achieving better efficiency and emission performance from solid fuel burning devices.

[Statutory Authority: Chapter 70.94 RCW and 501-506 ESHB 1028, 1991. 93-04-105 (Order 91-55), § 173-433-170, filed 2/3/93, effective 3/6/93. Statutory Authority: Chapter 70.94 RCW. 91-07-066 (Order 90-58), § 173-433-170, filed 3/20/91, effective 4/20/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-054 (Order 88-38), § 173-433-170, filed 1/3/89.]

WAC 173-433-200 Regulatory actions and penalties.

A person in violation of this chapter may be subject to the provisions of WAC 173-400-230 Regulatory actions and WAC 173-400-240 Criminal penalties.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-433-200, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 88-01-056 (Order 87-44), § 173-433-200, filed 12/16/87.]

Chapter 173-434 WAC

SOLID WASTE INCINERATOR FACILITIES

WAC

173-434-010	Purpose.
173-434-020	Applicability.
173-434-030	Definitions.
173-434-050	New source review (NSR).
173-434-070	Prevention of significant deterioration (PSD).
173-434-090	Operation and maintenance plan.
173-434-100	Requirement for BACT.
173-434-110	Standards of performance.
173-434-120	Emission standards for hazardous air pollutants.
173-434-130	Emission standards.
173-434-160	Design and operation.

173-434-170	Monitoring and reporting.
173-434-190	Changes in operation.
173-434-200	Emission inventory.
173-434-210	Special studies.

WAC 173-434-010 Purpose. This chapter, promulgated under chapter 70.94 RCW, establishes emissions standards, design requirements, and performance standards for solid waste incinerator facilities.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-010, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-010, filed 3/16/87.]

WAC 173-434-020 Applicability. The provisions of this chapter shall apply state-wide to all solid waste or solid waste derived fuel incinerator facilities that:

- (1) Are constructed after January 1, 1985, which are designed to burn twelve or more tons per day; or
- (2) Was constructed prior to January 1, 1985, but begins to burn twelve or more tons per day after January 1, 1985.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-020, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-020, filed 3/16/87.]

WAC 173-434-030 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings.

(1) "Incinerator facility" means all of the emissions unit(s) including quantifiable fugitive emissions, which are located in one or more contiguous or adjacent properties, and are under the control of the same person(s), whose activities are ancillary to the incineration of solid waste.

(2) "Residence time" means the minimum amount of time that a parcel of gas is subject to a given temperature.

(3) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid and semisolid materials, which are not primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to septage from septic tanks, dangerous waste, and problem wastes. Solid waste does not include wood waste or sludge from waste water treatment plants.

(4) "Transmissometer" means a device that measures opacity and conforms to EPA Performance Specification Number 1 in Title 40 Code of Federal Regulations, Part 60, Appendix B as promulgated prior to July 1, 1988.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-030, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-030, filed 3/16/87.]

WAC 173-434-050 New source review (NSR). The conditions of WAC 173-400-110 shall apply to each new source or emissions unit covered by this chapter.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-050, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-434-050, filed

1/3/89. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-050, filed 3/16/87.]

WAC 173-434-070 Prevention of significant deterioration (PSD). The conditions of WAC 173-400-141 shall apply to all new major sources and major modifications covered by this chapter.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-070, filed 9/17/90, effective 10/18/90.]

WAC 173-434-090 Operation and maintenance plan. As part of a condition of approval of the notice of construction, the owner or operator of the incinerator shall develop a plan for the operation and maintenance of all equipment and procedures that can cause or control air pollution. This plan must be approved by ecology or the authority prior to initial startup or testing. Every twenty-four months thereafter, the owner or operator must obtain approval of a new or updated plan to continue operation. The plan may include operating parameters, maintenance procedures and operation personnel training requirements and procedures to assure that the source will comply with all applicable rules, resolutions, regulations, safety practices, and ordinances.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-090, filed 9/17/90, effective 10/18/90.]

WAC 173-434-100 Requirement for BACT. (1) No incinerator facility shall cause or permit air contaminant emissions in excess of the limits described in this section, as modified by chapter 173-400 WAC if applicable. All incinerator facilities that are required to file a notice of construction are required to use best available control technology (BACT) which is determined on a case-by-case basis at the time of approval of the notice of construction. For some incinerator facilities, this may be more stringent than the emissions limitations of this chapter and may include fuel cleaning or separation.

(2) Whenever more than one regulation applies to the control of air contaminants from an incinerator facility, the more stringent regulation, control, or emission limit shall govern.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-100, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-100, filed 3/16/87.]

WAC 173-434-110 Standards of performance. Sources and emissions units to which this chapter is applicable, shall comply with any applicable provisions of WAC 173-400-115 "Standards of performance for new sources."

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-110, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-110, filed 3/16/87.]

WAC 173-434-120 Emission standards for hazardous air pollutants. Sources and emissions units to which this chapter is applicable shall comply with any applicable provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants."

[Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-434-120, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW, 87-07-041 (Order 86-38), § 173-434-120, filed 3/16/87.]

WAC 173-434-130 Emission standards. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no incinerator facility shall cause or permit air contaminant emissions in excess of the limits listed below. Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(1) Particulate.

(a) For incinerator facilities that are capable of burning two hundred fifty or more tons of solid waste per day, emissions from each stack shall not exceed 0.046 grams of particulate per dry cubic meter at standards conditions (0.020 grains/dscf) corrected to seven percent oxygen for an hourly average.

(b) For incinerator facilities that have a maximum capability of burning less than two hundred fifty tons of solid waste per day, emissions from each stack shall not exceed 0.069 grams of particulate per dry cubic meter at standards conditions (0.030 grains/dscf) corrected to seven percent oxygen for an hourly average.

(2) Hydrogen chloride. The hydrogen chloride emissions from each stack shall not exceed fifty ppm on a volumetric dry basis corrected to seven percent oxygen for an hourly average, except if the owner or operator demonstrates that uncontrolled emissions of hydrogen chloride are reduced by at least eighty percent and a procedure acceptable to ecology or the authority for monitoring is developed.

(3) Sulfur dioxide. The sulfur dioxide emissions from each stack shall not exceed fifty ppm on a volumetric dry basis corrected to seven percent oxygen for an hourly average, except if the owner or operator demonstrates that the uncontrolled emissions of sulfur dioxide are reduced by at least eighty percent and a procedure acceptable to ecology or the authority for monitoring is developed. When more than fifty percent of the heat input is fossil fuel, ecology or the authority may establish a higher sulfur dioxide limit provided that limit meets BACT requirements.

(4) Opacity.

(a) The opacity as measured visually from any incinerator stack shall not exceed an average of five percent opacity for more than six consecutive minutes in any sixty minute period.

(b) The opacity as measured by a transmissometer shall not exceed an average of ten percent opacity for more than six consecutive minutes in any sixty minute period.

(c) The opacity as measured visually shall not exceed an average of zero percent from any emissions unit except incinerator stacks for more than six consecutive minutes in any sixty minute period.

(5) Fugitive emissions. Each operator or owner shall take reasonable precautions to prevent fugitive emissions which includes the paving of all normally traveled roadways within the plant boundary and enclosing or hooding material transfer points.

(6) Source testing. To demonstrate compliance with this chapter, refer to WAC 173-400-105.

[Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-434-130, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW, 87-07-041 (Order 86-38), § 173-434-130, filed 3/16/87.]

WAC 173-434-160 Design and operation. (1) Combustion zone temperature. Whenever solid waste is being burned, the temperature of the final combustion zone shall not be below 982°C (1800°F) for a fifteen minute average nor below 871°C (1600°F) for any reading.

(2) Residence time. The minimum combustion chamber temperature must be maintained for at least one second (1.0 second) in a zone after the last over fire air has entered the combustion chamber. If over fire air is not used, the combustion chamber shall maintain the minimum combustion temperature or greater for at least one second with all combustion gases. Procedures for determining the residence time shall be a part of the new source review.

(3) Excess air. The combustion gases leaving the final combustion zone must contain at least three percent oxygen measured on a wet basis.

(4) Combustion air. To minimize odor, fugitive emissions and to maintain a negative pressure in the tipping area, the combustion air shall be withdrawn from the tipping area, or shall utilize an equivalent means of odor and fugitive emission control acceptable to ecology or the authority.

(5) Combustion air distribution and control. The air distribution shall be fully controllable where pressurized air is introduced and the air flow shall be monitored and recorded.

(6) Particulate control device temperature. The inlet temperature of the primary particulate control device shall not exceed 177°C (350°F).

(7) Operation. At all times, the owner or operator shall, to the extent practicable, maintain and operate any incinerator facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. This may mean that if the emissions limits are being exceeded, no more waste should be fed into the incinerator until the problem is corrected. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology or the authority which may include, but is not limited to, monitoring and recording results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

[Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-434-160, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW, 87-07-041 (Order 86-38), § 173-434-160, filed 3/16/87.]

WAC 173-434-170 Monitoring and reporting. The owners or operators of each incinerator facility shall conduct routine monitoring of emissions in accordance with a program that has been approved by ecology or the authority. The program must contain quality control and quality assurance procedures.

(1) Monitoring. The owners or operators shall install, operate, and maintain continuous monitors and recorders for the following:

- (a) Opacity;
- (b) Combustion zone temperature;
- (c) Particulate control device temperature;

- (d) Hydrogen chloride and/or sulfur dioxide;
- (e) Oxygen;
- (f) Carbon monoxide;
- (g) Combustion air distribution.

The monitors for opacity, sulfur dioxide, carbon monoxide, and oxygen shall comply with EPA performance specifications in Title 40, Code of Federal Regulations, Part 60, Appendix B as promulgated prior to July 1, 1989.

(2) Reporting. Results of the monitoring shall be reported within fifteen days of the end of each calendar month and shall include but may not be limited to data such as:

(a) The average daily maximum and the daily maximum concentration of each monitored pollutant and the daily amount of solid waste burned.

(b) The date, time, and magnitude of any periods during which the standards were exceeded, and what corrective action was or will be taken.

(c) Any period(s) of monitor down time.

(3) Testing. The owners or operators shall conduct emission tests for particulate, sulfur dioxide and hydrogen chloride on a regular basis. These tests may be used to determine acceptable operating parameters. Testing shall be at least annually for incinerator facilities capable of burning two hundred fifty tons or more of solid waste per day and biennially for other facilities.

(4) Other data. Each owner or operator shall furnish upon request by ecology or the authority, other data required to evaluate the incinerator's emissions or emissions control program.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-170, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-170, filed 3/16/87.]

WAC 173-434-190 Changes in operation. If a startup, shutdown, breakdown, or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:

(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to ecology or the authority not less than twenty-four hours in advance of its occurrence. For incinerator facilities that normally operate for less than twenty-four hours per day, this provision may be waived provided that daily startup and shutdown procedures are developed that are acceptable to ecology or the authority.

(2) For unplanned conditions, such as a breakdown or upset, the condition shall be reported to ecology or the authority as soon as possible, but no later than the end of the next business day.

If, upon reviewing the available information, ecology or the authority determines that continued operation of any emissions unit is likely to cause a significant risk to the public, it may order an immediate shutdown of the emissions unit.

Upon request ecology or the authority, the owner or operator of the source shall submit a full written report including known causes of any infraction, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

Compliance with the requirement of WAC 173-434-100, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-434 WAC nor from the resulting liabilities for failure to comply.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-190, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-190, filed 3/16/87.]

WAC 173-434-200 Emission inventory. The owner or operator of any solid waste incinerator shall submit an inventory of emissions that complies with WAC 173-400-105. The inventory shall include but may not be limited to stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds, hydrogen chloride, and other contaminants.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-200, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-434-200, filed 1/3/89. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-200, filed 3/16/87.]

WAC 173-434-210 Special studies. Ecology or the authority may require such additional special studies relevant to process emissions and establish completion dates as it determines necessary. These special studies may include the requirement to conduct studies of dioxin emissions and control measures.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-434-210, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapter 70.94 RCW. 87-07-041 (Order 86-38), § 173-434-210, filed 3/16/87.]

Chapter 173-435 WAC EMERGENCY EPISODE PLAN (Formerly chapter 18-08 WAC)

WAC

173-435-010	Purpose.
173-435-015	Significant harm levels.
173-435-020	Definitions.
173-435-030	Episode stage criteria.
173-435-040	Source emission reduction plans.
173-435-050	Action procedures.
173-435-060	Enforcement.
173-435-070	Sampling sites, equipment, and methods.

WAC 173-435-010 Purpose. These rules implement chapter 70.94 RCW, the Washington State Clean Air Act.

Air pollution episodes occur under meteorological conditions that reduce the effective volume of air into which air contaminants are introduced. When these conditions occur, there is a possible danger that normal operations at air contaminant sources will be detrimental to public health and safety. The avoidance of high contaminant concentrations reaching significant harm levels during an episode requires a plan which will provide for rapid short-term emission reduction. This chapter sets up such an episode avoidance plan.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-010, filed 1/3/89; Order DE 77-21, § 173-435-010, filed 10/31/77.]

WAC 173-435-015 Significant harm levels. Significant harm levels are reached when any one of the following pollutant concentrations are measured:

- (1) Sulfur dioxide - 2,620 $\mu\text{g}/\text{m}^3$ (1.0 ppm), 24-hour average.
- (2) PM-10 - 600 micrograms/cubic meter, 24-hour average.
- (3) Carbon monoxide - 57.5 mg/m^3 (50 ppm), 8-hour average, 86.3 mg/m^3 (75 ppm) 4-hour average, 144 mg/m^3 (125 ppm) 1-hour average.
- (4) Ozone - 1,200 $\mu\text{g}/\text{m}^3$ (0.6 ppm) - 2-hour average.
- (5) Nitrogen dioxide - 3,750 $\mu\text{g}/\text{m}^3$ (2.0 ppm) 1-hour average, 938 $\mu\text{g}/\text{m}^3$ (0.5 ppm) 24-hour average.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-015, filed 1/3/89.]

WAC 173-435-020 Definitions. Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings, general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to the emergency episode plan as defined below.

- (1) "Air quality control region" means an area designated as an air quality control region by the federal environmental protection agency.
- (2) "Episode stage" means a prescribed level of air contaminants or meteorological conditions where certain control actions are required to prevent ambient pollutant concentrations from reaching levels which could cause significant harm to the health of persons.
- (3) "Emergency action center" means the headquarters for all department actions during an episode stage.
- (4) "Hour" means a 60 minute period, beginning and ending on a clock hour.
- (5) "8 hours" means any consecutive 8 hours, starting at any clock hour.
- (6) "Major source" means any source which is estimated to emit at an annual rate of twenty-five tons per year or more of SO_2 , particulates, or carbon monoxide.
- (7) "Source emission reduction plan (SERP)" means a plan developed for an individual air pollution source and approved by the director, which sets forth the actions to be taken at that source upon the declaration of various stages of an episode.
- (8) "24 hours" means any consecutive 24 hours, starting at any clock hour.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-020, filed 1/3/89; Order DE 77-21, § 173-435-020, filed 10/31/77.]

WAC 173-435-030 Episode stage criteria. The declaration of episode stages shall be in accordance with the following criteria:

- (1) **Stage:** "First or forecast" - the forecast stage indicates the presence of meteorological conditions conducive to the accumulation of air contaminants. A forecast stage may be declared when an air stagnation advisory is issued by the national weather service or there is equivalent indication of stagnant atmospheric conditions and conditions are forecast to persist for 24 hours. Declaration of this stage will activate increased air quality surveillance.

(2) **Stage:** "Second or alert" - the alert stage is that concentration of pollutants at which control actions are to begin. An alert will be declared when any one of the following levels is reached:

- (a) SO_2 - 800 $\mu\text{g}/\text{m}^3$ (0.3 ppm), 24-hour average.
- (b) PM-10 - 350 $\mu\text{g}/\text{m}^3$, 24-hour average.
- (c) CO - 17 mg/m^3 (15 ppm), 8-hour average.
- (d) Oxidant (O_3) - 400 $\mu\text{g}/\text{m}^3$ (0.2 ppm) - 1-hour average.
- (e) NO_2 - 1130 $\mu\text{g}/\text{m}^3$ (0.6 ppm) 1-hour average, 282 $\mu\text{g}/\text{m}^3$ (0.15 ppm) 24-hour average; and meteorological conditions are such that the pollutant concentrations can be expected to remain at or above the alert levels for 12 or more hours or can be expected to recur within 24 hours unless control actions are taken.

(3) **Stage:** "Third or warning" - the warning stage indicates that air quality is continuing to degrade and that additional control actions are necessary. A warning will be declared when any one of the following levels is reached:

- (a) SO_2 - 1,600 $\mu\text{g}/\text{m}^3$ (0.6 ppm), 24-hour average.
- (b) PM-10 - 420 $\mu\text{g}/\text{m}^3$, 24-hour average.
- (c) CO - 34 mg/m^3 (30 ppm), 8-hour average.
- (d) Oxidant (O_3) - 800 $\mu\text{g}/\text{m}^3$ (0.4 ppm), 1-hour average.
- (e) NO_2 - 2,260 $\mu\text{g}/\text{m}^3$ (1.2 ppm), 1-hour average; 565 $\mu\text{g}/\text{m}^3$ (0.3 ppm), 24-hour average; and meteorological conditions are such that pollutant concentrations can be expected to remain at or above the warning levels for 12 or more hours or can be expected to recur within 24 hours unless control actions are taken.

(4) **Stage:** "Fourth or emergency" - the emergency stage indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary. An emergency will be declared when any one of the following levels is reached at any monitoring site:

- (a) SO_2 - 2,100 $\mu\text{g}/\text{m}^3$ (0.8 ppm), 24-hour average.
- (b) PM-10 - 500 $\mu\text{g}/\text{m}^3$, 24-hour average.
- (c) CO - 46 mg/m^3 (40 ppm), 8-hour average.
- (d) Oxidant (O_3) - 1,200 $\mu\text{g}/\text{m}^3$ (0.6 ppm), 1-hour average.
- (e) NO_2 - 3,000 $\mu\text{g}/\text{m}^3$ (1.6 ppm), 1-hour average; 750 $\mu\text{g}/\text{m}^3$ (0.4 ppm), 24-hour average; and meteorological conditions are such that this condition can be expected to remain at or above emergency levels for 12 or more hours, or can be expected to recur within 24 hours.

(5) **Stage:** "Termination" - once declared, any stage reached by applying these criteria will remain in effect until the criteria for that level are no longer met. At that time, the next lower stage will be declared. When conditions improve to where the criteria are no longer met for any episode stage, the episode will be terminated.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-030, filed 1/3/89; Order DE 77-21, § 173-435-030, filed 10/31/77.]

WAC 173-435-040 Source emission reduction plans.

- (1) Any person responsible for the operation of a major source, when requested in writing by the director, shall prepare, in consultation with the department, a source emission reduction plan (SERP). This SERP shall be consistent with good industrial practice and safe operating

procedures for reducing the emissions of air contaminants into the ambient air during periods of air pollution alert, warning, and emergency.

(2) SERPs shall be in writing and shall show the source of air contamination, describe the manner in which the reduction of air contaminant emissions will be achieved during periods of air pollution alert, warning, and emergency, and give the amount of reduction for each stage.

(3) During periods of air pollution alert, warning, or emergency, SERPs shall be made available, on the premises of sources required under this section to have them, to any person authorized to enforce the provisions of this episode avoidance plan.

(4) SERPs shall be submitted to the director within 30 days after receipt of a request thereof.

(5) SERPs shall be reviewed and approved by the director. If, in the opinion of the director, a SERP does not, in whole or in part, provide for satisfactory emission reduction during an episode, the director may disapprove such SERP, give the reason for disapproval, and require the resubmittal of same within a specified time period.

If within the time period specified, the person responsible fails to submit a SERP satisfactory to the director, the director may revise the SERP to cause it to meet episode avoidance objectives. This revised plan will then be the SERP for the source to which it applies.

(6) SERPs may be amended after submission to the director of a revised SERP. This revised SERP will be processed in the same manner as the originally submitted SERP.

(7) An emission reduction plan for the purpose of reducing motor vehicle emissions during episode stages, will be developed or approved by the department. These plans may include actions to be taken by other governmental units, citizens, and businesses.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-040, filed 1/3/89; Order DE 77-21, § 173-435-040, filed 10/31/77.]

WAC 173-435-050 Action procedures. (1) Whenever applicable criteria are met, the director may declare and terminate the forecast, alert, and warning stages of an episode. This declaration shall constitute an order for action in accordance with applicable SERPs.

(2) No open fires shall be ignited during any stage of an episode. Any person responsible for an open fire already ignited shall extinguish that fire when informed that an episode has been declared. Open fires conducted under the auspices of the department of natural resources for the purpose of burning forest slash pursuant to RCW 70.94.660 through 70.94.700 are to be extinguished by withholding new fuel and allowing the fire to burn down.

(3) Whenever applicable criteria are met, the governor may declare and terminate the emergency stage of an episode. This declaration shall constitute an order for action in accordance with applicable SERPs.

(4) Adverse air quality need not be region-wide for any episode stage to be declared. Action procedures may be taken for any area affected or likely to be affected by episode conditions. The declaration of any episode stage shall specify the area to which it applies.

(5) The broadest publicity practicable shall be given to the declaration of any episode stage. Such declaration shall, as soon as possible, be directly communicated to all persons responsible for the carrying out of SERPs within the affected area.

(6) Regardless of whether any episode stages have previously been declared, whenever the governor finds that emissions are causing imminent danger to public health or safety, the governor may declare an air pollution emergency and order the persons responsible for the operation of sources causing the danger, to reduce or discontinue emissions consistent with good operating practice, safe operating procedures, and SERPs, if any.

(7) Whenever an episode stage is declared on the basis of contaminant levels of carbon monoxide, oxidant, or nitrogen dioxide, the director shall take such action as may be required to reduce emissions from motor vehicles. These actions may include, but are not limited to, the rerouting or detouring of traffic. Actions to be taken by cities and businesses will be established and implemented according to plans developed by them and approved by the department. These plans must meet criteria for emission reduction established by the department.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-050, filed 1/3/89; Order DE 77-21, § 173-435-050, filed 10/31/77.]

WAC 173-435-060 Enforcement. (1) Whenever any episode stage has been declared, the department shall establish an emergency action center, which shall be the headquarters for all department actions during the episode.

(2) The department shall develop an operations manual, which shall set forth a plan for the receipt, processing, and dissemination of information and data during an episode.

(3) Enforcement with respect to any episode shall be directed from the emergency action center by the director in consultation with the governor's office.

(4) Authorized personnel of the department, the department of social and health services, and the state police shall have the authority to enforce orders of the director or the governor, issued under this chapter, as directed from the emergency action center. In addition, authorized personnel of any local air pollution control agency or local police force shall have the authority to enforce such orders against sources within the area over which that agency or police force has jurisdiction, as directed from the emergency action center.

(5) To determine compliance with any SERP, those persons authorized to enforce orders, hereunder, shall have the authority to enter upon any private or public property, excepting nonmultiple unit private dwellings, housing two families or less. No person shall refuse entry or access to enforcement personnel who request entry and present appropriate credentials.

(6) Whenever it appears that action being taken in compliance with SERPs will not avert imminent danger to public health and safety, the governor may order the following additional measures:

(a) Stopping and prohibiting motor vehicle travel and traffic;

(b) Closing down or restricting the use of any business, commercial, industrial or other establishment or activity which contributes to the emission of contaminants to the air.

(7) Any declaration or order issued in accordance with WAC 173-435-050 shall be effective immediately and shall not be stayed, pending completion of review.

(8) Whenever any order has been issued hereunder, the attorney general, upon the request of the governor or authorized representative, or the director shall petition the superior court of the county in which a source is located for a temporary restraining order for the immediate reduction or discontinuance of emissions from that source.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-060, filed 1/3/89; Order DE 77-21, § 173-435-060, filed 10/31/77.]

WAC 173-435-070 Sampling sites, equipment, and methods. (1) Data from all stations shall be considered when determining episode conditions. The department shall specify PM-10 monitoring stations to be operated continuously during any episode stage for episode management purposes. Stations from which episode declarations are based must be located in such a manner that the area represented by that station and the sources contributing to the episode condition can reasonably be determined and corrective actions taken.

(2) Sampling and analysis will be done by federal reference or federal equivalent methods; except the department may approve other sampling and analysis methods for PM-10 if reasonable site specific equivalency with the federal reference method has been demonstrated. This equivalency must be reestablished biennially.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-435-070, filed 1/3/89; Order DE 77-21, § 173-435-070, filed 10/31/77.]

Chapter 173-450 WAC
ESTABLISHING REQUIREMENTS FOR THE
RECEIPT OF FINANCIAL AID
(Formerly chapter 18-20 WAC)

WAC	
173-450-010	Purpose and applicability.
173-450-020	Definitions.
173-450-030	Limitations.
173-450-040	Applications.
173-450-050	Workable program.
173-450-060	Grant conditions.
173-450-070	Payments.
173-450-080	Changes, amendments and supplemental state financial aid.
173-450-090	Termination.
173-450-100	Federal grants.

WAC 173-450-010 Purpose and applicability. These rules and regulations are promulgated under RCW 70.94.143, 70.94.305, and 70.94.385 of the Washington Clean Air Act to establish standard of eligibility for the granting of state and federal financial aid to air authorities.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-010, filed 9/16/87.]

WAC 173-450-020 Definitions. Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings; general terms common with other chapters of Title 173 WAC as defined in chapter 173-403 WAC, and terms specific to requirements for financial aid as follows:

(1) "Applicant" means an air authority applying for state financial aid under the provisions of chapter 70.94 RCW.

(2) "Grantee" means an applicant for whom state financial aid has been approved by the department.

(3) "Locally funded portion" or "local funds" means the funds provided to the applicant air authority from sources available to it under chapter 70.94 RCW exclusive of state financial aid or federal funds designated specifically for air pollution.

(4) "Payment period" means the period of time for which money for state and federal financial aid is paid to the grantee upon receipt and approval by the department of a properly executed voucher.

(5) "Workable program" means a comprehensive statement of objectives for the prevention and control of air pollution and the existing and proposed measures to achieve these objectives as described in WAC 173-450-050.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-020, filed 9/16/87.]

WAC 173-450-030 Limitations. State financial aid shall be granted to air authorities qualifying under these regulations subject to the following limitations:

(1) State financial aid shall not exceed an amount equal to fifty percent of the locally funded portion of the annual recurring expenditures of such air authority in each of the first three years during which state financial aid is utilized by the air authority and shall not exceed an amount equal to one hundred percent of the locally funded portion in each following year.

(2) The department may limit the amount of financial aid available to a grantee when it becomes necessary due to the lack of sufficient funds available for distribution to meet the needs of all qualified grantees throughout the state.

(3) The department may limit the amount of financial aid to less than the amount for which the applicant applies when the department determines that proposed items of expenditure are not consistent with air pollution control program needs in the applicant's area of jurisdiction, or are not in the best interests of a coordinated state-wide air pollution control program, or where such items of expenditure duplicate the responsibilities and activities of the department.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-030, filed 9/16/87.]

WAC 173-450-040 Applications. Applications for state financial aid shall be prepared and submitted on forms specified by the department under the following conditions:

(1) Applications shall be filed with the department and the department shall take action as to the disposition of an application within sixty-five days of its first presentation. Applications shall be approved, denied, or deferred: *Provided*, That where action is deferred the applicant shall be

advised of the reasons for such deferral and action shall be taken within a reasonable time.

(2) Applications must contain a statement of need for air pollution prevention and control in the applicant's jurisdiction.

(3) The applicant must describe a workable program and its objectives together with a proposed timetable of accomplishment.

(4) The application shall contain the budget of the air authority showing all anticipated revenue and sources of revenue, including requested state financial aid, and shall show proposed expenditures covering salaries, equipment and accessories, expendable supplies, travel, and such other information as may be deemed necessary by the department.

(5) Any air pollution control activity conducted by the applicant air authority during the twelve-month period immediately prior to the proposed grant period shall be described in the application, including funds budgeted and expended.

(6) It shall be the policy of the department in reviewing applications for state financial aid and in administering such financial aid to take into consideration the following factors:

(a) The implementation of coordinated state-wide air pollution prevention and control.

(b) The responsibilities of the department with respect to its jurisdiction over any areas or type of air contaminant sources and for monitoring the movement of air contaminants throughout the state.

(c) The needs and financial capability of the air authorities in the various areas of the state and the relative effectiveness of the air authorities.

(d) The capability and reasonable potential of the air authorities to perform.

(7) The department will, from time to time, determine or estimate the amount of state financial aid that will be available and advise the applicants, or potential applicants, as to the availability of such aid or supplemental aid.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-040, filed 9/16/87.]

WAC 173-450-050 Workable program. The applicant shall provide sufficient information to show that its workable program is designed to provide for effective prevention and control of air pollution through an orderly progression of development, establishment, and improvement of air pollution control programs.

(1) The initial activity of an applicant shall be the development of a plan designed to provide an evaluation of existing and potential air pollution within the jurisdiction of the applicant, including a general inventory of the types of air contaminant sources and their relative contribution to the air pollution problem; to provide for the initiation of air quality surveillance appropriate to the air contaminant sources over which the applicant will have jurisdiction; and to provide for the development of regulations appropriate to the existing air contaminant sources or those which may be reasonably anticipated.

(2) The establishment and improvement of air pollution control programs which constitute the operating control activity of an applicant, shall be oriented to attaining compliance with requirements and regulations of the appli-

cant with respect to air contaminant sources under its jurisdiction.

(3) Sampling and monitoring programs shall be oriented to surveillance for control purposes with respect to those air contaminant sources under the applicant's jurisdiction, except as may be requested by the department to supplement the state-wide monitoring program.

(4) Budget for personnel, equipment and other operating expenses must be adequate to carry out the program during the grant period for which state financial aid is requested. Total funding from all sources shall provide, as a minimum, for the equivalent of one full time person: *Provided*, That the department may approve the sharing of personnel with another agency, the utilization of part-time staff, or persons under contract when these methods can be demonstrated as an effective means of carrying out the program and the purposes of the Washington Clean Air Act.

(5) The locally funded portion of the annual operating cost, budgeted and expended in any grant period for which application is made for state financial aid, shall not be less than the locally funded annual expenditure for air pollution control during the twelve-months' period immediately preceding the proposed grant period, unless it can be demonstrated by the applicant that there were necessary nonrecurring expenditures in the previous period or that the program objectives and the purposes of the Washington Clean Air Act can reasonably be met with a reduced expenditure.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-050, filed 9/16/87.]

WAC 173-450-060 Grant conditions. (1) No grant of state funds shall be made to any grantee for a period in excess of twelve months.

(2) Any state financial aid granted shall be used solely for carrying out the program outlined in the approved application or approved amendment as provided in WAC 173-450-040 and 173-450-080.

(3) The grantee shall provide for and maintain such accounting, budgetary, and other fiscal procedures so as to assure the proper and efficient administration of funds. The fiscal records shall be such as to reflect currently the receipt and disposition of all funds including state financial aid. Such records and documents pertinent to the receipt and disposition of funds shall be kept available for review and audit.

(4) As a minimum the grantee shall submit quarterly financial and progress reports to the department.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-060, filed 9/16/87.]

WAC 173-450-070 Payments. (1) Grantees shall initiate requests for payment of state financial aid for the appropriate payment period utilizing properly executed vouchers furnished by the department. The voucher shall state the requested amount of state financial aid and the expenditure of local funds during the payment period. Local funds expended for any item may be shown as the appropriate portion of the total expenditure when the expenditure properly includes the use of, or anticipates, reimbursement with federal or state grant funds.

(2) Upon approval of the voucher by the department, payment for the appropriate payment period shall be authorized.

(3) Payments of state and federal financial aid shall be made by way of reimbursement as contained in the annual agreement payment schedule or otherwise mutually agreed upon, and changed by an amendment to the annual agreement. All expenditures claimed for reimbursement shall be subject to audit.

(4) Final payment of state and federal financial aid shall be based upon approved vouchers applied to the entire grant period.

(5) Vouchers for the final payment period during a grant period shall be submitted by the grantee by the 15th day of July of that year.

(6) The department may withhold approval of the vouchers submitted by the grantee if it finds that said grantee has failed to comply with any of the grant conditions or any other requirement or condition imposed by these regulations or chapter 70.94 RCW, for a period not to exceed thirty days. If at the end of such period the matter has not been resolved and the department has not approved said vouchers, the grantee may request an administrative hearing before the department.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-070, filed 9/16/87.]

WAC 173-450-080 Changes, amendments and supplemental state financial aid. (1) Changes in the workable program of a grantee during the grant period which would not substantially affect the workable program, nor increase the total cost to the state, and which are for the purpose of improving the operation and performance of the workable plan, may be made: *Provided*, That written approval in advance is obtained from the department.

(2) Changes in the workable program of a grantee during the grant period which would significantly alter the workable program shall not be made until the grantee has submitted to, and the department has approved, an amendment to the original application.

(3) Application for supplemental state and federal financial aid may be made by the grantee when notice is given by the department that such supplemental funds have become available. The application shall be made as an amendment to the previously approved workable program of the grantee and shall include proposed additions in or improvements to the workable program and proposed changes in the budget including the additional local funds to be provided. The department may approve additional financial aid to the extent such funds become available having considered the needs of all grantees throughout the state.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-080, filed 9/16/87.]

WAC 173-450-090 Termination. The department may terminate state and federal financial aid, in whole or in part, to any grantee when it finds, after reasonable notice and opportunity for appeal to the director, that the grantee has failed to comply with any of the conditions of the approved application or amendments thereto or any of the require-

ments or conditions imposed by or pursuant to these regulations or the Washington Clean Air Act.

Upon the effective date of termination, the grantee shall promptly render an accounting and final statement as would similarly be required for request for payment of state financial aid under WAC 173-450-070. The department may authorize payment of the state's share of the amount required to settle at minimum cost any contractual obligations properly incurred by the grantee prior to the date of termination, if the department finds that the grantee acted in good faith in incurring the obligations.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-090, filed 9/16/87.]

WAC 173-450-100 Federal grants. The standards and requirements of these regulations establishing the eligibility of air authorities for state financial aid shall be equally applicable to the applications of such air authorities for federal grants.

[Statutory Authority: Chapter 70.94 RCW. 87-19-077 (Order 87-16), § 173-450-100, filed 9/16/87.]

Chapter 173-460 WAC

CONTROLS FOR NEW SOURCES OF TOXIC AIR POLLUTANTS

WAC

173-460-010	Purpose.
173-460-020	Definitions.
173-460-030	Requirements, applicability and exemptions.
173-460-040	New source review.
173-460-050	Requirement to quantify emissions.
173-460-060	Control technology requirements.
173-460-070	Ambient impact requirement.
173-460-080	Demonstrating ambient impact compliance.
173-460-090	Second tier analysis.
173-460-100	Request for risk management decision.
173-460-110	Acceptable source impact levels.
173-460-120	Scientific review and amendment of acceptable source impact levels and lists.
173-460-130	Fees.
173-460-140	Remedies.
173-460-150	Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.
173-460-160	Class B toxic air pollutants and acceptable source impact levels.

WAC 173-460-010 Purpose. (1) Pursuant to chapter 70.94 RCW, Washington Clean Air Act, the purpose of this chapter is to establish the systematic control of new sources emitting toxic air pollutants (TAPs) in order to prevent air pollution, reduce emissions to the extent reasonably possible, and maintain such levels of air quality as will protect human health and safety. Toxic air pollutants include carcinogens and noncarcinogens listed in WAC 173-460-150 and 173-460-160.

- (2) This chapter establishes three major requirements:
 - (a) Best available control technology for toxics;
 - (b) Toxic air pollutant emission quantification;
 - (c) Human health and safety protection demonstration.

(3) Policy. It is the policy of ecology to reduce, avoid, or eliminate toxic air pollutants prior to their generation whenever economically and technically practicable.

[Statutory Authority: RCW 70.94.331, 91-13-079 (Order 90-62), § 173-460-010, filed 6/18/91, effective 9/18/91.]

WAC 173-460-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. In the event of a conflict between the definitions provided in chapter 173-400 WAC and the definitions provided in this section, the definitions in this section shall govern. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings. Note: For copies of the above mentioned rule and any other rule cited in this chapter, contact the Department of Ecology, Records Section, P.O. Box 47600, Olympia, WA 98504-7600.

(1) "Acceptable source impact analysis" means a procedure for demonstrating compliance with WAC 173-460-070 and 173-460-080, that compares maximum incremental ambient air impacts with applicable acceptable source impact levels (ASIL).

(2) "Acceptable source impact level (ASIL)" means a concentration of a toxic air pollutant in the outdoor atmosphere in any area which does not have restricted or controlled public access that is used to evaluate the air quality impacts of a single source. There are three types of acceptable source impact levels: Risk-based, threshold-based, and special. Concentrations for these three types of ASILs are determined as provided in WAC 173-460-110. ASILs are listed in WAC 173-460-150 and 173-460-160.

(3) "Authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. Ecology is the authority if an air pollution control authority has not been activated or if ecology has jurisdiction over the source pursuant to RCW 70.94.395.

(4) "Best available control technology for toxics (T-BACT)" applies to each toxic air pollutant (TAP) discharged or mixture of TAPs, taking in account the potency quantity and toxicity of each toxic air pollutant or mixture of TAPs discharged in addition to the meaning given in WAC 173-400-030(10).

(5) "Carcinogenic potency factor" means the upper 95th percentile confidence limit of the slope of the dose-response curve and is expressed in units of (mg/kg-day)-1.

(6) "Class A toxic air pollutant (Class A TAP)" means a substance or group of substances listed in WAC 173-460-150.

(7) "Class B toxic air pollutant (Class B TAP)" means any substance that is not a simple asphyxiant or nuisance particulate and that is listed in WAC 173-460-160.

(8) "EPA's Dispersion Modeling Guidelines" means the United States Environmental Protection Agency Guideline on Air Quality Models, EPA (Revised) 40 CFR Part 51 Appendix W, and is hereby incorporated by reference.

(9) "EPA's Risk Assessment Guidelines" means the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment, 51 FR 33992 (September 24, 1986) and is hereby incorporated by reference.

(10) "Increased cancer risk of one in one hundred thousand" means the 95th percent upper bound on the estimated risk of one additional cancer above the background cancer rate per one hundred thousand individuals continuous-

ly exposed to a Class A toxic air pollutant at a given average dose for a specified time.

(11) "Increased cancer risk of one in one million" means the 95th percent upper bound on the estimated risk of one additional cancer above the background cancer rate per one million individuals continually exposed to a Class A toxic air pollutant at a given average dose for a specified time.

(12) "Inhalation Reference Concentration (Inhalation RfC)" means a reference concentration published in the United States Environmental Protection Agency Integrated Risk Information System (IRIS).

(13) "Mixture" means a combination of two or more substances mixed in arbitrary proportions.

(14) "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 emission 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. For purposes of this chapter, the term "air contaminant" shall mean "toxic air contaminant" or "toxic air pollutant" as defined in subsection (20) of this section.

(15) "New toxic air pollutant source" means:

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

(b) Any other project that constitutes a new source under section 112 of the Federal Clean Air Act.

(16) "Second Tier Analysis" means an optional procedure used after T-BACT and acceptable source impact analysis for demonstrating compliance with WAC 173-460-070. The second tier analysis uses a health impact assessment as provided in WAC 173-460-090, instead of an acceptable source impact level.

(17) "Simple asphyxiant" means a physiologically inert gas or vapor that acts primarily by diluting atmospheric oxygen below the level required to maintain proper levels of oxygen in the blood. Examples of simple asphyxiants are given in Appendix X of the TLV Booklet referred to in subsection (19) of this section and incorporated by reference.

(18) "Threshold limit value-time weighted average (TLV-TWA)" means a concentration limit recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) for a normal eight-hour workday and forty-hour workweek.

(19) "TLV Booklet" means "TLVs, Threshold Limit Values and Biological Exposure Indices for 1991-92," published by the American Conference of Governmental Industrial Hygienists and is hereby incorporated by reference.

(20) "Toxic air pollutant (TAP)" or "toxic air contaminant" means any Class A or Class B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. 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 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(21) "Upper bound unit risk factor" means the 95 percent upper confidence limit of an estimate of the extra risk of cancer associated with a continuous 70 year exposure to 1 ug/m3 of a Class A toxic air pollutant.

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-020, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-020, filed 6/18/91, effective 9/18/91.]

WAC 173-460-030 Requirements, applicability and exemptions. (1) Applicability.

(a) The provisions of this chapter shall apply state-wide. The authority shall enforce WAC 173-460-010, 173-460-020, 173-460-030, 173-460-040, 173-460-050, 173-460-060, 173-460-070, 173-460-080, 173-460-130, 173-460-140, 173-460-150, and 173-460-160.

(b) Except as provided in this chapter, any new toxic air pollutant source listed in (b)(i), (ii), or (iii) of this subsection that may emit a Class A or Class B TAP into the ambient air is subject to these regulations:

(i) Standard industrial classifications:

(A) Major group 10-Metal mining.

(B) Major group 12-Bituminous coal and lignite mining.

(C) Major group 13-Oil and gas extraction.

(D) Manufacturing industries major groups 20-39.

(E) Major group 49-Electric, gas, and sanitary services except 4971 irrigation systems.

(F) Dry cleaning plants, 7216.

(G) General medical surgical hospitals, 8062.

(H) Specialty hospitals, 8069.

(I) National security, 9711.

(ii) Any source or source category listed in WAC 173-400-100, 173-400-115(2), or 173-490-030(1) except WAC 173-490-030 (1)(e) gasoline dispensing facilities.

(iii) Any of the following sources:

(A) Landfills.

(B) Sites subject to chapter 173-340 WAC Model Toxics Control Act—Cleanup regulation.

(2) Exempt sources.

(a) Containers such as tanks, barrels, drums, cans, and buckets are exempt from the requirements of this chapter unless equipped with a vent other than those required solely as safety pressure release devices.

(b) Nonprocess fugitive emissions of toxic air pollutants from stationary sources, such as construction sites, unpaved roads, coal piles, waste piles, and fuel and ash handling operations are exempt from WAC 173-460-060.

(c) The following sources are generally exempt from the requirements of WAC 173-460-050, 173-460-070, 173-460-080, and 173-460-090. However, the authority may on a case-by-case basis, require compliance with these sections if the authority determines that the amount of emissions, nature of pollutant, or source location indicate that the ambient impact should be evaluated.

(i) Perchloroethylene dry cleaners

(ii) Petroleum solvent dry cleaning systems

(iii) Solvent metal cleaners

(iv) Chromic acid plating and anodizing

(v) Abrasive blasting

(d) Demolition and renovation projects involving asbestos removal and disposal are exempt from the requirements of this chapter.

(e) Process vents subject to 40 C.F.R. Parts 264 and 265, Subpart AA are exempt from the requirements of this chapter.

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-030, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-030, filed 6/18/91, effective 9/18/91.]

WAC 173-460-040 New source review. (1) Applicability. This chapter supplements the new source review requirements of WAC 173-400-110 by adding additional new source review requirements for toxic air pollutant sources. If a notice of construction is required under both chapter 173-400 WAC and this chapter, the written applications shall be combined. A notice of construction is a written application to permit construction of a new source.

(a) The owner or operator of a new toxic air pollutant source listed in WAC 173-460-030(1) shall notify the authority prior to the construction, installation, or establishment of a new toxic air pollutant source and shall file a notice of construction application with the authority for the proposed emission unit(s). Notification and notice of construction are not required if the source is an exempt source listed in WAC 173-460-030(2) or subsection (2) of this section.

(b) The notice of construction and new source review applies only to the affected emission unit(s) and the contaminants emitted from the emission unit(s).

(c) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the toxic air contaminants whose emissions would increase as a result of the modification.

(2) The owner or operator of a new toxic air pollutant source listed in WAC 173-460-030 (1) is not required to notify or file a notice of construction with the authority if any of the following conditions are met:

(a) Routine maintenance or repair requires equivalent replacement of air pollution control equipment; or

(b) The new source is a minor process change that does not increase capacity and total toxic air pollutant emissions do not exceed the emission rates specified in small quantity emission rate tables in WAC 173-460-080; or

(c) The new source is the result of minor changes in raw material composition and the total toxic air pollutant emissions do not exceed the emission rates specified in the small quantity emission rate tables in WAC 173-460-080.

(3) Additional information. Within thirty days of receipt of a notice of construction, the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.

(4) Requirements for new toxic air pollutant sources. The authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:

(a) The source will be in accord with applicable federal, state, and authority air pollution control rules and regulations;

(b) The source will use T-BACT for emissions control for the toxic air pollutants which are likely to increase; and

(c) Sources required to use T-BACT for emission control demonstrate compliance with WAC 173-460-070 by

using the procedures established in WAC 173-460-080 or, failing that, demonstrates compliance, by using the additional procedures in WAC 173-460-090 and/or 173-460-100.

(5) Preliminary determination. Within thirty days after receipt of all information required, the authority shall:

(a) Make preliminary determinations on the matters set forth in this section; and

(b) Initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable.

(6) Final determination. If, after review of all information received including public comment, the authority finds that all the conditions in this section are satisfied, the authority shall issue a regulatory order to approve the notice of construction for the proposed new source or modification. If the authority finds that the conditions in this section are not satisfied, the authority shall issue an order for the prevention of construction, installation, or establishment of the toxic air pollution source(s). Where ecology has jurisdiction, it will endeavor to make final determinations as promptly as possible.

(7) Appeal of decision. A final notice of construction decision may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW.

(8) Commencement of construction. The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.

(9) Operation and maintenance plan. As a condition of notice of construction approval, prior to start up, the authority may require a plan for the operation and maintenance of all equipment and procedures to assure continuous compliance with this chapter.

(a) A copy of the plan shall be filed with the authority upon request.

(b) The plan shall reflect good industrial practice and may include operating parameters and maintenance procedures, and shall be updated to reflect any changes in good industrial practice.

(c) Submittal of all plans should coincide with the authorities reporting requirements where applicable.

(10) Jurisdiction. Emission of toxic air pollutants that exceed the acceptable source impact levels listed in WAC 173-460-150 and 173-460-160 requires ecology and, if applicable, authority approval as specified in WAC 173-460-090 and 173-460-100.

[Statutory Authority: Chapter 70.94 RCW, 94-03-072 (Order 93-19), § 173-460-040, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331, 91-13-079 (Order 90-62), § 173-460-040, filed 6/18/91, effective 9/18/91.]

WAC 173-460-050 Requirement to quantify emissions. (1) New sources.

(a) When applying for a notice of construction, an owner or operator of a new toxic air pollution source shall quantify those emissions of each TAP or combination of TAPs that:

(i) Will be used for the modeling procedures in WAC 173-460-080; and

(ii) That may be discharged after applying required control technology. The information shall be submitted to the authority.

(b) Emissions shall be quantified in sufficient detail to determine whether the source complies with the requirements of this chapter.

(2) Small quantity sources.

Sources that choose to use small quantity emission rate tables instead of using dispersion modeling shall quantify emissions as required under WAC 173-460-080, in sufficient detail to demonstrate to the satisfaction of the authority that the emissions are less than the applicable emission rates listed in WAC 173-460-080.

(3) Level of detail.

An acceptable source impact level analysis under WAC 173-460-080, may be based on a conservative estimate of emissions that represents good engineering judgment. If compliance with WAC 173-460-070 and 173-460-080 cannot be demonstrated, more precise emission estimates shall be used to demonstrate compliance with WAC 173-460-090.

(4) Mixtures of toxic air pollutants.

(a) An owner or operator of a source that may discharge more than one toxic air pollutant may demonstrate compliance with WAC 173-460-070 and 173-460-080 by:

(i) Quantifying emissions and performing modeling for each TAP individually; or

(ii) Calculating the sum of all TAP emissions and performing modeling for the total TAP emissions and comparing maximum ambient levels to the smallest ASIL; or

(iii) Equivalent procedures may be used if approved by ecology.

(b) Dioxin and furan emissions shall be considered together as one TAP and expressed as an equivalent emission of 2,3,7,8 TCDD based on the relative potency of the isomers in accordance with United States Environmental Protection Agency (EPA) guidelines.

Note: Copies of EPA "Interim procedures for estimating risks associated with exposures to mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs). 1989 Update" are available by requesting EPA /625/3-89/016, March 1989 from ORD Publications (513) 684-7562.

(c) Polyaromatic hydrocarbon (PAH) emissions. The owner or operator of a source that may emit a mixture of polyaromatic hydrocarbon emissions shall quantify the following PAHs and shall consider them together as one TAP equivalent in potency to benzo(a)pyrene: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, benzo(a)pyrene. The acceptable source impact analysis shall be conducted using the polyaromatic hydrocarbon emission ASIL contained in WAC 173-460-150(3).

(d) Uncontrolled roof vent emissions from primary aluminum smelters. The owner or operator of a primary aluminum smelter that may emit a mixture of polyaromatic hydrocarbons from uncontrolled roof vents shall quantify PAH emissions using either of the following methods:

(i) Quantify PAH emissions using the procedures in (c) of this subsection; or

(ii) Multiply the total particulate emission mass from the uncontrolled roof vents by the percent of the particulate that is extractable organic matter. The percent extractable organic matter shall be considered one percent of total particulate matter unless ecology determines that there is compelling scientific data which demonstrates that the use of this value is inappropriate. The acceptable source impact

analysis shall be conducted using the primary aluminum smelter uncontrolled roof vent PAH emission ASIL contained in WAC 173-460-150(3). Note: For example, 100 grams of particulate air emission mass times one percent yields one gram of PAH emissions.

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-050, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-050, filed 6/18/91, effective 9/18/91.]

WAC 173-460-060 Control technology requirements. Except as provided for in WAC 173-460-040, a person shall not establish, operate, or cause to be established or operated any new toxic air pollutant source which is likely to increase TAP emissions without installing and operating T-BACT. Satisfaction of the performance requirements listed below fulfill the T-BACT requirement for those particular sources. Local air pollution authorities may develop and require performance requirements in lieu of T-BACT provided that ecology approves the performance requirements as equivalent to T-BACT.

(1) Perchloroethylene dry cleaners. The entire dryer exhaust shall be vented through a control device which will reduce VOC emissions to 5 kg or less per 100 kg dry weight of cleaned articles.

(a) The control device shall meet one of the following conditions:

(i) The exhaust from a carbon adsorber shall contain less than 100 ppm perchloroethylene as measured over a period of one minute before dilution; or

(ii) The air temperature at the outlet of a refrigerated condenser shall reach seven degrees centigrade or less during the cool-down period. A temperature gauge with a minimum range from negative thirty-two to seventy-five degrees centigrade shall be installed and maintained on the condenser outlet duct; or

(iii) The demonstrated control efficiency for any other control device shall be ninety percent or greater by weight, prior to the discharge to the atmosphere measured over a complete control cycle.

(b) The operation of any perchloroethylene dry cleaner shall meet all of the following conditions:

(i) All leaking components shall be repaired immediately; and

(ii) All filtration cartridges shall be drained in the filter housing or other enclosed container before discarding the cartridges.

(2) Petroleum solvent dry cleaning systems. A petroleum solvent dry cleaning system shall include the following:

(a) All cleaned articles are dried in a solvent recovery dryer or the entire dryer exhaust is vented through a properly functioning control device which will reduce emissions to no more than 3.5 kg of VOC per 100 kg dry weight of cleaned articles; and

(b) All cartridge filtration systems are drained in their sealed housing or other enclosed container before discarding the cartridges; and

(c) All leaking components shall be repaired immediately.

(3) Chromic acid plating and anodizing. The facility-wide uncontrolled hexavalent chromium emissions from plating or anodizing tanks shall be reduced by at least

ninety-five percent using either of the following control techniques:

(a) An antimist additive or other equally effective control method approved by ecology or authority; or

(b) The tank is equipped with:

(i) A capture system which represents good engineering practice and which shall be in place and in operation at all times electrical current is applied to the tank; and

(ii) An emission control system which limits hexavalent chromium emissions to no more than 0.15 milligrams per ampere-hour of electrical charge applied to the tank or uncontrolled emissions shall be reduced by ninety-five percent.

(4) Chromic acid plating and anodizing (greater than 1 kilogram). If the facility-wide hexavalent chromium emissions from chromic acid plating and anodizing are greater than 1 kilogram per year after the application of control techniques required by subsection (3) of this section, the facility-wide hexavalent chromium emissions shall be reduced by at least ninety-nine percent using either of the following control techniques:

(a) An antimist additive or other equally effective control method approved by ecology or authority; or

(b) The tank is equipped with:

(i) A capture system which represents good engineering practice and which shall be in place and in operation at all times electrical current is applied to the tank; and

(ii) An emissions control system which limits hexavalent chromium emissions to no more than 0.03 milligrams per ampere-hour of electrical charge applied to the tank or uncontrolled emissions shall be reduced by ninety-nine percent.

(5) Solvent metal cleaners.

(a) Any solvent metal cleaner shall include all of the following equipment:

(i) A cover for the solvent tank which shall be closed at all times except when processing work in the degreaser. However, the cover shall be closed to the maximum extent possible when parts are being degreased;

(ii) A facility for draining cleaned parts such that the drained solvent is returned to the solvent tank;

(iii) For cold solvent cleaners, a freeboard ratio greater than or equal to 0.75;

(iv) Vapor degreasers shall have:

(A) A high vapor cutoff thermostat with manual reset; and

(B) For degreasers with spray devices, a vapor-up thermostat which will allow spray operation only after the vapor zone has risen to the design level; and

(C) Either a freeboard ratio greater than or equal to 1.00 or a refrigerated freeboard chiller; and

(v) Conveyorized vapor degreasers shall have:

(A) A drying tunnel or a rotating basket sufficient to prevent cleaned parts from carrying liquid solvent out of the degreaser; and

(B) A high vapor cutoff thermostat with manual reset; and

(C) A vapor-up thermostat which will allow conveyor movement only after the vapor zone has risen to the design vapor level.

(b) The operation of any solvent metal cleaner shall meet the following requirements:

(i) Solvent shall not leak from any portion of the degreasing equipment;

(ii) Solvent, including waste solvent, shall be stored in closed containers and shall be disposed of in such a manner as to prevent its evaporation into the atmosphere;

(iii) For cold cleaners, cleaned parts shall be drained until dripping ceases; and

(iv) Degreasers shall be constructed to allow liquid solvent from cleaned parts to drain into a trough or equivalent device and return to the solvent tank.

(c) For open-top vapor degreasers, solvent drag-out shall be minimized by the following measures:

(i) Racked parts shall be allowed to drain fully;

(ii) The work load shall be degreased in the vapor zone until condensation ceases;

(iii) Spraying operations shall be done within the vapor layer;

(iv) When using a powered hoist, the vertical speed of parts in and out of the vapor zone shall be less than three meters per minute (ten feet per minute);

(v) When the cover is open, the lip of the degreaser shall not be exposed to steady drafts greater than 15.3 meters per minute (fifty feet per minute); and

(vi) When equipped with a lip exhaust, the fan shall be turned off when the cover is closed.

(d) For conveyORIZED vapor degreasers, solvent drag-out shall be minimized by the following measures:

(i) Racked parts shall be allowed to drain fully; and

(ii) Vertical conveyor speed shall be maintained at less than three meters per minute (ten feet per minute).

(6) Abrasive blasting.

(a) Abrasive blasting shall be performed inside a booth or hangar designed to capture the blast grit or overspray.

(b) Outdoor blasting of structures or items too large to be reasonably handled indoors shall employ control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps.

(c) Outdoor blasting shall be performed with either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(d) All abrasive blasting with sand shall be performed inside a blasting booth or cabinet.

[Statutory Authority: Chapter 70.94 RCW, 94-03-072 (Order 93-19), § 173-460-060, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331, 91-13-079 (Order 90-62), § 173-460-060, filed 6/18/91, effective 9/18/91.]

WAC 173-460-070 Ambient impact requirement.

When applying for a notice of construction under WAC 173-460-040, the owner or operator of a new toxic air pollutant source which is likely to increase TAP emissions shall demonstrate that emissions from the source are sufficiently low to protect human health and safety from potential carcinogenic and/or other toxic effects. Compliance shall be demonstrated in any area which does not have restricted or controlled public access. The source shall demonstrate compliance by using procedures established in this chapter after complying with the control technology requirements in WAC 173-460-060.

[Statutory Authority: RCW 70.94.331, 91-13-079 (Order 90-62), § 173-460-070, filed 6/18/91, effective 9/18/91.]

WAC 173-460-080 Demonstrating ambient impact compliance. (1) When applying for a notice of construction under WAC 173-460-040, the owner or operator of a new toxic air pollutant source which is likely to increase TAP emissions shall complete an acceptable source impact level analysis for Class A and Class B TAPs. The authority may complete this analysis.

(2) Acceptable source impact analysis.

(a) Carcinogenic effects. The owner or operator shall use dispersion modeling to estimate the maximum incremental ambient impact of each Class A TAP from the source and compare the estimated incremental ambient values to the Class A acceptable source impact levels in WAC 173-460-150. If applicable, the source may use the small quantity emission rate tables in (e) of this subsection.

(b) Other toxic effects. The owner or operator shall use dispersion modeling to estimate the maximum incremental ambient impact of each Class B TAP from the source and compare the estimated ambient values to the Class B acceptable source impact levels in WAC 173-460-160. If applicable, the source may use the small quantity emission rate tables in (e) of this subsection.

(c) Dispersion modeling. The owner or operator shall use dispersion modeling techniques in accordance with EPA guidelines. If concentrations predicted by dispersion screening models exceed applicable acceptable source impact levels, more refined modeling and/or emission estimation techniques shall be used. Refined modeling techniques shall be approved by ecology and the authority. (Note: EPA's Guideline on Air Quality Models, EPA 450/2-78-027R, can be obtained through NTIS (703) 487-4650 or can be downloaded from the OAQPS Technology Transfer Network electronic bulletin board system).

(d) Averaging times. The owner or operator shall use the averaging times in (d)(i), (ii), (iii) of this subsection unless alternate averaging times are approved by ecology. Ecology may allow the use of an alternate averaging time if it determines that the operating procedures of the source may cause a high concentration of a TAP for a short period and that consideration of potential health effects due to peak exposures may be warranted for the TAP.

(i) An annual average shall be used for Class A TAPs listed in WAC 173-460-150(2).

(ii) The averaging times specified in WAC 173-460-150(3) shall be used for Class A TAPs listed in WAC 173-460-150(3).

(iii) A twenty-four-hour averaging time shall be used for Class B TAPs listed in WAC 173-460-160.

(e) Small quantity emission rates. Instead of using dispersion modeling to show compliance with ambient impact demonstration requirements in WAC 173-460-080 and 173-460-090, a source may use the small quantity emission rate tables for all toxic air pollutants with acceptable source impact levels equal to or greater than 0.001 ug/m³. A source must first meet control technology and emission quantification requirements of WAC 173-460-050 and 173-460-060, then demonstrate that the source emission rate does not exceed the rates specified in the appropriate table below.

SMALL QUANTITY EMISSION RATES
CLASS A TOXIC AIR POLLUTANTS

Acceptable Source Impact Level (Annual ug/m3)	TAP Emissions Pounds per Year (10 meter stack and downwash)
0.001 to 0.0099	0.5
0.01 to 0.06	10
0.07 to 0.12	20
0.13 to 0.99	50
1.0 to 10	500

SMALL QUANTITY EMISSION RATES
CLASS B TOXIC AIR POLLUTANTS

Acceptable Source Impact Level (24 hour ug/m3)	TAP Emissions	
	Pounds per Year	Pounds per Hour
Less than 1	175	0.02
1 to 9.9	175	0.02
10 to 29.9	1,750	0.20
30 to 59.9	5,250	0.60
60 to 99.9	10,500	1.20
100 to 129.9	17,500	2.0
130 to 250	22,750	2.6
Greater than 250	43,748	5.0

(3) Criteria for compliance. Compliance with WAC 173-460-070 is demonstrated if the authority determines that, on the basis of the acceptable source impact analysis, the source's maximum incremental ambient air impact levels do not exceed the Class A or Class B acceptable source impact levels in WAC 173-460-150 and 173-460-160; or, if applicable, the source TAP emission rates do not exceed the rates specified in subsection (2)(e) of this section.

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-080, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-080, filed 6/18/91, effective 9/18/91.]

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

(a) The owner or operator who cannot demonstrate class A or class B TAP source compliance with WAC 173-460-070 and 173-460-080 using an acceptable source impact level analysis as provided in WAC 173-460-080(2), may submit a petition requesting ecology perform a second tier analysis evaluation to determine a means of compliance with WAC 173-460-070 and 173-460-080 by establishing allowable emissions for the source. Petitions for second tier analysis evaluation shall be submitted to the local authority or ecology if ecology has jurisdiction over the source. Petitions received by local authorities shall be submitted to ecology within ten days of receipt. A second tier analysis evaluation may be requested when a source wishes to more accurately characterize risks, to justify risks greater than acceptable source impact levels, or to otherwise modify assumptions to more accurately represent risks. Risks may be more accurately characterized by utilizing updated EPA unit risk factors, inhalation reference concentrations, or other EPA recognized or approved methods. Ecology shall specify the maximum allowable emissions of any class A or class B TAP source based on ecology's second tier analysis evaluation.

(b) Ecology shall evaluate a source's second tier analysis only if:

(i) The authority has advised ecology that other conditions for processing the notice of construction have been met; and

(ii) Emission controls contained in the conditional notice of construction represent at least T-BACT; and

(iii) Ambient concentrations exceed acceptable source impact levels after using more refined emission quantification and air dispersion modeling techniques.

(c) Ecology shall determine whether the conditions in (b)(i), (ii), and (iii) of this subsection for a second tier analysis have been satisfied within ten working days of receipt of all information needed to make the determination. The matter shall be returned to the authority if ecology finds the conditions for a second tier analysis evaluation have not been met.

(2) Jurisdiction.

(a) Any second tier analysis application submitted by a source wishing to emit toxic air pollutants at levels greater than the acceptable source impact level contained in WAC 173-460-150 or 173-460-160 shall be approved or rejected by ecology.

(b) Any new emission limits approved by ecology as a result of the second tier analysis evaluation shall be enforced by the authority provided the authority approves the new emission limits.

(3) Approval criteria.

(a) Based on the second tier analysis, ecology may approve the emissions of TAPs from a source where ambient concentrations exceed acceptable source impact levels only if it determines that emission controls represent at least T-BACT and the source demonstrates that emissions of Class A TAPs are not likely to result in an increased cancer risk of more than one in one hundred thousand. The emission of Class A TAPs at levels likely to result in an increased cancer risk of more than one in one hundred thousand requires the approval of the director after complying with WAC 173-460-100.

(b) Ecology shall consider the second tier analysis and other information submitted by the applicant as well as department of health comments.

(i) Comments from other agencies and universities with appropriate expertise may also be considered in the decision to approve emissions that exceed acceptable source impact levels.

(ii) Public comments shall be considered if the source applies for a risk management decision under WAC 173-460-100.

(4) Contents of the second tier analysis.

(a) The second tier analysis consists of a health impact assessment. The applicant shall complete and submit a health impact assessment to ecology which includes the following information. Ecology may approve the submittal of less information if it determines that such information is sufficient to perform the second tier analysis evaluation. The health impact assessment shall be prepared in accordance with EPA's risk assessment guidelines as defined in WAC 173-460-020(9).

(i) Demographics such as population size, growth, and sensitive subgroups;

(ii) Toxicological profiles of all toxic air pollutants that exceed the ASIL;

(iii) Characterization of existing pathways and total daily intake for toxic air pollutants that exceed the ASIL;

(iv) Contribution of the proposed source toward total daily intake for toxic air pollutants that exceed the ASIL;

(v) Using existing data, characterization of risk from current exposure to the toxic air pollutants that exceed the ASIL. This includes existing TAP sources in the area, and anticipated risk from the new source;

(vi) Additive cancer risk for all Class A toxic air pollutants which may be emitted by the source;

(vii) Other information requested by ecology and pertinent to ecology's decision to approve the second tier application;

(viii) Uncertainty in the data; and

(ix) Length of exposure and persistence in the environment.

(b) The health assessment shall utilize current scientific information. New scientific information on the toxicological characteristics of toxic air pollutants may be used to justify modifications of upper bound unit risk factors used to calculate ASILs in WAC 173-460-150 and/or absorption rates of individual toxic air pollutants if ecology determines there is compelling scientific data which demonstrates that the use of EPA recognized or approved methods are inappropriate.

(5) Additional information.

(a) If approved by ecology, newly discovered scientific information which was unavailable at the time of the original submission of the health assessment may be used to justify modifications of the original health assessment. Ecology may approve the additional information if the source exercised due diligence at the time of original submission.

(b) Within thirty days after receipt of the second tier analysis and all supporting data and documentation, ecology may require the submission of additional information needed to evaluate the second tier analysis.

(6) Determination.

(a) If the second tier analysis is approved by ecology, ecology will return the petition to the authority and the authority may approve the notice of construction.

(b) The authority shall specify allowable emissions consistent with ecology's second tier analysis evaluation determination expressed in weight of pollutant per unit time for each emissions unit involved in the application. The notice of construction shall also include all requirements necessary to assure that conditions of this chapter and chapter 173-400 WAC are satisfied.

(7) Public notification requirements.

Ecology decisions regarding second tier analysis or decisions under WAC 173-460-100 shall comply with public notification requirements contained in WAC 173-400-171.

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-090, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-090, filed 6/18/91, effective 9/18/91.]

WAC 173-460-100 Request for risk management decision. (1) Applicability. The owner or operator of a source that emits Class A TAPs that are likely to result in an increased cancer risk of more than one in one hundred thousand may request that ecology establish allowable emissions for the source.

(1995 Ed.)

(2) Contents of the application.

The applicant shall meet the submittal requirements of WAC 173-460-090(1) and submit all materials required under WAC 173-460-090 (4) and (5). The applicant may submit the request for a risk management decision concurrently with the second tier analysis application. Prior denial of the second tier analysis application under WAC 173-460-090(6) is not required.

(3) Criteria for approval. Ecology may approve the emissions of TAPs from a source where ambient concentrations are likely to result in an increased cancer risk of more than one in one hundred thousand only if the source first demonstrates the following:

(a) Proposed emission controls represent all known available and reasonable technology; and

(b) Application of all known available toxic air pollution prevention methods to reduce, avoid, or eliminate toxic air pollutants prior to their generation including recycling, chemical substitution, and efforts to redesign processes; and

(c) The proposed changes will result in a greater benefit to the environment as a whole.

(4) Additional methods to reduce toxic air pollutants. In addition to the requirements in subsection (3) of this section, the owner or operator may propose and ecology may consider measures that would reduce community exposure, especially exposure of that portion of the community subject to the greatest additional risk, to comparable toxic air pollutants provided that such measures are not already required.

(5) Public involvement. Ecology will initiate public notice and comment within thirty days of receipt of a completed risk management decision application. In addition to the public notice and comment requirements of WAC 173-400-171, the owner or operator shall hold a public hearing to:

(a) Present the results of the second tier analysis, the proposed emission controls, pollution prevention methods, additional proposed measures, and remaining risks; and

(b) Participate in discussions and answer questions.

(6) Time limitation. The owner or operator shall commence construction within eighteen months of the director's approval.

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-100, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-100, filed 6/18/91, effective 9/18/91.]

WAC 173-460-110 Acceptable source impact levels.

There are three types of acceptable source impact levels: Risk-based, threshold-based, and special acceptable source impact levels. They are computed as follows:

(1) Risk-based acceptable source impact levels for Class A TAPs. Risk-based acceptable source impact levels means the annual average concentration, in micrograms per cubic meter, that may cause an increased cancer risk of one in one million. Ecology shall calculate the risk-based acceptable source impact levels for Class A TAPs in WAC 173-460-150(2) using the following equation:

$$\text{Risk based ASIL (ug/m3)} = \frac{\text{RISK}}{\text{URF}}$$

*Where:

RISK = Cancer risk level (1 in 1,000,000)
 URF = Upper bound unit risk factor as published in IRIS data base or other appropriate sources (ug/m3)-1.

(2) Threshold-based acceptable source impact levels for Class B TAPs. Threshold-based acceptable source impact levels in WAC 173-460-160 shall be determined as follows:

(a) If a Class B TAP has an Environmental Protection Agency Inhalation Reference Concentration, the inhalation reference concentration and specified averaging time shall be used.

(b) Other Class B TAP acceptable source impact levels shall be determined by dividing the TLV-TWA by three hundred to calculate a twenty-four hour TWA acceptable source impact level.

(3) Special acceptable source impact levels.

(a) Ecology may establish special acceptable source impact levels for TAPs for which upper bound risk factors or TLVs have not been established, or for mixtures of compounds if it determines that the above acceptable source impact level methods are not appropriate, do not adequately protect human health or are overly stringent.

(b) The averaging times for special ASILs are listed in WAC 173-460-150(3).

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-110, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-110, filed 6/18/91, effective 9/18/91.]

WAC 173-460-120 Scientific review and amendment of acceptable source impact levels and lists. (1) Ongoing scientific review.

(a) To use the best available scientific information, ecology shall conduct an ongoing review of information concerning whether to add or delete toxic air pollutants to WAC 173-460-150 or 173-460-160, what acceptable source impact levels should be used to review emissions of TAPs, source applicability and exemptions.

(b) A complete review shall be made at least once every three years at which time ecology shall consider scientific information developed by the E.P.A., Washington department of health, other states or other scientific organizations, scientific information provided by any person, and results of second tier analyses evaluations.

(2) Criteria for listing as Class A or Class B TAP.

(a) Ecology shall list a substance or group of substances as Class A or Class B TAPs if the department has reason to believe that the compound or group of compounds are likely to be emitted to the air from an air pollution source and the air emission of such compound or compounds could impact public health. The compounds shall be removed from the list if ecology determines that these conditions no longer exist.

(b) Ecology may list mixtures of compounds as Class A and/or Class B TAPs if ecology determines that the health impact of the emission mixture is likely to be different from the known individual chemical impacts.

(3) Acceptable source impact level (ASIL).

Ecology may adopt an ASIL only if ecology determines that concentrations at that level will not unreasonably endanger human health.

[Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-120, filed 6/18/91, effective 9/18/91.]

WAC 173-460-130 Fees. (1) Pursuant to RCW 70.94.152, ecology or the authority may charge a fee for the review of notices of construction.

(2) The fee imposed under this section may not exceed the cost of reviewing plans, specifications, and other information and administering such notice.

[Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-130, filed 6/18/91, effective 9/18/91.]

WAC 173-460-140 Remedies. Violations of this chapter are subject to the penalty provisions and/or other remedies provided in chapter 70.94 RCW.

[Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-140, filed 6/18/91, effective 9/18/91.]

WAC 173-460-150 Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.

(1) TABLE I
 CLASS A TOXIC AIR POLLUTANTS
 Known and Probable Carcinogens

CAS #	SUBSTANCE
75-07-0	Acetaldehyde
53-96-3	2-Acetylaminofluorene
79-06-1	Acrylamide
107-13-1	Acrylonitrile
309-00-2	Aldrin
—	Aluminum smelter polyaromatic hydrocarbon emissions
117-79-3	2-Aminoanthraquinone
97-56-3	o-Aminoazotoluene
92-67-1	4-Aminobiphenyl
61-82-5	Amitrole
62-53-3	Aniline
90-04-0	o-Anisidine
C7440-38-2	Arsenic and inorganic arsenic compounds
1332-21-4	Asbestos
2465-27-2	Auramine (technical grade)
71-43-2	Benzene
92-87-5	Benzidine and its salts
56-55-3	Benzo(a)anthracene
50-32-8	Benzo(a)pyrene
205-99-2	Benzo(b)fluoranthene
205-82-3	Benzo(j)fluoranthene
207-08-9	Benzo(k)fluoranthene
1694-09-3	Benzyl violet 4b
7440-41-7	Beryllium and compounds
111-44-4	Bis(2-chloroethyl)ether
117-81-7	Bis(2-ethylhexyl)phthalate (DEHP)
542-88-1	Bis(chloromethyl)ether
75-25-2	Bromoform
106-99-0	1,3-Butadiene
3068-88-0	B-Butyrolactone
7440-43-9	Cadmium and compounds
56-23-5	Carbon tetrachloride
57-74-9	Chlordane
510-15-6	Chlorobenzilate
67-66-3	Chloroform
107-30-2	Chloromethyl methyl ether (technical-grade)
108-43-0	Chlorophenols
126-99-8	Chloroprene
C7440-47-3	Chromium, hexavalent metal and compounds
—	Coke oven emissions
8001-58-9	Creosote
135-20-6	Cupferron
94-75-7	2,4-D and esters
3547-04-4	DDE (p,p'-Dichlorodiphenyldichloroethylene)
50-29-3	DDT (1,1,1 Trichloro-2,2-Bis(p-chlorophenyl)-ethane)

613-35-4 N,N-Diacetylbenzidine
 101-80-4 4,4'-Diaminodiphenyl ether
 226-36-8 Dibenz(a,h)acridine
 53-70-3 Dibenz(a,h)anthracene
 224-42-0 Dibenz(a,j)acridine
 132-64-9 Dibenzofurans
 189-64-0 Dibenzo(a,h)pyrene
 191-30-0 Dibenzo(a,l)pyrene
 189-55-9 1,2,7,8-Dibenzopyrene (dibenzo(a,i)pyrene)
 192-65-4 Dibenzo(a,e)pyrene
 764-41-0 1,4-Dichloro-2-butene
 28434-86-8 3,3'-Dichloro-4,4'-diaminodiphenyl ether
 106-46-7 1,4-Dichlorobenzene
 91-94-1 3,3'-Dichlorobenzidine
 107-06-2 1,2-Dichloroethane (ethylene chloride)
 75-09-2 Dichloromethane (methylene chloride)
 696-28-6 Dichlorophenylarsine (arsenic group)
 78-87-5 1,2-Dichloropropane
 60-57-1 Dieldrin
 1615-80-1 1,2-Diethylhydrazine
 101-90-6 Diglycidyl resorcinol ether
 119-90-4 3,3'-Dimethoxybenzidine (ortol-dianisidine)
 119-93-7 3,3-Dimethyl benzidine
 77-78-1 Dimethyl sulfate
 540-73-8 1,2-Dimethylhydrazine
 123-91-1 1,4-Dioxane
 — Dioxins and furans
 122-66-7 1,2-Diphenylhydrazine
 106-89-8 Epichlorohydrin
 106-93-4 Ethylene dibromide (dibromethane)
 75-21-8 Ethylene oxide
 96-45-7 Ethylene thiourea
 50-00-0 Formaldehyde
 67-45-8 Furazolidone
 765-34-4 Furium (nitrofurans group)
 76-44-8 Glyciadalddehyde
 118-74-1 Heptachlor
 319-84-6 Hexachlorocyclohexane (Lindane) Alpha BHC
 319-85-7 Hexachlorocyclohexane (Lindane) Beta BHC
 58-89-9 Hexachlorocyclohexane (Lindane) Gamma BHC
 680-31-9 Hexamethylphosphoramide
 302-01-2 Hydrazine
 193-39-5 Indeno(1,2,3-cd)pyrene
 — Isopropyl oils
 — Lead compounds
 301-04-2 Lead acetate
 7446-27-7 Lead phosphate
 129-15-7 2-Methyl-1-nitroanthraquinone
 592-62-1 Methyl azoxymethyl acetate
 3697-24-3 5-Methylchrysene
 101-14-4 4,4'-Methylenebis(2-chloroaniline) (MBOCA)
 838-88-0 4,4'-Methylenebis(2-methylaniline)
 101-77-9 4,4-Methylene dianiline
 13552-44-8 4,4-Methylenedianiline dihydrochloride
 64091-91-4 4-(Methylnitrosamino)-1-(3-pyridyl)-1-butanone
 2385-85-5 Mirex
 139-91-3 5-(Morpholinomethyl)-3-amino-2-oxazolidinone (furaltudone)
 134-32-7 1-Naphthylamine
 C7440-02-0 Nickel and compounds (as nickel subsulfide or nickel refinery dust)
 531-82-8 N-(4-(5-Nitro-2-furyl)-2-thiazolyl)acetamide
 602-87-9 5-Nitroacenaphthene
 1836-75-5 Nitrofen
 Nitrofurans
 Nitrofurazone
 555-84-9 1-(5-Nitrofurfurylidene)amino)-2-imidazolidinone
 126-85-2 Nitrogen mustard N-oxide
 302-70-5 Nitrogen mustard N-oxide hydrochloride
 79-46-9 2-Nitropropane
 924-16-3 N-Nitrosodi-n-butylamine
 759-73-9 N-Nitroso-N-ethylurea (NEU)
 615-53-2 N-Nitroso-N-methylurethane
 621-64-1 N-Nitrosodi-n-propylamine
 10595-95-6 N-Nitrosomethylethylamine

59-89-2 N-Nitrosomorpholine
 86-30-6 N-Nitrosodiphenylamine
 55-18-5 N-Nitrosodiethylamine (diethylnitrosoamine) (DEN)
 62-75-9 N-Nitrosodimethylamine
 2646-17-5 Oil orange SS
 794-93-4 Panfuran S (dihydroxymethylfuratrizine)
 87-86-5 Pentachlorophenol
 127-18-4 Perchloroethylene (tetrachloroethylene)
 63-92-3 Phenoxybenzamine hydrochloride
 — N-Phenyl-2-naphthylamine
 1336-36-3 Polyaromatic hydrocarbons (PAH)
 3761-53-3 Polychlorinated biphenyls (PCBs)
 Ponceau MX
 P(p)(alpha, alpha, alpha)-Tetra-chlorotoluene
 1,3-Propane sultone
 75-56-9 Propylene oxide
 1746-01-6 2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)
 139-65-1 4,4'-Thiodianiline
 1314-20-1 Thorium dioxide
 95-80-7 2,4-Toluene diamine
 584-84-9 2,4-Toluene diisocyanate
 95-53-4 o-Toluidine
 636-21-5 o-Toluidine hydrochloride
 8001-35-2 Toxaphene
 55738-54-0 Trans-2((Dimethylamino)methylimino)-5-(2-(5-nitro-2-furyl) vinyl)-1,3,4-oxadiazole
 79-01-6 Trichloroethylene
 88-06-2 2,4,6-Trichlorophenol
 75-01-4 Vinyl chloride

(2) TABLE II
 CLASS A TOXIC AIR POLLUTANTS
 WITH ESTABLISHED
 ACCEPTABLE SOURCE IMPACT LEVELS

CAS #	SUBSTANCE	10-6 RISK ASIL MICRO- GRAMS/M ³ ANNUAL AVERAGE
75-07-0	Acetaldehyde	0.4500000
79-06-1	Acrylamide	0.0007700
107-13-1	Acrylonitrile	0.0150000
309-00-2	Aldrin	0.0002000
62-53-3	Aniline	6.3000000
C7440-38-2	Arsenic and inorganic arsenic compounds	0.0002300
1332-21-4	Asbestos (Note: fibers/ml)	0.0000044
71-43-2	Benzene	0.1200000
92-87-5	Benzidine and its salts	0.0000150
50-32-8	Benzo(a)pyrene	0.0004800
7440-41-7	Beryllium and compounds	0.0004200
111-44-4	Bis(2-chloroethyl)ether	0.0030000
117-81-7	Bis(2-ethylhexyl)phthalate (DEHP)	2.5000000
542-88-1	Bis(chloromethyl)ether	0.0000160
75-25-2	Bromoform	0.9100000
106-99-0	1,3-Butadiene	0.0036000
7440-43-9	Cadmium and compounds	0.0005600
56-23-5	Carbon tetrachloride	0.0670000
57-74-9	Chlordane	0.0027000
510-15-6	Chlorobenzilate	0.2000000
67-66-3	Chloroform	0.0430000
108-43-0	Chlorophenols	0.1800000
C7440-47-3	Chromium, hexavalent metal and compounds	0.0000830
—	Coke oven emissions	0.0016000
3547-04-4	DDE (p,p'-dichlorodiphenyldichloroethylene)	0.1000000
50-29-3	DDT (1,1,1 Trichloro-2,2-Bis-(p-chlorophenyl)-ethane)	0.0100000
764-41-0	1,4-Dichloro-2-butene	0.0003800
106-46-7	1,4-Dichlorobenzene	1.5000000
91-94-1	3,3'-Dichlorobenzidine	0.0770000
107-06-2	1,2-Dichloroethane (ethylene chloride)	0.0380000
75-09-2	Dichloromethane (methylene chloride)	0.5600000
60-57-1	Dieldrin	0.0002200

119-93-7	3,3-Dimethyl benzidine	0.0038000
123-91-1	1,4-Dioxane	0.0320000
122-66-7	1,2-Diphenylhydrazine	0.0045000
106-89-8	Epichlorohydrin	0.8300000
106-93-4	Ethylene dibromide (dibromethane)	0.0045000
75-21-8	Ethylene oxide	0.0100000
96-45-7	Ethylene thiourea	1.0000000
50-00-0	Formaldehyde	0.0770000
76-44-8	Heptachlor	0.0007700
118-74-1	Hexachlorobenzene	0.0022000
58-89-9	Hexachlorocyclohexane (Lindane) gamma BHC	0.0026000
302-01-2	Hydrazine	0.0002000
C7440-02-0	Nickel and compounds (as nickel subsulfide or nickel refinery dust)	0.0021000
924-16-3	N-Nitrosodi-n-butylamine	0.0006300
55-18-5	N-Nitrosodiethylamine (diethylnitrosoamine)(DEN)	0.0000230
62-75-9	N-Nitrosodimethylamine	0.0000710
79-46-9	2-Nitropropane	0.0003700
87-86-5	Pentachlorophenol	0.3300000
127-18-4	Perchloroethylene (tetrachloroethylene)	1.1000000
1336-36-3	Polychlorinated biphenyls (PCB)	0.0045000
75-56-9	Propylene oxide	0.2700000
1746-01-6	2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	0.0000003
95-80-7	2,4-Toluene diamine	0.0110000
95-53-4	o-Toluidine	0.1400000
636-21-5	o-Toluidine hydrochloride	0.1400000
8001-35-2	Toxaphene	0.0031000
79-01-6	Trichloroethylene	0.5900000
88-06-2	2,4,6-Trichlorophenol	0.3200000
75-01-4	Vinyl chloride	0.0120000

(3) TABLE III
CLASS A TOXIC AIR POLLUTANTS
WITH SPECIAL ACCEPTABLE SOURCE
IMPACT LEVELS

CAS #	SUBSTANCE	ASIL MICRO-GRAMS/M ³	AVERAGING TIME
—	Primary aluminum smelter uncontrolled roof vent polyaromatic hydrocarbon (PAH) emissions (Note: Quantify according to WAC 173-460-050 (4)(d))	0.0013	Annual
61-82-5	Amitrole	0.06	24 hour
90-04-0	o-Anisidine	1.7	24 hour
126-99-8	β-Chloroprene	120	24 hour
94-75-7	2,4-D and esters	33	24 hour
78-87-5	1,2-Dichloropropane	4.0	24 hour
77-78-1	Dimethyl sulfate	1.7	24 hour
540-73-8	1,2-Dimethylhydrazine	4.0	24 hour
319-84-6	Hexachlorocyclohexane (Lindane) alpha BHC	1.7	24 hour
319-85-7	Hexachlorocyclohexane (Lindane) beta BHC	1.7	24 hour
—	Lead compounds	0.5	24 hour
101-14-4	4,4'-Methylenebis (2-Chloroaniline) (MBOCA)	0.7	24 hour
101-77-9	4,4-Methylene dianiline	2.7	24 hour
—	Polyaromatic hydrocarbon (PAH) emissions (Note: Quantify according to WAC 173-460-050 (4)(d))	0.00048	Annual
584-84-9	2,4-Toluene diisocyanate	0.12	24 hour

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-150, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62), § 173-460-150, filed 6/18/91, effective 9/18/91.]

WAC 173-460-160 Class B toxic air pollutants and acceptable source impact levels. The following table lists Class B toxic air pollutants and acceptable source impact levels:

CLASS B TOXIC AIR POLLUTANTS AND ACCEPTABLE SOURCE IMPACT LEVELS

CAS#	SUBSTANCE	ASIL MICRO-GRAMS/M ³ TWENTY-FOUR-HOUR AVERAGE
86-88-4	ANTU	1.0
60-35-5	Acetamide	—
64-19-7	Acetic acid	83
108-24-7	Acetic anhydride	67
67-64-1	Acetone	5900
75-05-8	Acetonitrile	220
98-86-2	Acetophenone	—
79-27-6	Acetylene tetrabromide	47
107-02-8	Acrolein	0.02
79-10-7	Acrylic acid	0.30
107-18-6	Allyl alcohol	17
107-05-1	Allyl chloride	1.0
106-92-3	Allyl glycidyl ether (AGE)	77
2179-59-1	Allyl propyl disulfide	40.0
C7429-90-5	Aluminum, Al alkyls	6.7
7429-90-5	Aluminum, as Al metal dust	33
C7429-90-5	Aluminum, as Al pyro powders	17
C7429-90-5	Aluminum, as Al soluble salts	6.7
C7429-90-5	Aluminum, as Al welding fumes	17
504-29-0	2-Aminopyridine	6.3
7664-41-7	Ammonia	100
12125-02-9	Ammonium chloride fume	33
3825-26-1	Ammonium perfluorooctanoate	0.33
7773-06-0	Ammonium sulfamate	33
628-63-7	n-Amyl acetate	1800
626-38-0	sec-Amyl acetate	2200
62-53-3	Aniline & homologues	1.0
29191-52-4	Anisidine (o-,p- isomers)	1.7
C7440-36-0	Antimony & compounds as Sb	1.7
1309-64-4	Antimony trioxide, as Sb	1.7
7784-42-1	Arsine	0.53
8052-42-4	Asphalt (petroleum) fumes	17
1912-24-9	Atrazine	17
86-50-0	Azinphos-methyl	0.67
C7440-39-3	Barium, soluble compounds Ba	1.7
17804-35-2	Benomyl	33
98-07-7	Benzotrithloride	—
94-36-0	Benzoyl Peroxide	17
100-44-7	Benzyl chloride	17
92-52-4	Biphenyl	4.3
1304-82-1	Bismuth telluride	33
1304-82-1	Bismuth telluride Se doped	17
C1303-96-4	Borates, anhydrous	3.3
C1303-96-4	Borates, decahydrate	17
C1303-96-4	Borates, pentahydrate	3.3
1303-86-2	Boron oxide	33
10294-33-4	Boron tribromide	33
76737-07-2	Boron trifluoride	9.3
314-40-9	Bromacil	33
7726-95-6	Bromine	2.2
7789-30-2	Bromine pentafluoride	2.4
106-97-8	Butane	6300.0
111-76-2	2-Butoxyethanol	400
123-86-4	n-Butyl acetate	2400
105-46-4	sec-Butyl acetate	3200
540-88-5	tert-Butyl acetate	3200
141-32-2	Butyl acrylate	170
71-36-3	n-Butyl alcohol	500
78-92-2	sec-Butyl alcohol	1000
75-65-0	tert-Butyl alcohol	1000
1189-85-1	tert-Butyl chromate, as CrO3	0.33

New Sources of Toxic Air Pollutants

173-460-160

2426-08-6	n-Butyl glycidyl ether (BGE)	440	19287-45-7	Diborane	0.37
138-22-7	n-Butyl lactate	83	96-12-8	1,2-Dibromo-3-chloropropane	0.20
109-79-5	n-Butyl mercaptan	6.0	107-66-4	Dibutyl phosphate	29
109-73-9	n-Butylamine	50.0	84-74-2	Dibutyl phthalate	17
89-72-5	o-sec-Butylphenol	100	102-81-8	2-N-Dibutylaminoethanol	47
98-51-1	p-tert-Butyltoluene	200	594-72-9	1,1-Dichloro-1-nitroethane	40
156-62-7	Calcium cyanamide	1.7	118-52-5	1,3-Dichloro-5,5-Dimethyl hydantoin	0.67
1305-62-0	Calcium hydroxide	17	7572-29-4	Dichloroacetylene	1.3
1305-78-8	Calcium oxide	6.7	95-50-1	o-Dichlorobenzene (1,2-Dichlorobenzene)	1000
76-22-2	Camphor, synthetic	40	75-71-8	Dichlorodifluoromethane	16000
105-60-2	Caprolactam, dust	3.3	75-34-3	1,1-Dichloroethane	2700
105-60-2	Caprolactam, vapor	67	540-59-0	1,2-Dichloroethylene	2600
2425-06-1	Captafol	0.33	75-43-4	Dichlorofluoromethane	130
133-06-2	Captan	17	542-75-6	Dichloropropene	20
63-25-2	Carbaryl	17	75-99-0	2,2-Dichloropropionic acid	19
1563-66-2	Carbofuran	0.33	76-14-2	Dichlorotetrafluoroethane	23000
1333-86-4	Carbon black	12	62-73-7	Dichlorvas	3.3
75-15-0	Carbon disulfide	100	141-66-2	Dicrotophos	0.83
558-13-4	Carbon tetrabromide	4.7	77-73-6	Dicyclopentadiene	100
353-50-4	Carbonyl fluoride	18	102-54-5	Dicyclopentadienyl iron	33
463-58-1	Carbonyl sulfide	—	111-42-2	Diethanolamine	43
120-80-9	Catechol	77	96-22-0	Diethyl ketone	2300
21351-79-1	Cesium hydroxide	6.7	84-66-2	Diethyl phthalate	17
133-90-4	Chloramben	—	64-67-5	Diethyl sulfate	—
55720-99-5	Chlorinated diphenyl oxide (hexachlorophenyl ether)	1.7	109-89-7	Diethylamine	100
7782-50-5	Chlorine	5.0	100-37-8	Diethylaminoethanol	170
10049-04-4	Chlorine dioxide	0.2	111-40-0	Diethylene triamine	14
7790-91-2	Chlorine trifluoride	1.3	75-61-6	Difluorodibromomethane	2900
600-25-9	1-Chloro-1-nitropropane	33	2238-07-5	Diglycidyl ether	1.7
107-20-0	Chloroacetaldehyde	11	108-83-8	Diisobutyl ketone	480
79-11-8	Chloroacetic acid	—	108-18-9	Diisopropylamine	67
532-27-4	a-Chloroacetophenone	1.1	127-19-5	Dimethyl acetamide	120
79-04-9	Chloroacetyl chloride	0.67	60-11-7	Dimethyl aminoazobenzene	—
2698-41-1	o-Chlorobenzylidene malonitrile	1.3	79-44-7	Dimethyl carbamoyl chloride	—
108-90-7	Chlorobenzene	150	124-40-3	Dimethylamine	60
74-97-5	Chlorobromomethane	3500	121-69-7	Dimethylaniline	83
75-45-6	Chlorodifluoromethane	12000	68-12-2	Dimethylformamide	30
76-15-3	Chloropentafluoroethane	21000	57-14-7	1,1-Dimethylhydrazine	4.0
76-06-2	Chloropicrin	2.2	131-11-3	Dimethylphthalate	17
2039-87-4	o-Chlorostyrene	940	148-01-6	Dinitolmide	17
95-49-8	o-Chlorotoluene	860	534-52-1	Dinitro-o-cresol	0.67
2921-88-2	Chlorpyrifos	0.67	528-29-0	Dinitrobenzene, all isomers	3.3
C7440-47-3	Chromium (II) compounds, as Cr	1.7	51-28-5	2,4-Dinitrophenol	—
C7440-47-3	Chromium (III) compounds, Cr	1.7	121-14-2	2,4-Dinitrotoluene	5.0
7440-47-3	Chromium (metal)	1.7	78-34-2	Dioxathion	0.67
14977-61-8	Chromyl chloride	0.53	122-39-4	Diphenylamine	33
2971-90-6	Clopidol	33	123-19-3	Dipropyl ketone	780
7440-48-4	Cobalt as Co metal Dust and fume	0.17	34590-94-8	Dipropylene glycol methyl ether	2000
10210-68-1	Cobalt carbonyl as Co	0.33	85-00-7	Diquat	1.7
16842-03-8	Cobalt hydrocarbonyl	0.33	97-77-8	Disulfiram	6.7
C7440-50-8	Copper, Dusts and mists, as Cu	3.3	298-04-4	Disulfuton	0.33
7440-50-8	Copper, Fume	0.67	128-37-0	2,6-Ditert. butyl-p-cresol	33
—	Cotton dust, raw	0.67	330-54-1	Diuron	33
1319-77-3	Cresol, all isomers	73	1321-74-0	Divinyl benzene	180
4170-30-3	Crotonaldehyde	20	2104-64-5	EPN	1.7
299-86-5	Crufomate	17	115-29-7	Endosulfan	0.33
98-82-2	Cumene	820	72-20-8	Endrin	0.33
420-04-2	Cyanamide	6.7	13838-16-9	Enflurane	1900
51-12-5	Cyanides, as CN	17	106-88-7	1,2-Epoxybutane	20
460-19-5	Cyanogen	67	141-43-5	Ethanolamine	25
506-77-4	Cyanogen chloride	2.5	563-12-2	Ethion	1.3
110-82-7	Cyclohexane	3400	110-80-5	2-Ethoxyethanol	200
108-93-0	Cyclohexanol	690	111-15-9	2-Ethoxyethyl acetate	90
108-94-1	Cyclohexanone	330	141-78-6	Ethyl acetate	4800
110-83-8	Cyclohexene	3400	140-88-5	Ethyl acrylate	66
108-91-8	Cyclohexylamine	140	64-17-5	Ethyl alcohol	6300
121-82-4	Cyclonite	5.0	541-85-5	Ethyl amyl ketone	440
542-92-7	Cyclopentadiene	680	100-41-4	Ethyl benzene	1000
287-92-3	Cyclopentane	5700	74-96-4	Ethyl bromide	3000
13121-70-5	Cyhexatin	17	106-35-4	Ethyl butyl ketone	780
17702-41-9	Decaborane	0.83	51-79-5	Ethyl carbamate	—
8065-48-3	Demeton	0.37	75-00-3	Ethyl chloride	10000
123-42-2	Diacetone alcohol	790	60-29-7	Ethyl ether	4000
333-41-5	Diazinon	0.33	109-94-4	Ethyl formate	1000
334-88-3	Diazomethane	1.1	75-08-1	Ethyl mercaptan	4.3
			78-10-4	Ethyl silicate	280

75-04-7	Ethylamine	60	121-75-5	Malathion	33
107-07-3	Ethylene chlorohydrin	11	108-31-6	Malic anhydride	3.3
107-15-3	Ethylene diamine	83	C7439-96-5	Manganese dust & compounds	0.40
107-21-1	Ethylene glycol	420	C7439-96-5	Manganese fume	3.3
628-96-6	Ethylene glycol dinitrate	1.0	12079-65-1	Manganese cyclopentadienyl tricarbonyl	0.33
151-56-4	Ethylenimine	2.9	C7439-97-6	Mercury, Aryl & inorganic compd	0.33
16219-75-3	Ethylidene norbornene	83	C7439-97-6	Mercury, as Hg Alkyl compounds	0.33
100-74-3	N-Ethylmorpholine	77	C7439-97-6	Mercury, vapors except alkyl	0.17
22224-92-6	Fenamiphos	0.33	141-79-7	Mesityl oxide	200
115-90-2	Fensulthothion	0.33	79-41-4	Methacrylic acid	230
55-38-9	Fenthion	0.67	16752-77-5	Methomyl	8.3
14484-64-1	Ferbam	33	72-43-5	Methoxychlor	33
12604-58-9	Ferrovandium dust	3.3	109-86-4	2-Methoxyethanol	20
—	Fibrous glass dust	33	110-49-6	2-Methoxyethyl acetate	80
—	Fine mineral fibers	33	150-76-5	4-Methoxyphenol	17
16984-48-8	Fluorides, as F	8.3	137-05-3	Methyl 2-cyanoacrylate	30
7782-41-4	Fluorine	5.3	79-20-9	Methyl acetate	2000
944-22-9	Fonofos	0.33	74-99-7	Methyl acetylene	5500
75-12-7	Formamide	60	59355-75-8	Methyl acetylene-propadiene mixture (MAPP)	5500
64-18-6	Formic acid	31	96-33-3	Methyl acrylate	120
98-01-1	Furfural	26	67-56-1	Methyl alcohol	870
98-00-1	Furfuryl alcohol	130	100-61-8	N-Methyl aniline	7.3
7782-65-2	Germanium tetrahydride	2.1	74-83-9	Methyl bromide	5.0
111-30-8	Glutaraldehyde	2.5	74-87-3	Methyl chloride	340
556-52-5	Glycidol	250	71-55-6	Methyl chloroform (1,1,1-Trichloroethane)	6400
—	Glycol ethers	—	8022-00-2	Methyl demeton	1.7
7440-58-6	Hafnium	1.7	78-93-3	Methyl ethyl ketone (MEK)	1000
151-67-7	Halothane	1300	1338-23-4	Methyl ethyl ketone peroxide	5.0
142-82-5	Heptane (n-Heptane)	5500	107-31-3	Methyl formate	820
87-68-3	Hexachlorobutadiene	0.70	60-34-4	Methyl hydrazine	1.2
77-47-4	Hexachlorocyclopentadiene	0.33	74-88-4	Methyl iodide	40
67-72-1	Hexachloroethane	32	110-12-3	Methyl isoamyl ketone	780
1335-87-1	Hexachloronaphthalene	0.67	108-11-2	Methyl isobutyl carbinol	350
684-16-2	Hexafluoroacetone	2.3	108-10-1	Methyl isobutyl ketone (MIBK)	680
822-06-0	Hexamethylene diisocyanate	0.11	624-83-9	Methyl isocyanate	0.16
100-54-3	Hexane (n-Hexane)	200	563-80-4	Methyl isopropyl ketone	2300
—	Hexane, other isomers	5900	74-93-1	Methyl mercaptan	3.3
591-78-6	2-Hexanone (MBK)	67	80-62-6	Methyl methacrylate	1400
108-84-9	sec-Hexyl acetate	980	110-43-0	Methyl n-amyl ketone	780
107-41-5	Hexylene glycol	400	591-78-6	Methyl n-butyl ketone	67
10035-10-6	Hydrogen bromide	33	298-00-0	Methyl parathion	0.67
7647-01-0	Hydrogen chloride	7.0	107-87-9	Methyl propyl ketone	2300
74-90-8	Hydrogen cyanide	37	681-84-5	Methyl silicate	20
7664-39-3	Hydrogen fluoride, as F	8.7	1634-04-4	Methyl tert-butyl ether	500
7722-84-1	Hydrogen peroxide	4.7	98-83-9	a-Methyl styrene	810
7783-07-5	Hydrogen selenide, as Se	0.53	126-98-7	Methylacrylonitrile	9.0
7783-06-4	Hydrogen sulfide	0.9	109-87-5	Methylal	10000
123-31-9	Hydroquinone	6.7	74-89-5	Methylamine	43
999-61-1	2-Hydroxypropyl acrylate	9.3	108-87-2	Methylcyclohexane	5400
95-13-6	Indene	160	25639-42-3	Methylcyclohexanol	780
C7440-74-6	Indium, & compounds as In	0.33	583-60-8	o-Methylcyclohexanone	760
7553-56-2	Iodine	3.3	12108-13-3	Methylcyclopentadienyl manganese tricarbonyl	0.67
75-47-8	Iodoform	33	5124-30-1	Methylene bis (4-cyclo-hexylisocyanate)	0.18
1309-37-1	Iron oxide fume, Fe ₂ O ₃ as Fe	17	101-68-8	Methylene bis(phenyl isocyanate)	0.2
13463-40-6	Iron pentacarbonyl, as Fe	0.83	21087-64-9	Metribuzin	17
—	Iron salts, soluble as Fe	3.3	7786-34-7	Mevinphos	0.33
123-92-2	Isoamyl acetate	1700	C7439-98-7	Molybdenum, as Mo soluble cpds	17
123-51-3	Isoamyl alcohol	1200	C7439-98-7	Molybdenum, insoluble cpds	33
110-19-0	Isobutyl acetate	2400	6923-22-4	Monocrotophos	0.83
78-83-1	Isobutyl alcohol	510	110-91-8	Morpholine	240
26952-21-6	Isocytl alcohol	890	300-76-5	Naled	10
78-59-1	Isophorone	93	91-20-3	Napthalene	170
4098-71-9	Isophorone diisocyanate	0.15	54-11-5	Nicotine	1.7
109-59-1	Isopropoxyethanol	350	1929-82-4	Nitrapyrin	33
108-21-4	Isopropyl acetate	3500	7697-37-2	Nitric acid	17
67-63-0	Isopropyl alcohol	3300	10102-43-9	Nitric oxide	100
108-20-3	Isopropyl ether	3500	100-01-6	p-Nitroaniline	10
4016-14-2	Isopropyl glycidyl ether (IGE)	790	98-95-3	Nitrobenzene	1.7
75-31-0	Isopropylamine	40	100-00-5	p-Nitrochlorobenzene	2.0
768-52-5	N-Isopropylaniline	37	79-24-3	Nitroethane	1000
463-51-4	Ketene	2.9	7783-54-2	Nitrogen trifluoride	97
3687-31-8	Lead arsenate, as Pb ₃ (A ₂ O ₄) ₂	0.50	92-93-3	4-Nitrobiphenyl	—
7758-97-6	Lead chromate, as Cr	0.040	55-63-0	Nitroglycerin	1.5
68476-85-7	Liquified petroleum gas	6000	75-52-5	Nitromethane	830
7580-67-8	Lithium hydride	0.080			
1309-48-4	Magnesium oxide fume	33			

New Sources of Toxic Air Pollutants

173-460-160

100-02-7	4-Nitrophenol	—	62-74-8	Sodium fluoroacetate	0.17
108-03-2	1-Nitropropane	20	1310-73-2	Sodium hydroxide	6.7
684-93-5	N-Nitroso-N-methylurea	—	7681-57-4	Sodium metabisulfite	6.7
88-72-2	Nitrotoluene	37	7803-52-3	Stibine	1.7
111-84-2	Nonane	3500	57-24-9	Strychnine	0.5
2234-13-1	Octachloronaphthalene	0.33	100-42-5	Styrene	1000
111-65-9	Octane	4700	96-9-3	Styrene oxide	—
8012-95-1	Oil mist, mineral	17	1395-21-7	Subtilisins	0.0002
20816-12-0	Osmium tetroxide, as Os	0.0053	3689-24-5	Sulfotep	0.67
144-62-7	Oxalic acid	3.3	2551-62-4	Sulfur hexafluoride	20000
7783-41-7	Oxygen difluoride	0.37	10025-67-9	Sulfur monochloride	18
8002-74-2	Parafin wax fume	6.7	5714-22-7	Sulfur pentafluoride	0.33
4685-14-7	Paraquat	4.5	7783-60-0	Sulfur tetrafluoride	1.5
56-38-2	Parathion	0.33	7664-93-9	Sulfuric acid	3.3
19624-22-7	Pentaborane	0.043	2699-79-8	Sulfuryl fluoride	67
1321-64-8	Pentachloronaphthalene	1.7	35400-43-2	Sulprofos	3.3
82-68-8	Pentachloronitrobenzene (quintobenzene)	1.7	93-76-5	2,4,5-T	33
109-66-0	Pentane	6000	107-49-3	TEPP	0.16
594-42-3	Perchloromethyl mercaptan	2.5	C7440-25-7	Tantalum, metal & oxide dusts	17
7616-94-6	Perchloryl fluoride	43	C13494-80-9	Tellurium & compounds as Te	0.33
108-95-2	Phenol	63	7783-80-4	Tellurium hexafluoride, as Te	0.33
92-84-2	Phenothiazine	1.7	3383-96-8	Temephos	33
101-84-8	Phenyl ether	23	26140-60-3	Terphenyls	16
122-60-1	Phenyl glycidyl ether	2000	76-12-0	1,1,2,2-Tetrachloro-1,2-difluoroethane	14000
108-98-5	Phenyl mercaptan	7.7	76-11-9	1,1,1,2-Tetrachloro-2,2-difluoroethane	14000
106-50-3	p-Phenylenediamine	0.33	79-34-5	1,1,2,2-Tetrachloroethane	23
100-63-0	Phenyldiazine	1.5	1335-88-2	Tetrachloronaphthalene	6.7
638-21-1	Phenylphosphine	0.77	78-00-2	Tetraethyl lead, as Pb	0.33
298-02-2	Phorate	0.17	109-99-9	Tetrahydrofuran	2000
75-44-5	Phosgene	1.3	75-74-1	Tetramethyl lead, as Pb	0.5
7803-51-2	Phosphine	1.3	3333-52-6	Tetramethyl succinonitrile	9.3
7664-38-2	Phosphoric acid	3.3	509-14-8	Tetranitromethane	27
7723-14-0	Phosphorus	0.33	7722-88-5	Tetrasodium pyrophosphate	17
10025-87-3	Phosphorus oxychloride	2.1	479-45-8	Tetryl	5.0
10026-13-8	Phosphorus pentachloride	2.8	C7440-28-0	Thallium, soluble compounds, Tl	0.33
1314-80-3	Phosphorus pentasulfide	3.3	96-69-5	4,4-Thiobis(6-tert, butyl-m-cresol)	33
7719-12-2	Phosphorus trichloride	3.7	68-11-1	Thioglycolic acid	13
85-44-9	Phthalic anhydride	20	7719-09-7	Thionyl chloride	16
626-17-5	m-Phthalodinitrile	17	137-26-8	Thiram	3.3
1918-02-1	Picloram	33	7440-31-5	Tin, Metal	6.7
88-89-1	Picric acid	0.33	C7440-31-5	Tin, Organic compounds, as Sn	0.33
83-26-1	Pindone	0.033	7440-31-5	Tin, oxide & inorganic except SnH ₄	6.7
142-64-3	Piperazine dihydrochloride	17	7550-45-0	Titanium tetrachloride	—
7440-06-4	Platinum, Metal	3.3	108-88-3	Toluene	400
C7440-06-4	Platinum, Soluble salts as Pt	0.0067	108-44-1	m-Toluidine	29
1310-58-3	Potassium hydroxide	6.7	106-49-0	p-Toluidine	29
107-19-7	Propargyl alcohol	7.7	126-73-8	Tributyl phosphate	7.3
57-57-8	B-Propiolactone	5.0	76-13-1	1,1,2-Trichloro-1,2,2-trifluoroethane	27000
123-38-6	Propionaldehyde	—	76-03-9	Trichloroacetic acid	22
114-26-1	Propoxur	1.7	120-82-1	1,2,4-Trichlorobenzene	120
79-09-4	Propionic acid	100	79-00-5	1,1,2-Trichloroethane	180
109-60-4	n-Propyl acetate	2800	75-69-4	Trichlorofluoromethane	19000
71-23-8	n-Propyl alcohol	1600	1321-65-9	Trichloronaphthalene	17
627-13-4	n-Propyl nitrate	360	95-95-4	2,4,5-Trichlorophenol	—
6423-43-4	Propylene glycol dinitrate	1.1	96-18-4	1,2,3-Trichloropropane	200
107-98-2	Propylene glycol monomethyl ether	2000	121-44-8	Triethylamine	7.0
75-55-8	Propylene imine	16	75-63-8	Trifluorobromomethane	20000
8003-34-7	Pyrethrum	1.7	1582-09-8	Trifluralin	—
110-86-1	Pyridine	53	552-30-7	Trimellitic anhydride	0.13
91-22-5	Quinoline	—	2551-13-7	Trimethyl benzene	420
106-51-4	Quinone	1.5	540-84-1	2,2,4-Trimethylpentane	—
108-46-3	Resorcinol	150	121-45-9	Trimethyl phosphite	33
7440-16-6	Rhodium Metal	3.3	75-50-3	Trimethylamine	80
C7440-16-6	Rhodium, Insoluble compounds	3.3	118-96-7	2,4,6-Trinitrotoluene	1.7
C7440-16-6	Rhodium, Soluble compounds	0.033	78-30-8	Triorthocresyl phosphate	0.33
299-84-3	Ronnel	33	603-34-9	Triphenyl amine	17
83-79-4	Rotenone	17	115-86-6	Triphenyl phosphate	10
—	Rubber solvent (Naphtha)	5300	C7440-33-7	Tungsten, Insoluble compounds	17
C7782-49-2	Selenium compounds, as Se	0.67	C7440-33-7	Tungsten, Soluble compounds	3.3
7783-79-1	Selenium hexafluoride, as Se	0.53	8006-64-2	Turpentine	1900
136-78-7	Sesone	33	C7440-61-1	Uranium, insoluble & soluble	0.67
7803-62-5	Silicon tetrahydride	22	8032-32-4	VM & P Naphtha	4600
7440-22-4	Silver, Metal	0.33	110-62-3	n-Valeraldehyde	590
C7440-22-4	Silver, soluble compounds as Ag	0.033	1314-62-1	Vanadium, as V ₂ O ₅	0.17
26628-22-8	Sodium azide	1.0	108-05-4	Vinyl acetate	200
7631-90-5	Sodium bisulfite	17	593-60-2	Vinyl bromide	73

106-87-6	Vinyl cyclohexene dioxide	200
75-35-4	Vinylidene chloride	67
25013-15-4	Vinyl toluene	800
81-81-2	Warfarin	0.33
—	Welding fumes	17
1477-55-0	m-Xylene a,a'-diamine	0.33
1330-20-7	Xylenes (m-,o-,p-isomers)	1500
1300-73-8	Xylidine	8.3
C7440-65-5	Yttrium, metal and cpds as Y	3.3
7646-85-7	Zinc chloride fume	3.3
13530-65-9	Zinc chromates	0.033
1314-13-2	Zinc oxide, fume	17
C7440-67-7	Zirconium compounds, as Zr	17

[Statutory Authority: Chapter 70.94 RCW. 94-03-072 (Order 93-19), § 173-460-160, filed 1/14/94, effective 2/14/94. Statutory Authority: RCW 70.94.331. 91-13-079 (Order 90-62, § 173-460-160, filed 6/18/91, effective 9/18/91.)]

Chapter 173-470 WAC

AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

(Formerly chapter 18-40 WAC)

WAC

173-470-010	Purpose.
173-470-020	Applicability.
173-470-030	Definitions.
173-470-100	Ambient air quality standards.
173-470-110	Particle fallout standards.
173-470-150	Method of measurement.
173-470-160	Reporting of data.

WAC 173-470-010 Purpose. This chapter promulgated under RCW 70.94.305 and 70.94.331 establishes maximum acceptable levels for particulate matter in the ambient air. Particulate matter is characterized in criteria developed by the United States Environmental Protection Agency.

[Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-010, filed 9/16/87.]

WAC 173-470-020 Applicability. The provisions of this chapter apply to all areas of the state of Washington.

[Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-020, filed 9/16/87.]

WAC 173-470-030 Definitions. Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings; general terms common with other chapters of Title 173 WAC as defined in chapter 173-403 WAC.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-470-030, filed 1/3/89. Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-030, filed 9/16/87.]

WAC 173-470-100 Ambient air quality standards.

(1) The level of the 24-hour ambient air quality standard for total suspended particulate is 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour average concentration. The standard is attained when the number of days per calendar year is less than or equal to one for measured 24-hour concentrations above 150 $\mu\text{g}/\text{m}^3$.

(2) The level of the annual standard for total suspended particulate is sixty micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual geometric mean. The standard is attained when the

annual geometric mean concentration is less than or equal to 60 $\mu\text{g}/\text{m}^3$.

(3) The level of the 24-hour ambient air quality standard for PM-10 is 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour average concentration. The standard is attained when:

(a) The expected number of days per calendar year with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR 50 Appendix K as in effect on July 1, 1988, is equal to or less than one; and

(b) The number of days per calendar year the measured 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$ is equal to or less than one.

(4) The level of the annual standard for PM-10 is 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual arithmetic mean. The standard is attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR 50 Appendix K as in effect on July 1, 1988, is less than or equal to 50 $\mu\text{g}/\text{m}^3$.

[Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-470-100, filed 1/3/89. Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-100, filed 9/16/87.]

WAC 173-470-110 Particle fallout standards.

Particle fallout shall not exceed the standards enumerated below at the conditions stated.

(1) The particle fallout rate measured at a primary air mass station, ground level monitoring station or special station shall not exceed:

(a) Ten grams per square meter (10 g/m^2) per month in an industrial area; or

(b) Five grams per square meter (5 g/m^2) per month in an industrial area if visual observations show a presence of wood waste and the volatile fraction of the sample exceeds seventy percent.

(c) Five grams per square meter (5 g/m^2) per month in residential and commercial areas.

(d) Three and one-half grams per square meter (3.5 g/m^2) per month in residential and commercial areas if visual observations show the presence of wood waste and the volatile fraction of the sample exceeds seventy percent.

(2) In recognition of natural dust in areas of the state, the following exceptions apply to areas east of the Cascade range crest. When concentrations measured at approved background locations exceed three and one-half grams per square meter (3.5 g/m^2) per month, the particle fallout rate measured at a primary air mass station, ground level monitoring station or special station, shall not exceed:

(a) Six and one-half grams per square meter (6.5 g/m^2) per month plus background in an industrial area; or

(b) One and one-half grams per square meter (1.5 g/m^2) per month plus background in residential and commercial areas.

The provisions of WAC 173-470-110 (1)(b) and (d) pertaining to wood waste shall continue to apply regardless of background.

[Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-110, filed 9/16/87.]

WAC 173-470-150 Method of measurement.

Sampling and analysis for particulate matter shall be conducted according to methods approved by and on file with

the department. Methods equivalent in sensitivity, accuracy, reproducibility, and selectivity to the approved standard method may be used after approval by the department.

[Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-150, filed 9/16/87.]

WAC 173-470-160 Reporting of data. (1) Air authorities sampling for particulate matter shall notify the department of all infractions of these standards. Notification shall be made quarterly. A quarterly summary of all samples greater than the standards shall be submitted within sixty days of the end of each calendar quarter. Quarterly data shall include:

- (a) Location of sampler.
- (b) Time period (day and year).
- (c) Individual concentrations recorded at each air monitoring station.

(d) The applicable geometric or arithmetic mean for each monitoring station (first quarter report only for previous calendar year).

(2) If particulate matter values greater than the standards are measured by the department, the air authority shall be notified quarterly. This notification shall include:

- (a) Location.
- (b) Time or time period.
- (c) Concentrations recorded.
- (d) The applicable geometric or arithmetic mean (first quarter report only for previous calendar year).

[Statutory Authority: Chapter 70.94 RCW. 87-19-080 (Order 87-19), § 173-470-160, filed 9/16/87.]

Chapter 173-474 WAC AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES

(Formerly chapter 18-56 WAC)

WAC

173-474-010	Purpose.
173-474-015	Objective.
173-474-020	Applicability.
173-474-030	Definitions.
173-474-100	Air quality standards.
173-474-150	Measurement method.
173-474-160	Data reporting.

WAC 173-474-010 Purpose. This chapter promulgated under RCW 70.94.305 and 70.94.331 establishes maximum acceptable levels for sulfur dioxide as a measure of the sulfur oxide concentration in the ambient air.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-010, filed 9/30/87.]

WAC 173-474-015 Objective. In recognition of the need to continue improvement of the quality of the air resource, the department intends to work toward the achievement of the following objective: The sulfur oxide concentration measured as sulfur dioxide at a primary air mass station, primary ground level monitoring station, or special station shall not be greater than three-tenths per million (0.3 ppm) average for five minutes.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-015, filed 9/30/87.]

WAC 173-474-020 Applicability. The provisions of this chapter apply to all areas of the state of Washington.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-020, filed 9/30/87.]

WAC 173-474-030 Definitions. Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings; general terms common with other chapters of Title 173 WAC as defined in chapter 173-403 WAC, and terms specific to standards for sulfur oxide as follows:

"Period" means any interval of the specified time.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-030, filed 9/30/87.]

WAC 173-474-100 Air quality standards. Sulfur oxide in the ambient air, measured as sulfur dioxide shall not exceed the following values:

(1) Four-tenths parts per million (0.4 PPM) by volume average for a one-hour period more than once per one-year period.

(2) Twenty-five one-hundredths parts per million (0.25 PPM) by volume average for a one-hour period more than twice in a consecutive seven-day period.

(3) One-tenth parts per million (0.1 PPM) by volume average for a one-day period more than once per one-year period.

(4) Two one-hundredths parts per million (0.02 PPM) by volume average for a one-year period.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-100, filed 9/30/87.]

WAC 173-474-150 Measurement method. For determining compliance with this regulation, sulfur oxides shall be measured by methods approved by, and on file with, the department. Other methods equivalent in sensitivity, accuracy, reproducibility, and selectivity to the approved methods may be used after approval by the department.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-150, filed 9/30/87.]

WAC 173-474-160 Data reporting. (1) Air authorities sampling for sulfur oxides shall notify the department of all violations of these standards. The notification shall be submitted quarterly. Summaries shall provide the following information:

- (a) Location of sampler.
- (b) Time period (hours, days, and year).
- (c) Actual concentrations recorded that exceeded the standard.

(2) The department will give quarterly notice to an air authority of infractions of the standards within its jurisdiction. This notice will include:

- (a) Location.
- (b) Time period and dates.
- (c) Concentrations recorded.

[Statutory Authority: Chapter 70.94 RCW. 87-20-020 (Order 87-22), § 173-474-160, filed 9/30/87.]

Chapter 173-475 WAC

AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE, OZONE, AND NITROGEN DIOXIDE

WAC

173-475-010	Purpose.
173-475-020	Definitions.
173-475-030	Air quality standards.
173-475-040	Measurement methods.
173-475-050	Reporting of data.

WAC 173-475-010 Purpose. These rules implement chapter 70.94 RCW, the Washington State Clean Air Act, and chapter 163, Laws of 1979 ex. sess. The purpose of this chapter is to set statewide air quality standards for carbon monoxide, ozone, and nitrogen dioxide.

[Statutory Authority: RCW 43.21A.080, 70.94.331, 70.120.030, and 70.120.120. 80-03-071 (Order DE 79-36), § 173-475-010, filed 2/29/80.]

WAC 173-475-020 Definitions. (1) "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.

- (2) "Ambient air" means the surrounding outside air.
- (3) "Department" means the state department of ecology.
- (4) "National air monitoring stations (NAMS)" means fixed monitoring stations operated by the state and local air pollution control agencies to meet national monitoring objectives. The stations are a subset of the SLAMS network and are sited with emphasis on urban and multi-source areas.

(5) "State and local air monitoring stations (SLAMS)" means stations designed to meet any of four basic monitoring objectives:

- (a) To determine highest concentrations expected to occur;
- (b) To determine representative concentrations in areas of high population density;
- (c) To determine the impact on ambient air pollution levels of significant sources or source categories; and
- (d) To determine general background concentration levels.

(6) "Special purpose monitoring stations (SPMS)" means monitoring stations operated by state and local air pollution control agencies to supplement the SLAMS network in order to increase the overall effectiveness of the state's monitoring efforts.

[Statutory Authority: RCW 43.21A.080, 70.94.331, 70.120.030, and 70.120.120. 80-03-071 (Order DE 79-36), § 173-475-020, filed 2/29/80. Formerly chapters 18-32 and 18-46 WAC (part).]

WAC 173-475-030 Air quality standards. (1) Carbon monoxide in the ambient air as measured at a SPMS designated by the department for the purpose of determining compliance with air quality standards, or at any NAMS or SLAMS, shall not exceed the following values:

- (a) Nine parts per million (ten milligrams per cubic meter) eight-hour average concentration not to be exceeded

more than once per year at any location where people would be exposed to such concentrations for eight consecutive hours or more. Compliance shall be based on data that begins and ends on a clock hour. There shall be no overlapping of hours in any violation period. A maximum of three violations can occur in any one day.

(b) Thirty-five parts per million (forty milligrams per cubic meter) one-hour average concentration not to be exceeded more than once per year at any location where people would be exposed to such concentrations for one hour or more. Compliance shall be determined from data that begins on a clock hour.

(2) Ozone in the ambient air as measured at a SPMS designated by the department for the purpose of determining compliance with this air quality standard, or at any NAMS or SLAMS, shall not exceed 0.12 parts per million (two hundred and thirty-five milligrams per cubic meter) hourly concentration on more than 1.0 days per calendar year as determined under the following conditions:

(a) Three calendar years of data shall be used in determining compliance with this standard. If three years of data are not available, a minimum of one calendar year must be used;

(b) All hourly measurements must start on the clock hour; and

(c) All daily maximum hourly averages not available for a year shall be accounted for by use of the following equation:

e = v + v/n (N-n-z)

e = the estimated number of potential times the allowed concentrations are exceeded for the year.

N = the number of required monitoring days in the year.

n = the number of days that valid data was available.

v = the number of days that readings have exceeded compliance level.

z = the number of days that readings are assumed to be less than the level of the standard. If a day should be included is based on whether the daily maximum one-hour reading on both the preceding day and the following day do not exceed 0.09 ppm ozone.

(3) Nitrogen dioxide. The annual arithmetic mean of nitrogen dioxide readings in the ambient air measured at a SPMS designated by the department for the purpose of determining compliance with this air quality standard, or at any NAMS or SLAMS, shall not exceed 0.05 parts per million (one hundred micrograms per cubic meter).

[Statutory Authority: RCW 43.21A.080, 70.94.331, 70.120.030, and 70.120.120. 80-03-071 (Order DE 79-36), § 173-475-030, filed 2/29/80. Formerly WAC 18-32-020 and 18-46-030.]

WAC 173-475-040 Measurement methods. Measurements for determining compliance with WAC 173-475-030 shall be made by equipment and procedures approved by and on file with the department. All methods and procedures shall be available to the public upon request.

[Statutory Authority: RCW 43.21A.080, 70.94.331, 70.120.030, and 70.120.120. 80-03-071 (Order DE 79-36), § 173-475-040, filed 2/29/80. Formerly WAC 18-32-040 and 18-46-040.]

WAC 173-475-050 Reporting of data. Local and regional air pollution control agencies shall notify the department of all occurrences which exceed the applicable standards for carbon monoxide, ozone, or nitrogen dioxide. Notification shall be made quarterly and shall include:

- (a) Location of monitoring sites by address and UTM coordinates;
- (b) Date and time of each violation;
- (c) Concentrations recorded; and
- (d) Method of sampling used.

[Statutory Authority: RCW 43.21A.080, 70.94.331, 70.120.030, and 70.120.120. 80-03-071 (Order DE 79-36), § 173-475-050, filed 2/29/80. Formerly WAC 18-32-050 and 18-46-050.]

Chapter 173-480 WAC

AMBIENT AIR QUALITY STANDARDS AND EMISSION LIMITS FOR RADIONUCLIDES

WAC

173-480-010	Purpose.
173-480-020	Applicability.
173-480-030	Definitions.
173-480-040	Ambient standard.
173-480-050	General standards for maximum permissible emissions.
173-480-060	Emission standards for new and modified emission units.
173-480-070	Emission monitoring and compliance procedures.
173-480-080	Regulatory actions and penalties.

WAC 173-480-010 Purpose. The purpose of this chapter is to define maximum allowable levels for radionuclides in the ambient air and control emissions from specific sources.

[Statutory Authority: RCW 70.94.331. 86-10-053 (Order 86-04), § 173-480-010, filed 5/7/86.]

WAC 173-480-020 Applicability. (1) The ambient air standards shall apply to the entire state. Measurements may be made at all points up to property lines of point, area and fugitive emission sources.

(2) The emission limits of this chapter shall apply to all radionuclide emission units.

[Statutory Authority: RCW 70.94.331. 86-10-053 (Order 86-04), § 173-480-020, filed 5/7/86.]

WAC 173-480-030 Definitions. Unless a different meaning is clearly required by context words and phrases used in this chapter shall have the following meanings: General terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to the standards and limits of radionuclides as defined in this section.

(1) Best available radionuclide control technology "BARCT" means technology which will result in a radionuclide emission limitation based on the maximum degree of reduction for radionuclides which would be emitted from any proposed new or modified emission units 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 emission unit or modification through application of production processes or available methods, systems, and techniques. In no event shall application of best available radionuclide technology result in emissions of radionuclides which would exceed the ambient annual standard limitation specified in this chapter.

(2) "Critical organ" means the most exposed human organ or tissue exclusive of the skin (integumentary system) and the cornea.

(3) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quantity of radiation and its distribution in the body.

(4) "Radionuclide" means any nuclide that emits radiation.

(5) "Rem" means a unit of dose equivalent radiation.

(6) "Whole body" means all human organs or tissue exclusive of the skin (integumentary system) and the cornea.

[Statutory Authority: RCW 70.94.331. 86-10-053 (Order 86-04), § 173-480-030, filed 5/7/86.]

WAC 173-480-040 Ambient standard. Emissions of radionuclides in the air shall not cause a maximum accumulated dose equivalent of more than 25 mrem/y to the whole body or 75 mrem/y to a critical organ of any member of the public. Doses due to radon-220, radon-222, and their respective decay products are excluded from these limits. Compliance with the standard shall be determined by procedures in WAC 173-480-070.

[Statutory Authority: RCW 70.94.331. 86-10-053 (Order 86-04), § 173-480-040, filed 5/7/86.]

WAC 173-480-050 General standards for maximum permissible emissions. (1) All radionuclide emission units are required to meet the emission standards in this chapter. At a minimum all emission units shall meet WAC 402-10-010 requiring every reasonable effort to maintain radioactive materials in effluents to unrestricted areas, as low as reasonably achievable (ALARA). For the purposes of this chapter, control equipment of facilities operating under ALARA shall be defined as reasonably available control technology (RACT).

(2) PSD: The emission requirements for an emission unit of radionuclides shall be the same for all areas of the state independent of prevention of significant deterioration (PSD) classification.

(3) Whenever another federal or state regulation or limitation in effect controls the emission of radionuclides to the ambient air, the more stringent control of emissions shall govern.

[Statutory Authority: RCW 70.94.331. 86-10-053 (Order 86-04), § 173-480-050, filed 5/7/86.]

WAC 173-480-060 Emission standards for new and modified emission units. (1) Whenever the construction, installation or establishment of a new emission unit subject to this chapter is contemplated, the project shall utilize best available radionuclide control technology (BARCT).

(2) Addition to, enlargement, modification, replacement, alteration of any process or emission unit or replacement of air pollution control equipment which will significantly change potential radionuclide emissions or significantly change the dose equivalent will require the proposed project to utilize best available radionuclide control technology (BARCT) for emission control.

[Statutory Authority: RCW 70.94.331. 86-10-053 (Order 86-04), § 173-480-060, filed 5/7/86.]

WAC 173-480-070 Emission monitoring and compliance procedures. (1) The procedures specified in chapter 402-80 WAC shall be used to determine compliance with the standard. Radionuclide emissions shall be determined and dose equivalents to members of the public shall be calculated using department of social and health services approved sampling procedures, department of social and health services approved models, or other procedures, including those based on environmental measurements that department of social and health services has determined to be suitable.

(2) Compliance with this standard shall be determined by calculating the dose to members of the public at the point of maximum annual air concentration in an unrestricted area where any member of the public may be.

[Statutory Authority: RCW 70.94.331, 86-10-053 (Order 86-04), § 173-480-070, filed 5/7/86.]

WAC 173-480-080 Regulatory actions and penalties.

(1) The department or any activated local air pollution control authority may enforce this chapter with the provisions of WAC 173-403-170, Regulatory actions; and 173-403-180, Criminal penalties.

(2) The responsible person may also be subject to the provisions of RCW 34.04.030, Emergency rules and amendments; 70.98.130, Administrative procedure; 70.98.140, Injunction proceedings; and 70.98.200, Penalties as cited by the department of social and health services.

[Statutory Authority: RCW 70.94.331, 86-10-053 (Order 86-04), § 173-480-080, filed 5/7/86.]

Chapter 173-481 WAC

AMBIENT AIR QUALITY AND ENVIRONMENTAL STANDARDS FOR FLUORIDES

(Formerly chapter 18-48 WAC)

WAC

173-481-010	Purpose.
173-481-020	Applicability.
173-481-030	Definitions.
173-481-100	Forage standards.
173-481-110	Ambient standards.
173-481-150	Compliance with standards.
173-481-160	Sampling and analysis.

WAC 173-481-010 Purpose. This chapter promulgated under RCW 70.94.305 and 70.94.331 establishes fluoride standards for the protection of livestock and vegetation. Standards address the fluoride content of forage and gaseous fluorides in the ambient air.

[Statutory Authority: Chapter 70.94 RCW, 87-19-073 (Order 87-21), § 173-481-010, filed 9/16/87.]

WAC 173-481-020 Applicability. The provisions of this chapter apply to all areas of the state of Washington.

[Statutory Authority: Chapter 70.94 RCW, 87-19-073 (Order 87-21), § 173-481-020, filed 9/16/87.]

WAC 173-481-030 Definitions. Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings;

general terms common with other chapters of Title 173 WAC as defined in chapter 173-403 WAC, and terms specific to standards for fluorides as defined below:

(1) "Forage" means grasses, pasture and other vegetation that is consumed or is intended to be consumed by livestock.

(2) "Cured forage" means hay, straw, ensilage that is consumed or is intended to be consumed by livestock.

[Statutory Authority: Chapter 70.94 RCW, 87-19-073 (Order 87-21), § 173-481-030, filed 9/16/87.]

WAC 173-481-100 Forage standards. (1) All sampling to determine compliance with these standards shall be conducted in locations and during time periods consistent with protecting livestock and vegetation.

(2) The fluoride content of forage calculated by dry weight shall not exceed:

(a) Forty parts per million fluoride ion (40 ppm F⁻) average for any twelve consecutive months.

(b) Sixty parts per million fluoride ion (60 ppm F⁻) each month for more than two consecutive months.

(c) Eighty parts per million fluoride ion (80 ppm F⁻) more than once in any two consecutive months.

(3) In areas where cattle are not grazed continually, but are fed cured forage part of the year, the fluoride content of the cured forage shall be used as the forage fluoride content for as many months as it is fed to establish the yearly average.

(4) Cured forage grown for sale as livestock feed shall not exceed forty parts per million fluoride ion (40 ppm F⁻) by dry weight after curing or preparing for sale.

[Statutory Authority: Chapter 70.94 RCW, 87-19-073 (Order 87-21), § 173-481-100, filed 9/16/87.]

WAC 173-481-110 Ambient standards. (1) All sampling to determine compliance with these standards shall be conducted in locations and during time periods consistent with protecting livestock and vegetation.

(2) Gaseous fluorides in the ambient air calculated as HF at standard conditions shall not exceed:

(a) Three and seven-tenths micrograms per cubic meter (3.7 µg/m³) average for any twelve consecutive hours;

(b) Two and nine-tenths micrograms per cubic meter (2.9 µg/m³) average for any twenty-four consecutive hours;

(c) One and seven-tenths micrograms per cubic meter (1.7 µg/m³) average for any seven consecutive days;

(d) Eighty-four one-hundredths micrograms per cubic meter (0.84 µg/m³) average for any thirty consecutive days;

(e) Five-tenths micrograms per cubic meter (0.5 µg/m³) average for the period March 1 through October 31 of any year.

[Statutory Authority: Chapter 70.94 RCW, 87-19-073 (Order 87-21), § 173-481-110, filed 9/16/87.]

WAC 173-481-150 Compliance with standards. When requested by the department, persons emitting fluorides to the ambient air shall demonstrate their compliance with WAC 173-481-100 and 173-481-110 by conducting a monitoring program approved in writing by the department. All monitoring data shall be submitted to the department.

[Statutory Authority: Chapter 70.94 RCW, 87-19-073 (Order 87-21), § 173-481-150, filed 9/16/87.]

WAC 173-481-160 Sampling and analysis. Sampling and analysis shall be in accordance with techniques approved by and on file with the department. Other sampling and methods of analysis which are equivalent in accuracy, sensitivity, reproducibility and applicability under similar conditions may be used after approval by the department.

[Statutory Authority: Chapter 70.94 RCW. 87-19-073 (Order 87-21), § 173-481-160, filed 9/16/87.]

Chapter 173-490 WAC

EMISSION STANDARDS AND CONTROLS FOR SOURCES EMITTING VOLATILE ORGANIC COMPOUNDS (VOC)

WAC

173-490-010	Policy and purpose.
173-490-020	Definitions.
173-490-025	General applicability.
173-490-030	Registration and reporting.
173-490-040	Requirements.
173-490-080	Exceptions and alternative methods.
173-490-090	New source review.
173-490-200	Petroleum refinery equipment leaks.
173-490-201	Petroleum liquid storage in external floating roof tanks.
173-490-202	Leaks from gasoline transport tanks and vapor collection systems.
173-490-203	Perchloroethylene dry cleaning systems.
173-490-204	Graphic arts systems.
173-490-205	Surface coating of miscellaneous metal parts and products.
173-490-207	Surface coating of flatwood paneling.
173-490-208	Aerospace assembly and component coating operations.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-490-070	Schedule of control dates. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-070, filed 5/8/79.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-490-071	Alternative schedule of control dates. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-071, filed 8/20/80.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-490-120	Compliance schedules. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-120, filed 5/8/79.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-490-130	Regulatory actions. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-130, filed 5/8/79.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-490-135	Criminal penalties. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-135, filed 5/8/79.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.
173-490-140	Appeals. [Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-140, filed 5/8/79.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.

173-490-150 Variance. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-150, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-150, filed 5/8/79.] Repealed by 91-05-064 (Order 90-06), filed 2/19/91, effective 3/22/91. Statutory Authority: Chapter 70.94 RCW.

173-490-206 Synthesized pharmaceutical products. [Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-206, filed 8/20/80.] Repealed by 82-16-021 (Order DE 82-22), filed 7/27/82. Statutory Authority: Chapters 70.94 and 43.21A RCW.

WAC 173-490-010 Policy and purpose. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish technically feasible and reasonably attainable standards for sources emitting volatile organic compounds (VOCs) and revise such standards as new information and better technology are developed and become available.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-010, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-010, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-010, filed 5/8/79.]

WAC 173-490-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are by this reference incorporated into this chapter. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Bottom loading" means the filling of a tank through a line entering the bottom of the tank.

(2) "Bulk gasoline plant" means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks.

(3) "Class II hardboard paneling finish" means finishes which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

(4) "Closed refinery system" means a system that will process or dispose of those VOCs collected from another system. The mass quantity of collected VOCs emitted to the ambient air from the closed refinery system shall not exceed that required for a disposal system.

(5) "Condensate" means hydrocarbon liquid separated from a gas stream which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

(6) "Condenser" means a device for cooling a gas stream to a temperature where specific VOCs become liquid and are removed.

(7) "Control system" means one or more control devices, including condensers, that are designed and operated to reduce the quantity of VOCs emitted to the atmosphere.

(8) "Crude oil" means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen or

oxygen derivatives of hydrocarbons which is a liquid at standard conditions.

(9) "Cutback asphalt" means an asphalt that has been blended with petroleum distillates to reduce the viscosity for ease of handling and lower application temperature. An inverted emulsified asphalt shall be considered a cutback asphalt when the continuous phase of the emulsion is a cutback asphalt.

(10) "Disposal system" means a process or device that reduces the mass quantity of the VOC that would have been emitted to the ambient air by at least ninety percent prior to their actual emission.

(11) "Dry cleaning facility" means a facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, any washer, dryer, filter and purification system(s), waste disposal system(s), holding tank(s), pump(s) and attendant piping and valve(s).

(12) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(13) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(14) "Gasoline" means a petroleum distillate which is a liquid at standard conditions and has a true vapor pressure greater than 200 mm of Hg (4 psia) at 20°C, and is used as a fuel for internal combustion engines.

(15) "Gasoline dispensing facility" means any site dispensing gasoline into motor vehicle fuel tanks from stationary storage tanks.

(16) "Gasoline loading terminal" means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks.

(17) "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot press.

(18) "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(19) "Lease custody transfer" means the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(20) "Liquid-mounted seal" means a primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof.

(21) "Liquid service" means equipment that processes, transfers or contains a VOC or VOCs in the liquid phase.

(22) "Low organic solvent coating" refers to coatings which contain less organic solvent than the conventional coatings used by the industry. Low organic solvent coatings

include water-borne, higher solids, electrodeposition and powder coatings.

(23) "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(24) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(25) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

(26) "Petroleum refinery" means a facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting or reforming unfinished petroleum derivatives. Not included are facilities re-refining used motor oils or waste chemicals, processing finished petroleum products, separating blended products, or air blowing asphalt.

(27) "Prime coat" means the first of two or more films of coating applied in an operation.

(28) "Printed interior panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(29) "Proper attachment fittings" means hardware for the attachment of gasoline transfer or vapor collection lines that meet or exceed industrial standards or specifications and the standards of other agencies or institutions responsible for safety and health.

(30) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(31) "Refinery unit" means a set of components that are a part of a basic process operation, such as distillation, hydrotreating, cracking or reforming of hydrocarbons.

(32) "Roll printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(33) "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(34) "Single coat" means only one film of coating is applied to the metal substrate.

(35) "Submerged fill line" means a pipe, tube, fitting or other hardware for loading liquids into a tank with either a discharge opening flush with the tank bottom; or with a discharge opening below the lowest normal operating drawoff level or that level determined by a liquid depth two and one half times the fill line diameter when measured in the main portion of the tank, but not in sumps or similar protrusions.

(36) "Submerged loading" means the filling of a tank with a submerged fill line descending nearly to the bottom.

(37) "Suitable closure or cover" means a door, hatch, cover, lid, pipe cap, pipe blind, valve or similar device that prevents the accidental spilling or emitting of VOC. Pressure relief valves, aspirator vents or other devices

specifically required for safety and fire protection are not included.

(38) "Thin particleboard" means a manufactured board one-quarter inch or less in thickness made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure.

(39) "Tileboard" means paneling that has a colored waterproof surface coating.

(40) "Topcoat" means the final film or series of films of coating applied in a two-coat (or more) operation.

(41) "Transport tank" means a container used for shipping gasoline on land.

(42) "True vapor pressure" means the equilibrium partial pressure of a petroleum liquid as determined with methods described in American Petroleum Institute Bulletin 2517, 1980.

(43) "Unit turnaround" means the procedure of shutting down, repairing, inspecting, and restarting a unit.

(44) "Valves not externally regulated" means valves that have no external controls, such as in-line check valves.

(45) "Vapor collection system" means a closed system to conduct vapors displaced from a tank being filled into the tank being emptied, a vapor holding tank, or a vapor control system.

(46) "Vapor control system" means a system designed and operated to reduce or limit the emission of VOCs, or to recover the VOCs to prevent their emission into the ambient air.

(47) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

(48) "Volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

(49) "Waxy, heavy pour crude oil" means a crude oil with a pour point of 50°F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-020, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-020, filed 7/27/82. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. 81-03-003 (Order DE 80-54), § 173-490-020, filed 1/8/81. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-020, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-020, filed 5/8/79.]

WAC 173-490-025 General applicability. In addition to the general applicability of chapter 173-400 WAC to all emission sources, specific emission standards listed in this

chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(1) This chapter shall apply to the specified emission sources of VOCs located in or operating within designated ozone nonattainment areas of the state of Washington.

(2) This chapter does not apply to those sources under the jurisdiction of the energy facility site evaluation council (EFSEC).

(3) A source of VOC emissions not belonging to any of the categories listed in WAC 173-490-030 nor specifically identified in any section, but which is located on the same or adjacent property and owned or operated by the same person as a regulated emission source, shall not be required to comply with the regulations of this chapter.

(4) Sources of VOC emissions may be exempted, by the director, from any or all requirements to control or reduce the emissions of VOCs when:

(a) The source is a development operation and the equipment is used exclusively for research, laboratory analysis or determination of product quality and commercial acceptance, provided emissions of VOCs from such operations do not exceed 300 kg (660 lbs) per month; or

(b) The source has emissions of VOCs which do not exceed 18 kg (40 lbs) per month and registration is not required under WAC 173-490-030; or

(c) The source is a spray booth which is used solely for maintenance and utility activities and whose emissions do not exceed 18 kg (40 lbs) per month.

(5) Sources of VOCs may be granted exemptions from emissions standards for a period not to exceed thirty days if the source is a newly permitted source which is to replace a similar permitted source and the new source is intended to utilize the existing emission control system. This provision is intended to apply to a break-in period prior to the shut-down and removal of the existing source.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-025, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-025, filed 7/27/82. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-025, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-025, filed 5/8/79.]

WAC 173-490-030 Registration and reporting. (1)

The owner or operator of a stationary emission source of VOCs in the following source categories and located in a designated ozone nonattainment area shall register the source with ecology unless registration is required by an authority or the energy facility site evaluation council (EFSEC).

- (a) Petroleum refineries.
- (b) Petroleum liquid storage tanks.
- (c) Gasoline loading terminals.
- (d) Bulk gasoline plants.
- (e) Gasoline dispensing facilities.
- (f) Surface coaters.
- (g) Open top vapor degreasers.
- (h) Conveyorized degreasers.
- (i) Gasoline transport tanks.
- (j) Vapor collection systems.
- (k) Perchloroethylene dry cleaning systems.
- (l) Graphic arts systems.

(m) Surface coaters of miscellaneous metal parts and products.

(n) Synthesized pharmaceutical manufacturing facilities.

(o) Flatwood panel manufacturers and surface finishing facilities.

(2) A new emission source of VOCs that must comply with any requirements in WAC 173-490-040, 173-490-200, 173-490-201, 173-490-202, 173-490-203, 173-490-204, 173-490-205, 173-490-206 and 173-490-207, shall comply with the requirements of WAC 173-400-100 and shall register with ecology or an authority prior to operation of the new source, and shall submit sufficient information to demonstrate that the new source is capable of complying with the requirements in this chapter. An opportunity shall be provided for an inspection of the new source by ecology or local authority inspectors prior to its operation.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-030, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-030, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-030, filed 5/8/79.]

WAC 173-490-040 Requirements. To demonstrate compliance with this chapter, refer to WAC 173-400-105.

(1) Petroleum refineries.

This chapter shall apply to all petroleum refineries with a crude oil or feed stock capacity greater than one million four hundred thirty thousand liters (9,000 bbl) per day.

(a) Vacuum producing system.

(i) Noncondensable VOC from vacuum producing systems shall be piped to an appropriate firebox, incinerator or to a closed refinery system.

(ii) Hot wells associated with contact condensers shall be tightly covered and the collected VOC introduced into a closed refinery system.

(b) Wastewater separator.

(i) Wastewater separator forebays shall incorporate a floating pontoon or fixed solid cover with all openings sealed, totally enclosing the compartmented liquid contents, or a floating pontoon or a double deck-type cover equipped with closure seals between the cover edge and compartment wall.

(ii) Accesses for gauging and sampling shall be designed to minimize VOC emissions during actual use. All access points shall be closed with suitable covers when not in use.

(c) Process unit turnaround.

(i) The VOC contained in a process unit to be depressurized for turnaround shall be introduced to a closed refinery system, combusted by a flare, or vented to a disposal system.

(ii) The pressure in a process unit following depressurization for turnaround shall be less than five psig before venting to the ambient air.

(iii) Venting or depressurization to the ambient air of a process unit for turnaround at a pressure greater than five psig shall be allowed if the owner demonstrates the actual emission of VOC to the ambient air is less than permitted by WAC 173-490-040 (1)(c)(ii).

(d) Maintenance and operation of emission control equipment. Equipment for the reduction, collection or disposal of VOC shall be maintained and operated in a

manner consistent with the level of maintenance and house-keeping of the overall plant.

(2) Petroleum liquid storage tanks.

(a) All fixed-roof tanks (except as noted in subparagraph (d) of this subsection) storing volatile organic petroleum liquids with a true vapor pressure as stored greater than 78 mm of Hg (1.5 psi) at actual monthly average storage temperatures and having a capacity greater than one hundred fifty thousand liters (40,000 gallons) shall comply with one of the following:

(i) Meet the equipment specifications and maintenance requirements of the federal standards of performance for new stationary sources - Storage Vessels for Petroleum Liquids (40 CFR 60, subpart K); or

(ii) Be retrofitted with a floating roof or internal floating cover using a metallic seal or a nonmetallic resilient seal at least meeting the equipment specifications of the federal standards referred to in WAC 173-490-040 (2)(a)(i) or its equivalent; or

(iii) Be fitted with a floating roof or internal floating cover meeting the manufacturer's specifications in effect when installed.

(b) All seals used in WAC 173-490-040 (2)(a)(ii) and (iii) are to be maintained in good operating condition and the seal fabric shall contain no visible holes, tears or other openings.

(c) All openings not related to safety are to be sealed with suitable closures.

(d) Tanks used for the storage of gasoline in bulk gasoline plants and equipped with vapor balance systems as required in WAC 173-490-040 (4)(b) shall be exempt from the requirements of WAC 173-490-040(2).

(3) Gasoline loading terminals.

(a) This chapter shall apply to all gasoline loading terminals with an average annual daily gasoline throughput greater than seventy-five thousand liters (20,000 gallons).

(b) Loading facilities. Facilities for the purpose of loading gasoline into any transport tank shall be equipped with a vapor recovery system (VRS) as described in WAC 173-490-040 (3)(c) and comply with the following conditions:

(i) The loading facility shall employ submerged or bottom loading for all transport tanks.

(ii) The VRS shall be connected to the transport tank being loaded and shall operate during the entire loading of every transport tank loaded at the facility.

(iii) The loading of all transport tanks shall be performed such that ninety percent by weight of the gasoline vapors displaced during filling are prevented from being released to the ambient air. Emissions from pressure relief valves shall not be included in the controlled emissions when the back pressure in the VRS collection lines is lower than the relief pressure setting of the transport tank's relief valves.

(iv) All loading lines and vapor lines shall be equipped to close automatically upon disconnect. The point of closure shall be on the tank side of any hose or intermediate connecting line.

(c) Vapor recovery system (VRS). The VRS shall be designed and built according to accepted industrial practices and meet the following conditions:

(i) The VRS shall prevent at least ninety percent by weight of the gasoline vapors displaced during loading of each transport tank from entering the ambient air and in no case shall the gasoline vapors emitted to the ambient air exceed eighty milligrams per liter of gasoline loaded.

(ii) The VRS shall be equipped with a signal device to alert personnel when the system is not operating or unintentionally shuts down.

(iii) The back pressure in the VRS collection lines shall not exceed the transport tank's pressure relief settings.

(d) Alternative loading facility. The loading of transport tanks by other means and using other vapor control systems shall require the facility owner to demonstrate that the emission of gasoline vapors to the ambient air is less than eighty milligrams per liter of gasoline loaded.

(4) Bulk gasoline plants.

(a) This chapter shall apply to all bulk gasoline plants with an annual average daily gasoline throughput greater than fifteen thousand liters (4,000 gallons).

(b) Storage tanks. All storage tanks with a capacity greater than two thousand one hundred liters (550 gallons) and used for the storage of gasoline shall comply with the following conditions:

(i) Each storage tank shall be equipped with a submerged fill line.

(ii) Each storage tank shall be equipped for vapor balancing of gasoline vapors with transport tanks during gasoline transfer operations.

(iii) The vapor line fittings on the storage tank side of break points with the transport tank vapor connection pipe or hose shall be equipped to close automatically upon planned or unintentional disconnect.

(iv) The pressure relief valves on storage tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.

(c) Transport tanks. All transport tanks, except those meeting the conditions in WAC 173-490-040 (4)(d), transferring gasoline with storage tanks in a bulk gasoline plant shall comply with the following conditions:

(i) The transport tank shall be equipped with the proper attachment fittings to make vapor tight connections for vapor balancing with storage tanks.

(ii) The vapor line fittings on the transport tank side of break points with the storage tank connection pipe or hose shall be equipped to close automatically upon planned or unintentional disconnect.

(iii) The pressure relief valves on transport tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.

(d) Transport tanks used for gasoline and meeting all of the following conditions shall be exempt from the requirement to be equipped with any attachment fitting for vapor balance lines:

(i) The transport tank is used exclusively for the delivery of gasoline into storage tanks of a facility exempt from the vapor balance requirements of WAC 173-490-040(5); and

(ii) The transport tank has a total capacity less than fifteen thousand liters (4,000 gallons) and is of a compartmented design and construction requiring the installation of four or more separate vapor balance fittings.

(e) Gasoline transfer operations. No owner or operator of a bulk gasoline plant or transport tank shall allow the transfer of gasoline between a transport tank and a storage tank except under the following conditions:

(i) All tanks shall be submerged filled or bottom loaded.

(ii) The loading of all tanks, except those exempted under WAC 173-490-040 (4)(d) shall be performed such that ninety percent by weight of the gasoline vapors displaced during filling are prevented from being released into the ambient air. Emissions from pressure relief valves shall not be included in the controlled emissions.

(f) Equipment or system failures. Failures or leaks in the vapor balance system shall be limited by the following conditions:

(i) During the months of April, May, June, July, August, September and October, failures of the vapor balance system to comply with this chapter shall require that gasoline transfer operations stop for the failed part of the system. Other transfer points that can operate in compliance may be used.

(ii) Loading or unloading of the transport tank connected to the failed part of the vapor balance system may be completed.

(iii) Breakdowns and upset conditions during all months of the year shall also comply with the provisions of WAC 173-400-105(5).

(g) The owner or operator of a bulk gasoline plant or transport tank shall take all reasonable necessary measures to prevent the spilling, discarding in sewers, storing in open containers or handling of gasoline in a manner on the plant site that will result in evaporation to the ambient air.

(5) Gasoline dispensing facilities (Stage I).

(a) This chapter shall apply to all gasoline dispensing facilities with a total annual gasoline output greater than seven hundred fifty-seven thousand liters (200,000 gallons) or sixty-three thousand one hundred liters (16,670 gallons) per month and total gasoline storage capacity greater than thirty-eight thousand liters (10,000 gallons).

(b) All gasoline storage tanks of the facilities defined in WAC 173-490-040 (5)(a) shall be equipped with submerged or bottom fill lines and fittings for vapor balancing gasoline vapors with the delivery transport tank.

(c) Gasoline storage tanks with offset fill lines shall be exempt from the requirement of WAC 173-490-040 (5)(b) if installed prior to January 1, 1979.

(d) The vapor balance system (for the purpose of measuring compliance with the emission control efficiency) shall consist of the transport tank, gasoline vapor transfer lines, storage tank and all tank vents. The vapor balance system shall prevent at least ninety percent of the displaced gasoline vapors from entering the ambient air. A vapor balance system that is designed, built and operated according to accepted industrial practices will satisfy this requirement.

(e) The owner or operator of a gasoline dispensing facility shall not permit the loading of gasoline into a storage tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated satisfactorily.

(6) Surface coaters.

The operation of a coater and dryer, that may serve one or more process lines, shall comply with the following emission limits if the potential uncontrolled emissions of

VOC from the coater, flashoff areas, and dryer would be greater than 18 kg (40 pounds) in any given twenty-four hour period. The emission limits and uncontrolled emission quantity shall include the additional quantity of emissions from the dryer during the twelve hour period after application of the coating.

Process	Limitation Grams/Liter of Coating (Excluding Water)	lb/Gal.of Coating (Excluding Water)
Can Coating		
Sheet basecoat and overvarnish; two-piece can exterior	340	2.8
Two and three piece can interior body spray, two piece can exterior end	510	4.2
Side-seam spray	660	5.5
End sealing compound	440	3.7
Coil coating	310	2.6
Fabric coating	350	2.9
Vinyl coating	450	3.8
Paper coating	350	2.9
Auto and light duty truck coating		
Prime	230	1.9
Topcoat	340	2.8
Repair	580	4.8
Metal furniture coating	360	3.0
Magnet wire coating	200	1.7
Large appliance coating	340	2.8

(7) Open top vapor degreasers.

(a) All open top vapor degreasers shall:

(i) Have a cover that may be readily opened and closed.

When a degreaser is equipped with a lip exhaust, the cover shall be located below the lip exhaust. When a degreaser has a freeboard ratio equal to or greater than 0.75 and the opening is greater than one square meter (10 square feet) the cover shall be power operated.

(ii) Have one of the following:

(A) A freeboard ratio equal to or greater than 0.75; or

(B) A freeboard chiller; or

(C) A closed design such that the cover opens only when the part enters or exits the degreaser.

(iii) Be equipped with at least the following three safety switches:

(A) Condenser-flow switch and thermostat (shuts off sump heat if coolant is either not circulating or too warm); and

(B) Spray safety switch (shuts off spray pump if the vapor level drops excessively); and

(C) Vapor level control thermostat (shuts off sump heat when vapor level rises too high).

(iv) Post a permanent and conspicuous pictograph or instructions clearly explaining the following work practices:

(A) Do not degrease porous or absorbent materials such as cloth, leather, wood or rope.

(B) The cover of the degreaser should be closed at all times except when processing workloads.

(C) When the cover is open the lip of the degreaser should not be exposed to steady drafts greater than 15.3 meters per minute (50 feet per minute).

(D) Rack parts so as to facilitate solvent drainage from the parts.

(E) Workloads should not occupy more than one-half of the vapor-air interface area.

(F) When using a powered hoist, the vertical speed of parts in and out of the vapor zone should be less than 3.35 meters per minute (11 feet per minute).

(G) Degrease the workload in the vapor zone until condensation ceases.

(H) Spraying operations should be done within the vapor layer.

(I) Hold parts in the degreaser until visually dry.

(J) When equipped with a lip exhaust, the fan should be turned off when the cover is closed.

(K) The condenser water shall be turned on before the sump heater when starting up a cold vapor degreaser. The sump heater shall be turned off and the solvent vapor layer allowed to collapse before closing the condenser water when shutting down a hot vapor degreaser.

(L) Water shall not be visible in the solvent stream from the water separator.

(b) A routine inspection and maintenance program shall be implemented for the purpose of preventing and correcting solvent losses. For example, leaks from drain taps, cracked gaskets, and malfunctioning equipment must be repaired immediately.

(c) Sump drainage and transfer of hot or warm solvent shall be carried out using threaded or other leakproof couplings.

(d) Still and sump bottoms shall be kept in closed containers.

(e) Waste solvent shall be stored in covered containers and returned to the supplier or to a firm which processes solvents for disposal.

(8) ConveyORIZED degreasers.

(a) The owner or operator of conveyORIZED cold cleaners and conveyORIZED vapor degreasers shall comply with the following operating requirements:

(i) Exhaust ventilation shall not exceed twenty cubic meters per minute per square meter (65 cfm per ft.²) of degreaser opening, unless necessary to meet OSHA requirements.

(ii) Post in the immediate work area a permanent and conspicuous pictograph or instructions clearly explaining the following work practices:

(A) Rack parts for best drainage.

(B) Maintain vertical speed of conveyed parts to less than 3.35 meters per minute (11 feet per minute).

(C) The condenser water shall be turned on before the sump heater when starting up a cold vapor degreaser. The sump heater shall be turned off and the solvent vapor layer allowed to collapse before closing the condenser water when shutting down a hot vapor degreaser.

(D) Water shall not be visible in the solvent stream from the water separator.

(iii) Vapor degreasers shall be equipped with at least the following three safety switches:

(A) Condenser flow switch and thermostat (shuts off sump heat if coolant is either not circulating or too warm); and

(B) Spray safety switch (shuts off spray pump if the vapor level drops excessively); and

(C) Vapor level control thermostat (shuts off sump heat when vapor level rises too high).

(b) A routine inspection and maintenance program shall be implemented for the purpose of preventing and correcting

solvent losses. For example, leaks from drain taps, cracked gaskets, and malfunctioning equipment must be repaired immediately.

(c) Sump drainage and transfer of hot or warm solvent shall be carried out using threaded or other leakproof couplings.

(d) Still and sump bottoms shall be kept in closed containers.

(e) Waste solvent shall be stored in covered containers and returned to the supplier or to a firm which processes solvents for disposal.

(f) All conveyORIZED cold cleaners and conveyORIZED vapor degreasers with air/vapor interfaces of 2.0 m² or greater shall have a carbon adsorption system, exhausting less than 25 ppm of solvent averaged over a complete adsorption cycle (based on exhaust ventilation of 15 m³ per min per m² of air/vapor area, when downtime covers are open), or a system with control effectiveness equal to or better than a carbon adsorption system.

(9) Cutback asphalt paving.

(a) All paving applications of cutback asphalts are prohibited during the months of April, May, June, July, August, September and October, except as provided for in WAC 173-490-040 (9)(b).

(b) The following paving uses and applications of cutback asphalts are permitted during all months of the year.

(i) As a penetrating prime coat on aggregate bases prior to paving.

(ii) The manufacture of patching mixes used exclusively for pavement maintenance and needed to be stockpiled for times longer than one month.

(iii) All paving uses when the temperature during application is below 10°C (50°F). Any person using cutback asphalt for paving shall demonstrate that the ambient air temperature at 8 a.m. (PST) is below 50°F. The paving application of cutback asphalt when the ambient air temperature is 50°F or higher is in violation of this chapter.

(10) Cold cleaners.

(a) The owners or operators of all cold cleaners shall comply with the following equipment specifications:

(i) Be equipped with a cover that is readily opened and closed.

(ii) Be equipped with a drain rack that returns the drained solvent to the solvent bath.

(iii) Have a freeboard ratio of at least 0.5.

(iv) Have a visible fill line.

(b) An owner or operator of a cold cleaner shall be responsible for following the required operating parameters and work practices. The owner shall post and maintain in the work area of each cold cleaner a pictograph or instructions clearly explaining the following work practices:

(i) The solvent level shall not be above the fill line.

(ii) The spraying of parts to be cleaned shall be performed only within the confines of the cold cleaner.

(iii) The cover of the cold cleaner shall be closed when not in use or when parts are being soaked or cleaned by solvent agitation.

(iv) Solvent-cleaned parts shall be rotated to drain cavities or blind holes and then set to drain until dripping has stopped.

(v) Waste solvent shall be stored in covered containers and returned to the supplier or to a firm which processes solvents for disposal.

(c) The owner or operator shall maintain cold cleaners in good working condition and free of solvent leaks.

(d) If the solvent has a vapor pressure greater than 2.0 kPa (0.3 psi) measured at 38°C (100°F), or if the solvent is agitated or heated, then the cover must be designed so that it can be easily operated with one hand.

(e) If the solvent has a vapor pressure greater than 4.3 kPa (0.6 psi) measured at 38°C (100°F), then the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(f) If the solvent has a vapor pressure greater than 4.3 kPa (0.6 psi) measured at 38°C (100°F), or if the solvent is heated above 50°C (120°F), one of the following solvent vapor control systems must be used:

(i) The freeboard ratio must be equal to or greater than 0.70; or

(ii) Water must be kept over the solvent. The solvent must be more dense and insoluble in water.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-040, filed 7/27/82. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. 81-03-003 (Order DE 80-54), § 173-490-040, filed 1/8/81. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-040, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-040, filed 5/8/79.]

WAC 173-490-080 Exceptions and alternative methods. (1) Other emission reduction methods may be used if the source operator demonstrates to ecology that they are at least as effective as the required methods; and

(2) The operation of a natural gas-fired incinerator and associated capture system installed for the purpose of complying with this chapter shall be required only during the months of April, May, June, July, August, September and October, unless the operation of such devices is required for purposes of occupational health or safety, or for the control of toxic substances, malodors, or other regulated pollutants.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-080, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-080, filed 7/27/82. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-080, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-080, filed 5/8/79.]

WAC 173-490-090 New source review. The provisions of WAC 173-400-110 shall apply to all new sources and emissions units to which this chapter is applicable.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-090, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-011 (Order DE 78-23), § 173-490-090, filed 5/8/79.]

WAC 173-490-200 Petroleum refinery equipment leaks. (1) Specific applicability. This section shall apply to all petroleum refineries as qualified in WAC 173-490-025.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a petroleum refinery shall:

(i) Develop and conduct a monitoring program consistent with the provisions in WAC 173-490-200(3), 173-490-200(4), 173-490-200(5), and 173-400-105;

(ii) Record all leaking components which have a VOC concentration greater than 10,000 ppm when tested according to the provisions in WAC 173-490-200(3) and place an identification tag on each component consistent with the provisions of WAC 173-490-200 (4)(c);

(iii) Correct and retest the leaking component, as defined in WAC 173-490-200 (2)(a)(ii), as soon as practicable, but not later than fifteen days after the leak is recorded. If a leak continues after all reasonable corrective actions have been taken, then the component shall be repaired or replaced on the next scheduled turnaround.

(iv) Identify all leaking components, as defined in WAC 173-490-200 (2)(a)(ii), that cannot be corrected until the refinery unit is shut down for turnaround.

(b) The owner or operator of a petroleum refinery shall not install or operate a valve at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second suitable closure. Exceptions to this requirement are the ends of a pipe or line connected to pressure relief valves, aspirator vents or other devices specifically required to be open for safety protection. The sealing device may be removed only when a sample is being taken or during maintenance operations.

(3) Testing procedures. To demonstrate compliance with this chapter, refer to WAC 173-400-105(5).

(4) Monitoring.

(a) The owner or operator of a petroleum refinery shall conduct a monitoring program consistent with the following provisions:

(i) Monitor yearly by the methods referenced in WAC 173-490-200(3) all pump seals, pipeline valves in liquid service and process drains;

(ii) Monitor quarterly by the methods referenced in WAC 173-490-200(3) all compressor seals, pipeline valves in gaseous service and pressure relief valves in gaseous service;

(iii) Monitor weekly by visual methods all pump seals;

(iv) Monitor immediately any pump seal from which liquids are observed leaking;

(v) Monitor any relief valve within twenty-four hours after it has vented to the atmosphere; and

(vi) After a leaking component is repaired, monitor for leaks prior to return to service.

(b) Pressure relief devices that are connected to an operating flare header, vapor recovery device, inaccessible valves, storage tank valves, and valves that are not externally regulated are exempt from the monitoring requirements in WAC 173-490-200 (4)(a).

(c) The owner or operator of a petroleum refinery, upon the detection of a leaking component, as defined in WAC 173-490-200 (2)(a)(ii), shall affix a weatherproof and readily visible tag, bearing an identification number and the date the leak is located, to the leaking component. This tag shall remain in place until the leak is corrected.

(5) Recordkeeping.

(a) The owner or operator of a petroleum refinery shall maintain a leaking component's monitoring log as specified in WAC 173-490-200 (2)(a)(ii) that shall contain, at a minimum, the following data:

(i) The name of the process unit where the component is located.

(ii) The type of component (e.g., valve, seal).

(iii) The tag number of the component.

(iv) The date on which a leaking component is discovered.

(v) The date on which a leaking component is repaired.

(vi) The date and instrument reading of the recheck procedure after a leaking component is repaired.

(vii) A record of the calibration of the monitoring instrument.

(viii) Those leaks that cannot be repaired until turnaround.

(ix) The total number of components checked and the total number of components found leaking.

(b) Copies of the monitoring log shall be retained by the owner or operator for a minimum of two years after the date on which the record was made or the report prepared.

(c) Copies of the monitoring log shall immediately be made available to ecology, upon verbal or written request, at any reasonable time.

(6) Reporting. The owner or operator of a petroleum refinery shall notify ecology in writing within forty-five days following each quarterly or annual inspection for component leaks when:

(a) The number of discovered leaks has increased by more than ten percent above the number recorded during the last inspection of the same components;

(b) The number of leaking components has increased for two consecutive quarterly or annual inspections;

(c) The number of leaks not corrected within fifteen days exceeds five percent of the leaks detected;

(d) The next scheduled process unit turnaround needed to repair an uncorrectable leak is more than twelve months away.

(7) Petition for alternative monitoring.

(a) After two complete liquid service inspections and five complete gaseous service inspections, the owner or operator of a petroleum refinery may petition the director for alternative monitoring procedures or a reduction in monitoring frequency.

(b) A petition for alternative monitoring procedures shall contain:

(i) The name and address of the company and the name and telephone number of the responsible person over whose signature the petition is submitted;

(ii) A detailed description of the problems encountered under WAC 173-490-200(4); and

(iii) A detailed description of the alternative monitoring procedures and how this alternative procedure will solve or reduce the problems encountered under WAC 173-490-200(4).

(c) A petition for a reduction in monitoring frequency shall contain:

(i) The information requested in WAC 173-490-200 (7)(b)(i);

(ii) A detailed description of the proposed component-monitoring schedule;

(iii) A demonstration by the owner or operator that the facility is currently operating with a low level of component leaks and is committed to a maintenance program that will assure a frequency and severity of component leaks as good as that attainable under WAC 173-490-200(2).

(d) An approved petition for a reduction in monitoring frequency shall begin with the next quarterly inspection and shall be valid for a period of twelve quarters (three years). At the time of the last inspection in the twelve quarters, a new submittal of the information required in WAC 173-490-200 (7)(c) shall be made if the reduced frequency of monitoring is to continue.

(e) Ecology may approve a part or all of a petition for alternative monitoring requested under WAC 173-490-200 (7)(b) or (c). Approval or disapproval will be in writing and within forty-five calendar days of receipt of the petition by ecology. A failure to approve or disapprove a new petition or petition for renewal within the stated time limit shall be taken as an approval.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-200, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-200, filed 8/20/80.]

WAC 173-490-201 Petroleum liquid storage in external floating roof tanks. (1) Specific applicability.

(a) This section shall apply to all petroleum liquid storage vessels equipped with external floating roofs, having capacities greater than 150,000 liters (40,000 gallons), and as qualified in WAC 173-490-025.

(b) This section does not apply to petroleum liquid storage vessels that:

- (i) Are used to store waxy, heavy pour crude oil; or
- (ii) Have capacities less than 1,600,000 liters (420,000 gallons) and are used to store produced crude oil and condensate prior to lease custody transfer; or
- (iii) Contain a petroleum liquid with a true vapor pressure of less than 10.5 kPa (1.5 psia); or
- (iv) Contain a petroleum liquid with a true vapor pressure less than 27.6 kPa (4.0 psia); are of welded construction; and presently possess a metallic-type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid filled type seal, or other closure device of demonstrated equivalence approved by ecology; or

(v) Are of welded construction, equipped with a metallic-type shoe primary seal and have secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal).

(2) Provisions for specific processes.

(a) No owner(s) or operator(s) of a petroleum liquid storage vessel shall store a petroleum liquid in that vessel unless:

(i) The vessel has been fitted with:

(A) A continuous secondary seal extending from the floating roof to the tank wall (rim-mounted secondary seal); or

(B) A closure or other device which controls VOC emissions with an effectiveness equal to or greater than a seal required under WAC 173-490-201 (2)(a)(i)(A) and approved by ecology.

(ii) All seal closure devices meet the following requirements:

(A) There are no visible holes, tears, or other openings in the seal or seal fabric;

(B) The seal is intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall; and

(C) For vapor mounted primary seals, the accumulated area of gaps exceeding 0.32 cm (1/8 inch) in width between the secondary seal and the tank wall shall not exceed 21.2 cm² per meter of tank diameter (1.0 in.² per foot of tank diameter), as determined by the method in WAC 173-490-201(3).

(iii) All openings in the external floating roof, except for automatic bleeder vents, rim space vents, and leg sleeves, are:

(A) Equipped with covers, seals, or lids in the closed position except when the openings are in actual use; and

(B) Equipped with projections into the tank which remain below the liquid surface at all times.

(iv) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;

(v) Rim vents are set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting; and

(vi) Emergency roof drains are provided with slotted membrane fabric covers or equivalent covers which cover at least ninety percent of the area of the opening.

(b) The owner(s) or operator(s) of a petroleum liquid storage vessel with an external floating roof subject to this chapter shall:

(i) Perform routine inspections annually in order to insure compliance with WAC 173-490-201 (2)(a) and the inspection shall include a visual inspection of the secondary seal gap;

(ii) Measure the secondary seal gap annually in accordance with WAC 173-490-201(3) when the floating roof is equipped with a vapor-mounted primary seal; and

(iii) Maintain records of the types of volatile petroleum liquids stored, the maximum true vapor pressure of the liquid as stored, and the results of the inspections performed in WAC 173-490-201 (2)(b)(i) and (ii).

(c) The owner(s) or operator(s) of a petroleum liquid storage vessel with an external floating roof exempted from this chapter by WAC 173-490-201 (1)(b)(iii), but containing a petroleum liquid with a true vapor pressure greater than 7.0 kPa (1.0 psi), shall maintain records of the average monthly storage temperature, the type of liquid, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 7.0 kPa.

(d) Copies of all records under WAC 173-490-201 (2)(b) and (c) shall be retained by the owner(s) or operator(s) for a minimum of two years after the date on which the record was made.

(e) Copies of all records required under WAC 173-490-201 shall immediately be made available to the director, upon verbal or written request, at any reasonable time.

(3) Testing and monitoring.

(a) The owner or operator of a storage vessel covered under WAC 173-490-201 shall demonstrate compliance by the methods of this subsection or an alternative method approved by ecology.

(b) A person proposing to measure the seal fit of a storage vessel in order to comply with this section shall notify ecology of the intent to measure no less than five working days before the measurement so the director or a representative may observe the measurement if desired.

(c) Compliance with WAC 173-490-201 (2)(a)(ii)(C) shall be determined by physically measuring the length and width of all gaps around the circumference of the secondary seal in each place where a 0.32 cm (1/8 in.) diameter probe passes freely (without forcing or binding against the seal) between the seal and the tank wall and summing the area of the individual gaps.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-201, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-201, filed 8/20/80.]

WAC 173-490-202 Leaks from gasoline transport tanks and vapor collection systems. (1) Specific applicability.

This section shall apply to all gasoline transport tanks equipped for gasoline vapor collection and all vapor collection systems at gasoline loading terminals, bulk gasoline plants and gasoline dispensing facilities as qualified in WAC 173-490-025 and 173-490-040.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the transport tank is on file with the facility or a valid inspection sticker is displayed on the vehicle.

(b) The owner(s) or operator(s) of a transport tank shall not make any connection to the tank for the purpose of loading or unloading gasoline, except in the case of an emergency, unless the gasoline transport tank:

(i) Is tested annually according to the test procedure referenced in WAC 173-490-202 (3)(c);

(ii) Sustains a pressure change of no more than 0.75 kilopascals (3 inches of water) in five minutes when pressurized to a gauge pressure of 4.5 kilopascals (18 inches of water) or evacuated to a gauge pressure of 1.5 kilopascals (6 inches of water) during the testing required in WAC 173-490-202 (2)(b)(i);

(iii) Is repaired by the owner(s) or operator(s) and retested within fifteen days of testing if it does not meet the criteria of WAC 173-490-202 (2)(b)(ii);

(c) The owner(s) or operator(s) of a transport tank shall:

(i) Have a current leak test certification for the transport tank on file with each gasoline loading or unloading facility where gasoline is transferred; or

(ii) Display a sticker near the department of transportation certification plate required by 49 CFR 178.340-10b which:

(A) Shows the date that the gasoline tank truck last passed the test required in WAC 173-490-202 (2)(b)(i) and (ii);

(B) Shows the identification number of the gasoline tank truck tank; and

(C) Expires not more than one year from the date of the leak tight test.

(d) The owner(s) or operator(s) of a vapor collection system shall:

(i) Operate the vapor collection system and the gasoline loading equipment during all loadings and unloadings of transport tanks equipped for emission control such that:

(A) A gauge reading of tank pressure will not exceed 4.5 kilopascals (18 inches of water) or vacuum 1.5 kilopascals (6 inches of water);

(B) The concentration of gasoline vapors is below the lower explosive limit (LEL, measured as propane) at all points a distance of 2.5 cm (1 inch) from potential leak sources when measured by the method in WAC 173-490-202(3); and

(C) There are no visible liquid leaks.

(ii) Repair and retest a vapor collection system that exceeds the limits of WAC 173-490-202 (2)(d)(i) within fifteen days.

(e) Ecology may, at any time, monitor a gasoline transport tank and vapor collection system during loading or unloading operations by the procedure in WAC 173-490-202 (3)(d) to confirm continuing compliance with WAC 173-490-202 (2)(b) or (d).

(3) Testing and monitoring.

(a) The owner(s) or operator(s) of a gasoline transport tank or vapor collection system shall, at his own expense, demonstrate compliance with WAC 173-490-202 (2)(a) and (b), respectively. All tests shall be made by, or under the direction of, a person qualified to perform the tests.

(b) The owner(s) or operator(s) of a gasoline transport tank shall notify ecology in writing of the date and location of a certification test at least ten calendar days before the anticipated test date.

(c) To demonstrate compliance with this chapter, refer to WAC 173-400-105.

(d) Monitoring to confirm the continuing existence of leak tight conditions shall be consistent with the procedures on file with and approved by ecology.

(4) Recordkeeping.

(a) The owner(s) or operator(s) of a gasoline transport tank or vapor collection system shall maintain records of all certification tests and repairs for at least two years after the test or repair is completed.

(b) The records of certification tests required by WAC 173-490-202 (4)(a) shall, as a minimum, contain:

(i) The transport tank identification number;

(ii) The initial test pressure and the time of the reading;

(iii) The final test pressure and the time of the reading;

(iv) The initial test vacuum and the time of the reading;

(v) The final test vacuum and the time of the reading;

(vi) At the top of each report page, the company name, date and location of the tests on that page; and

(vii) Name and title of the person conducting the test.

(c) The owner(s) or operator(s) of a gasoline transport tank shall annually certify that the transport tank passed the required tests.

(d) Copies of all records required under WAC 173-490-202 shall immediately be made available to ecology, upon written request, at any reasonable time.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-202, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-202, filed 8/20/80.]

WAC 173-490-203 Perchloroethylene dry cleaning systems. (1) Specific applicability. This section shall apply to all dry cleaning systems using perchloroethylene cleaning solvent and as qualified in WAC 173-490-203 (1)(a) and (b) and 173-490-025.

(a) The following dry cleaning systems are exempt from the requirements of WAC 173-490-203 (2)(a)(i) and (ii):

(i) Coin-operated systems;

(ii) Systems located in a facility with inadequate space to accommodate an adsorber;

(iii) Systems with insufficient steam capacity to desorb adsorbers.

(b) An exemption for the conditions stated in WAC 173-490-203 (2)(a)(i) and (ii) may be granted by ecology when sufficient evidence is submitted by the owner(s) or operator(s) of the dry cleaning system to justify the exemption.

(c) A material balance will be used to determine VOC losses.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a perchloroethylene dry cleaning facility subject to this chapter shall:

(i) Vent the entire dryer exhaust through a properly functioning carbon adsorption system or equally effective control device;

(ii) Emit no more than 100 ppmv when demonstrated in accordance with WAC 173-490-203 (3)(c)(i), of VOCs from the dryer control device before dilution;

(iii) Immediately repair all components found to be leaking liquid VOCs;

(iv) Cook or treat all diatomaceous earth filters so that the residue contains 25 kg or less of VOCs per 100 kg of wet waste material;

(v) Reduce the VOCs from all solvent stills to 60 kg or less per 100 kg of wet waste material;

(vi) Drain all filtration cartridges, in the filter housing or other enclosed container, for at least twenty-four hours before discarding the cartridges; and

(vii) When possible, dry all drained cartridges without emitting VOCs to the atmosphere.

(3) Testing and monitoring.

(a) Compliance with WAC 173-490-203 (2)(a)(i), (vi), and (vii) shall be determined by means of visual inspection.

(b) Compliance with WAC 173-490-203 (2)(a)(iii) shall be determined by means of visual inspection of the following components:

(i) Hose connections, unions, couplings and valves;

(ii) Machine door gaskets and seatings;

(iii) Filter head gasket and seating;

(iv) Pumps;

(v) Base tanks and storage containers;

(vi) Water separators;

(vii) Filter sludge recovery;

(viii) Distillation unit;

(ix) Diverter valves;

(x) Saturated lint from lint basket; and

(xi) Cartridge filters.

(c) Compliance with WAC 173-490-203 (2)(a)(ii) shall be demonstrated by:

(i) A test consistent with the procedures on file with and approved by ecology; or

(ii) The proper installation, operation, and maintenance of equipment that has been demonstrated by the owner(s) or operator(s) to adequately meet the emission limits in WAC 173-490-203 (2)(a)(ii).

(d) Compliance with WAC 173-490-203 (2)(a)(iv) and (v) shall be demonstrated by tests consistent with the procedures on file with and approved by ecology.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-203, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-203, filed 7/27/82. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. 81-03-003 (Order DE 80-54), § 173-490-203, filed 1/8/81. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-203, filed 8/20/80.]

WAC 173-490-204 Graphic arts systems. (1) Specific applicability.

(a) This section shall apply to all packaging rotogravure, publication rotogravure, specialty printing operations, and flexographic printing facilities that use more than 90 megagrams (100 tons) per year of VOCs as a component of ink, for the thinning of ink, cleaning of presses, press components and equipment; and are covered by WAC 173-490-025.

(b) Machines that have both coating units (apply a uniform layer of material across the entire width of a web) and printing units (forming words, designs, and pictures) shall be included under WAC 173-490-204 rather than WAC 173-490-040(6), Surface coaters.

(2) Provisions for specific processes.

(a) No owner(s) or operator(s) of a packaging rotogravure, publication rotogravure or flexographic printing subject to this regulation and employing solvent containing ink may operate, cause, allow or permit the operation of the facility unless:

(i) The volatile fraction of ink, as it is applied to the substrate, contains twenty-five percent by volume or less of organic solvent and seventy-five percent by volume or more of water;

(ii) The ink as it is applied to the substrate, less water, contains sixty percent by volume or more nonvolatile material; or

(iii) The owner(s) or operator(s) installs and operates a system that captures at least ninety percent by weight and;

(A) A carbon adsorption system which reduces the volatile organic emissions from the capture system by at least ninety percent by weight;

(B) An incineration system which oxidizes at least ninety percent of the nonmethane VOCs (VOC measured as total combustible carbon) to carbon dioxide and water; or

(C) An alternative VOC emission reduction system demonstrated to have at least a ninety percent reduction efficiency, measured across the control system, and has been approved by ecology.

(b) A collection system shall be used with the emission controls of WAC 173-490-204 (2)(a)(iii). The design and operation of the collection system shall be consistent with good engineering practice, and shall provide an overall reduction in the emission of VOCs of at least:

(i) Seventy-five percent where a publication rotogravure process is used; or

(ii) Sixty-five percent where a packaging rotogravure process is used; or

(iii) Sixty percent where a flexographic process is used.

(3) Testing and monitoring.

(a) To demonstrate compliance with this chapter, refer to WAC 173-400-105.

(b) When add-on control equipment is used, continuous monitors of the following parameters shall be installed, periodically calibrated, and operated at all times that the associated control equipment is operating:

(i) Exhaust gas temperature of all incinerators;

(ii) Temperature rise across a catalytic incinerator bed;

(iii) Breakthrough of VOC on a carbon adsorption unit; and

(iv) Any other continuous monitoring or recording device required by ecology.

(c) The owner or operator of a facility shall be responsible for all expenses of monitoring required by WAC 173-490-204 (3)(b).

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-204, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-204, filed 7/27/82. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-204, filed 8/20/80.]

WAC 173-490-205 Surface coating of miscellaneous metal parts and products. (1) Specific applicability. This section shall apply to surface coating of miscellaneous metal parts and products in the following industries, if the potential uncontrolled emissions of VOC is greater than 10 tons per year and as qualified in WAC 173-490-205 (1)(b), (c), and (d), and 173-490-025.

(a) Miscellaneous metal parts and products shall include:

(i) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(ii) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) Commercial machinery (office equipment, computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) Fabricated metal products (metal covered doors, frames, etc.); and

(vii) Any other industrial category which coats metal parts or products under the Standard Industrial Classification Code of Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (nonelectric machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), Major Group 39 (miscellaneous manufacturing industries), Major Group 40 (railroad transportation), and Major Group 41 (transit passenger transportation).

(b) This section is not applicable to the surface coating of the following metal parts and products:

(i) Automobiles and light-duty trucks;

(ii) Metal cans;

(iii) Flat metal sheets and strips in the form of rolls or coils;

(iv) Magnet wire for use in electrical machinery;

(v) Metal furniture;

(vi) Large appliances;

(vii) Airplanes;

(viii) Automobile refinishing;

(ix) Customized top coating of automobiles and trucks, if production is less than thirty-five vehicles per day; and

(x) Exterior of marine vessels.

(c) This chapter applies to the application area, flashoff area, air and forced air drier, and oven used in the surface coating of the metal parts and products in WAC 173-490-205 (1)(a). This chapter also applies to prime coat, top coat, and single coat operations.

(d) The application of coatings whose formulations are controlled by federal specifications and the use of which is required by federal agencies shall be exempt from the emission limits in WAC 173-490-205 (2)(a).

(e) A case-by-case determination of the emission controls best representing RACT may be substituted for the requirements of WAC 173-490-205(2). Such a determination shall be approved by ecology.

(2) Provisions for specific processes.

(a) The owner or operator of a coating application system shall not emit a quantity of VOCs greater than those listed by specific coating, excluding water and as delivered to the application system:

(i) Clear coatings 0.52 kg/liter (4.3 lb/gallon)

(ii) Extreme performance coatings 0.42 kg/liter (3.5 lb/gallon)

(iii) Air dried coatings 0.42 kg/liter (3.5 lb/gallon)

(iv) All others 0.36 kg/liter (3.0 lb/gallon)

(v) Powder coatings 0.05 kg/liter (0.4 lb/gallon)

(b) When more than one emission limitation listed in WAC 173-490-205 (2)(a) applies to a specific coating, the least stringent will apply.

(c) All VOC emissions from solvent washings shall be considered in the emission limitations in WAC 173-490-205 (2)(a), unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(d) The emission limits set forth in WAC 173-490-205 (2)(a) shall be achieved by:

(i) The application of low solvent coating technology; or

(ii) An incineration system that oxidizes at least ninety percent of the VOCs (VOC measured as total combustible carbon) to carbon dioxide and water; or

(iii) An equivalent means of VOC reduction certified by the owner(s) or operator(s) and approved by ecology.

(e) A collection system shall be used together with the incinerator of WAC 173-490-205 (2)(d)(ii). The design and operation of the collection system shall be consistent with good engineering practice and provide for an overall VOC emission reduction necessary to comply with the emission limits of WAC 173-490-205 (2)(a). The required VOC emission reduction shall be calculated on a unit volume of uncured solids basis.

(3) Testing and monitoring.

(a) Ecology may require the owner(s) or operator(s) of a source to demonstrate at his/her own expense, compliance by the methods of WAC 173-490-205 (3)(c).

(b) The owner(s) or operator(s) of a source shall notify ecology at least ten days before a proposed emission

certification test so the director or a representative may observe the test.

(c) To demonstrate compliance with this chapter, refer to WAC 173-400-105.

(d) Ecology may require monitoring of the following parameters:

- (i) Exhaust gas temperature of all incinerators;
- (ii) Temperature rise across a catalytic incinerator bed;

and

- (iii) Breakthrough of VOC on a carbon adsorption unit.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-205, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-205, filed 7/27/82. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-205, filed 8/20/80.]

WAC 173-490-207 Surface coating of flatwood paneling. (1) Specific applicability.

(a) This section shall apply to all flatwood panel manufacturers and surface finishing facilities as qualified in WAC 173-490-207 (1)(b) and (c) and 173-490-025.

(b) These chapters shall apply to all operations and equipment that is used to apply, convey and dry (including flashoff areas) a surface pattern or coating on the following products:

(i) Printed interior panels made of hardwood plywood and thin particleboard;

(ii) Natural finish hardwood plywood panels; or

(iii) Hardboard paneling with Class II finishes.

(c) These chapters do not apply to the manufacture of exterior siding, tileboard, or particleboard used as a furniture component.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a facility shall not emit VOCs from a coating application system in excess of:

(i) 2.9 kg per 100 square meters of coated finished product (6.0 lb/1,000 square feet) from printed interior panels, regardless of the number of coats applied;

(ii) 5.9 kg per 100 square meters of coated finished product (12.0 lb/1,000 square feet) from natural finish hardwood plywood panels, regardless of the number of coats applied; and

(iii) 4.9 kg per 100 square meters of coated finished product (10.0 lb/1,000 square feet) from Class II finishes on hardboard panels, regardless of the number of coats applied.

(b) The emission limits in WAC 173-490-207 (2)(a) shall be achieved by:

(i) The application of low solvent content coating technology; or

(ii) An incineration system which oxidizes at least ninety percent of the nonmethane VOCs entering the incinerator (VOC measured as total combustible carbon) to carbon dioxide and water; or

(iii) An equivalent means of VOC removal. The equivalent means must be certified by the owner(s) or operator(s) and approved by ecology.

(c) A capture system shall be used in conjunction with the emission control systems in WAC 173-490-207 (2)(b)(ii) and (iii). The design and operation of the capture system must be consistent with good engineering practice and shall be required to provide for an overall emission reduction

sufficient to meet the emission limitation in WAC 173-490-207 (2)(a).

(3) Testing and monitoring.

(a) Ecology may require the owner or operator of a facility to demonstrate at his/her own expense compliance by the methods of WAC 173-490-207 (3)(c).

(b) The owner(s) or operator(s) of a facility shall notify ecology at least ten days before a proposed emission certification test so the director or a representative may observe the test.

(c) To demonstrate compliance with this chapter, refer to WAC 173-400-105.

(d) Ecology may require monitoring of the following parameters:

(i) Exhaust gas temperature of all incinerators;

(ii) Temperature rise across a catalytic incinerator bed; and

(iii) Breakthrough of VOC on a carbon adsorption unit.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-207, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331 and 70.94.395. 80-11-062 (Order DE 80-18), § 173-490-207, filed 8/20/80.]

WAC 173-490-208 Aerospace assembly and component coating operations. (1) Specific applicability. This section shall apply to all aerospace component coating facilities that emit an annual average of eighteen kilograms (forty pounds) or more of VOCs per operating day and as qualified in WAC 173-490-025.

(2) It shall be unlawful for any person to cause or allow:

(a) The application of any primer or topcoat to aerospace components which contains in excess of:

(i) 650 grams of VOC per liter of primer, less water, as applied.

(ii) 600 grams of VOC per liter of topcoat, less water, as applied.

(b) The application of any temporary protective coating to aerospace components that contains more than 250 grams of VOC per liter of material, less water, as applied.

(c) The use of VOCs of composite vapor pressure of 10.4 kPa (1.5 psia) or greater at a temperature of 21.1°C (70°F) for surface preparation or cleanup, excluding paint removal.

(d) The use of VOCs for the cleanup of spray equipment used in aerospace component coating operations unless 85 percent of the VOCs by weight, are collected and disposed so that they are not emitted to the atmosphere.

(e) The use of a stripper which contains more than 400 grams of VOC per liter or has a composite vapor pressure of VOCs more than 1.3 kPa (0.19 psia) at 21.1°C (70°F).

(3) The emission limits of paragraph (2) shall be achieved by:

(a) The application of reasonably available low solvent coating technology;

(b) A vapor collection and disposal system; or

(c) An equivalent method of VOC reduction certified by the owner(s) or operator(s) and approved by ecology.

(4) The provisions of WAC 173-490-208 (2)(a) and (2)(b) shall not apply to the following materials:

(a) Coatings for masking in chemical etching operations,

(b) Adhesive bonding primer,

- (c) Flight test coatings,
- (d) Space vehicle coatings, or
- (e) Fuel tank coatings.

(5) Upon the submission of an alternative coating evaluation, ecology may determine that a reasonably available low solvent coating does exist for a given application and may exempt the coating from requirements of WAC 173-490-208. All alternative coating evaluations shall contain, as a minimum:

- (a) Types of products to be coated,
- (b) Types of coatings evaluated,
- (c) Results of performance tests,
- (d) Status of research into development of low VOC coatings for the application,
- (e) Feasibility of installing control equipment,
- (f) Mitigating measures that could be implemented to reduce VOC emissions.

[Statutory Authority: Chapter 70.94 RCW. 91-05-064 (Order 90-06), § 173-490-208, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 70.94 and 43.21A RCW. 82-16-021 (Order DE 82-22), § 173-490-208, filed 7/27/82.]

Chapter 173-491 WAC

EMISSION STANDARDS AND CONTROLS FOR SOURCES EMITTING GASOLINE VAPORS

WAC

173-491-010	Policy and purpose.
173-491-015	Applicability.
173-491-020	Definitions.
173-491-030	Registration.
173-491-040	Gasoline vapor control requirements.
173-491-050	Compliance schedules.

WAC 173-491-010 Policy and purpose. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapters 43.21A and 70.94 RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish standards for the control of air contaminants emitted from gasoline marketing sources.

[Statutory Authority: RCW 70.94.331. 91-14-101 (Order 90-63), § 173-491-010, filed 7/2/91, effective 8/2/91.]

WAC 173-491-015 Applicability. This chapter shall apply to gasoline marketing operations, including the storage, transport, and transfer of gasoline, including the transfer from storage tanks into transport tanks, and from storage tanks into motor vehicles. The requirements of this chapter supersede any less restrictive requirements of chapter 173-490 WAC, Emission standards and controls for sources emitting volatile organic compounds (VOC).

[Statutory Authority: RCW 70.94.331. 91-14-101 (Order 90-63), § 173-491-015, filed 7/2/91, effective 8/2/91.]

WAC 173-491-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are by this reference incorporated into this chapter. Unless a different meaning is clearly required by context, the following words

and phrases, as used in this chapter, shall have the following meanings:

(1) "Bottom loading" means the filling of a tank through a line entering the bottom of the tank.

(2) "Bulk gasoline plant" means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks.

(3) "Certified vapor recovery system" means a vapor recovery system which has been certified by the department of ecology. Only Stage II vapor recovery systems with a single coaxial hose can be certified. The department may certify vapor recovery systems certified by the California Air Resources Board as of the effective date of the regulation.

(4) "Eastern Washington counties" means the following counties: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

(5) "Gasoline" means a petroleum distillate which is a liquid at standard conditions and has a true vapor pressure greater than four pounds per square inch absolute at twenty degrees C, and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than four pounds per square inch absolute at twenty degrees C shall be considered "gasoline" for purpose of this regulation.

(6) "Gasoline dispensing facility" means any site dispensing gasoline into motor vehicle fuel tanks from stationary storage tanks.

(7) "Gasoline loading terminal" means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks.

(8) "Leak free" means a liquid leak of less than four drops per minute.

(9) "Stage I" means gasoline vapor recovery during all gasoline marketing transfer operations except motor vehicle refueling.

(10) "Stage II" means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.

(11) "Submerged fill line" means any discharge pipe or nozzle which meets either of the following conditions:

- Where the tank is filled from the top, the end of the discharge pipe or nozzle must be totally submerged when the liquid level is six inches from the bottom of the tank, or;
- Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is eighteen inches from the bottom of the tank.

(12) "Submerged loading" means the filling of a tank with a submerged fill line.

(13) "Suitable cover" means a door, hatch, cover, lid, pipe cap, pipe blind, valve, or similar device that prevents the accidental spilling or emitting of gasoline. Pressure relief valves, aspirator vents, or other devices specifically required for safety and fire protection are not included.

(14) "Throughput" means the amount of material passing through a facility.

(15) "Top off" means to attempt to dispense gasoline to a motor vehicle fuel tank after a vapor recovery dispensing nozzle has shut off automatically.

(16) "Transport tank" means a container used for shipping gasoline over roadways.

(17) "True vapor pressure" means the equilibrium partial pressure of a petroleum liquid as determined by methods described in American Petroleum Institute Bulletin 2517, 1980.

(18) "Upgraded" means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overfill protection that involved removal of ground or ground cover above a portion of the product piping.

(19) "Vapor balance system" means a system consisting of the transport tank, gasoline vapor transfer lines, storage tank, and all tank vents designed to route displaced gasoline vapors from a tank being filled with liquid gasoline.

(20) "Vapor collection system" means a closed system to conduct vapors displaced from a tank being filled into the tank being emptied, a vapor holding tank, or a vapor control system.

(21) "Vapor control system" means a system designed and operated to reduce or limit the emission of gasoline vapors emission into the ambient air.

(22) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

(23) "Vapor tight" means a leak of less than one hundred percent of the lower explosive limit on a combustible gas detector measured at a distance of one inch from the source or no visible evidence of air entrainment in the sight glasses of liquid delivery hoses.

(24) "Western Washington counties" means the following counties: Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

[Statutory Authority: RCW 70.94.331. 93-13-011 (Order 92-47), § 173-491-020, filed 6/7/93, effective 7/8/93; 91-14-101 (Order 90-63), § 173-491-020, filed 7/2/91, effective 8/2/91.]

WAC 173-491-030 Registration. (1) The owner or operator of a gasoline loading terminal, bulk gasoline plant, or gasoline dispensing facility subject to the provisions of WAC 173-491-040 (2) through (5) shall register annually the facility with ecology or local air authority. Annual registration shall be made by the owner or operator on a form provided by ecology or local air authority within sixty days of receipt of the form. Such registration form shall require information relevant to determining whether the facility is in compliance with the requirements of this chapter and be accompanied by the following fee: Gasoline loading terminals five hundred dollars, bulk gasoline plants two hundred dollars, gasoline dispensing facilities one hundred dollars, or a greater amount duly adopted by a local air pollution authority. The amount of the fees collected shall only be used to administer the registration program for facilities subject to this chapter.

(2) Administration of the registration program shall include:

(a) Initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration.

(e) Staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements.

(f) Clerical and other office support provided in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

(3) Ecology or local air authority will provide a written verification of registration to owners or operators of facilities subject to the provisions of WAC 173-491-040 (2) through (5). Such verification shall be available for inspection by ecology or local air authority personnel during normal business hours.

(4) The owner or operator of a gasoline loading terminal or a gasoline dispensing facility shall maintain total annual gasoline throughput records for the most recent two calendar years. Such records shall be available for inspection by ecology or local air authority personnel during normal business hours.

[Statutory Authority: RCW 70.94.331. 91-14-101 (Order 90-63), § 173-491-030, filed 7/2/91, effective 8/2/91.]

WAC 173-491-040 Gasoline vapor control requirements. (1) Fixed-roof gasoline storage tanks.

(a) All fixed-roof gasoline storage tanks having a nominal capacity greater than forty thousand gallons shall comply with one of the following:

(i) Meet the equipment specifications and maintenance requirements of the federal standards of performance for new stationary sources - Storage Vessels for Petroleum Liquids (40 CFR 60, subpart K).

(ii) Be retrofitted with a floating roof or internal floating cover using a metallic seal or a nonmetallic resilient seal at least meeting the equipment specifications of the federal standards referred to in (a)(i) of this subsection or its equivalent.

(iii) Be fitted with a floating roof or internal floating cover meeting the manufacturer's equipment specifications in effect when it was installed.

(b) All seals used in (a)(ii) and (iii) of this subsection are to be maintained in good operating condition and the seal fabric shall contain no visible holes, tears, or other openings.

(c) All openings not related to safety are to be sealed with suitable closures.

(d) Tanks used for the storage of gasoline in bulk gasoline plants and equipped with vapor balance systems as required in subsection (3)(b) of this section shall be exempt from the requirements of subsection (1) of this section.

(2) Gasoline loading terminals.

(a) This chapter shall apply to all gasoline loading terminals with an average annual gasoline throughput greater

than 7.2 million gallons according to the schedule of compliance in WAC 173-491-050.

(b) Loading facilities. Facilities for the purpose of loading gasoline into any transport tank shall be equipped with a vapor control system (VCS) as described in (c) of this subsection and comply with the following conditions:

(i) The loading facility shall employ submerged or bottom loading for all transport tanks.

(ii) The VCS shall be connected during the entire loading of all transport tanks.

(iii) The loading of all transport tanks shall be performed such that the transfer is at all times vapor tight. Emissions from pressure relief valves shall not be included in the controlled emissions when the back pressure in the VRS collection lines is lower than the relief pressure setting of the transport tank's relief valves.

(iv) All loading lines and vapor lines shall be equipped to close automatically when disconnected. The point of closure shall be on the tank side of any hose or intermediate connecting line.

(c) Vapor control system (VCS). The VCS shall be designed and built according to accepted industrial practices and meet the following conditions:

(i) The VCS shall not allow organic vapors emitted to the ambient air to exceed thirty-five milligrams per liter (three hundred twenty-two milligrams per gallon) of gasoline loaded.

(ii) The VCS shall be equipped with a device to monitor the system while the VCS is in operation.

(iii) The back pressure in the VCS collection lines shall not exceed the transport tank's pressure relief settings.

(3) Bulk gasoline plants.

(a) This section shall apply to all bulk gasoline plants with an average annual gasoline throughput greater than 7.2 million gallons according to the schedule of compliance in WAC 173-491-050.

(b) Deliveries to bulk gasoline plant storage tanks.

(i) The owner or operator of a bulk gasoline plant shall not permit the loading of gasoline into a storage tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated properly. The vapor balance system shall prevent at least ninety percent of the displaced gasoline vapors from entering the ambient air. A vapor balance system that is designed, built, and operated according to accepted industrial practices will satisfy this requirement.

(ii) Storage tank requirements. All storage tanks with a nominal capacity greater than five hundred fifty gallons and used for the storage of gasoline shall comply with the following conditions:

(A) Each storage tank shall be equipped with a submerged fill line.

(B) Each storage tank shall be equipped for vapor balancing of gasoline vapors with transport tanks during gasoline transfer operations.

(C) The vapor line fittings on the storage tank side of break points with the transport tank vapor connection pipe or hose shall be equipped to close automatically when disconnected.

(D) The pressure relief valves on storage tanks shall be set at the highest possible pressure consistent with local and

state codes for fire and safety but in no case greater than ninety percent of the tank's safe working pressure.

(iii) Transport tank requirements. All transport tanks transferring gasoline to storage tanks in a bulk gasoline plant shall comply with the following conditions:

(A) The transport tank shall be equipped with the proper attachment fittings to make vapor tight connections for vapor balancing with storage tanks.

(B) The vapor line fittings on the transport tank side of break points with the storage tank connection pipe or hose shall be equipped to close automatically when disconnected.

(C) The pressure relief valves on transport tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.

(c) Gasoline transfer operations.

(i) No owner or operator of a bulk gasoline plant or transport tank shall allow the transfer of gasoline between a stationary storage tank and a transport tank except when the following conditions exist:

(A) The transport tanks are being submerged filled or bottom loaded.

(B) The loading of all transport tanks, except those exempted under (c)(ii) of this subsection are being performed using a vapor balance system.

(C) The transport tanks are equipped to balance vapors and maintained in a leak tight condition in accordance with subsection (6) of this section.

(D) The vapor return lines are connected between the transport tank and the stationary storage tank and the vapor balance system is operated properly.

(ii) Transport tanks used for gasoline and meeting the following conditions shall be exempt from the requirement to be equipped with any attachment fitting for vapor balance lines if:

(A) The transport tank is used exclusively for the delivery of gasoline into storage tanks of a facility exempt from the vapor balance requirements of subsection (4) of this section; and the transport tank has a total nominal capacity less than four thousand gallons and is constructed so that it would require the installation of four or more separate vapor balance fittings; or

(B) In eastern Washington counties, a transport tank with a total nominal capacity less than four thousand gallons shall be exempt from the requirement to be fitted with any attachment fitting for vapor balance lines if the transport tank was in use prior to July 1, 1993. Replacement transport tanks or new equipment put into use July 1, 1993, or later are exempt from vapor balance requirements only as specified in (c)(ii)(A) of this subsection.

(4) Gasoline dispensing facilities (Stage I).

(a) This section shall apply to the delivery of gasoline to gasoline dispensing facilities with an annual gasoline throughput greater than three hundred sixty thousand gallons in accordance with the schedule of compliance in WAC 173-491-050 and all new gasoline dispensing facilities with a total gasoline nominal storage capacity greater than ten thousand gallons.

(b) All gasoline storage tanks of the facilities defined in (a) of this subsection shall be equipped with submerged or bottom fill lines and fittings to vapor balance gasoline vapors with the delivery transport tank.

(c) Gasoline storage tanks with offset fill lines shall be exempt from the requirement of (b) of this subsection if installed prior to January 1, 1979.

(d) The owner or operator of a gasoline dispensing facility shall not permit the loading of gasoline into a storage tank equipped with vapor balance fittings from a transport tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated satisfactorily.

(5) Gasoline dispensing facilities (Stage II).

(a) This section shall apply to the refueling of motor vehicles from stationary tanks at all gasoline dispensing facilities located in western Washington counties with an annual gasoline throughput greater than eight hundred forty thousand gallons with the exception of Clark, King, Pierce, and Snohomish counties where this section shall apply to gasoline dispensing facilities with an annual gasoline throughput greater than six hundred thousand gallons in accordance with the schedule of compliance in WAC 173-491-050 and all new gasoline dispensing facilities with greater than ten thousand gallons gasoline nominal storage capacity in western Washington counties.

(b) All gasoline dispensing facilities subject to this section shall be equipped with a certified Stage II vapor recovery system.

(c) The owner or operator of a gasoline dispensing facility subject to this section shall not transfer or allow the transfer of gasoline from stationary tanks into motor vehicle fuel tanks unless a certified Stage II vapor recovery system is used.

(d) All Stage II vapor recovery equipment shall be installed in accordance with the system's certification requirements and shall be maintained to be leak free, vapor tight, and in good working order.

(e) Whenever a Stage II vapor recovery system component is determined to be defective, the owner or operator shall take the system out of service until it has been repaired, replaced, or adjusted, as necessary.

(f) The owner or operator of each gasoline dispensing facility utilizing a Stage II system shall conspicuously post operating instructions for the system in the gasoline dispensing area. The instructions shall clearly describe how to fuel vehicles correctly using the vapor recovery nozzles and include a warning against topping off. Additionally, the instructions shall include a prominent display of ecology's toll free telephone number for complaints regarding the operation and condition of the vapor recovery nozzles.

(6) Equipment or systems failures.

(a) Specific applicability. This section shall apply to all gasoline transport tanks equipped for gasoline vapor collection and all vapor collection systems at gasoline loading terminals, bulk gasoline plants, and gasoline dispensing facilities as described in subsections (2) through (5) of this section.

During the months of May, June, July, August, and September any failure of a vapor collection system at a bulk gasoline plant or gasoline loading terminal to comply with this section requires the discontinuation of gasoline transfer operations for the failed part of the system. Other transfer points that can continue to operate in compliance may be used. The loading or unloading of the transport tank

connected to the failed part of the vapor collection system may be completed during the other months of the year.

(b) Provisions for specific processes.

(i) The owner or operator of a gasoline loading terminal or bulk gasoline plant shall only allow the transfer of gasoline between the facility and a transport tank if a current leak test certification for the transport tank is on file with the facility or a valid inspection sticker is displayed on the vehicle. Certification is required annually.

(ii) The owner or operator of a transport tank shall not make any connection to the tank for the purpose of loading or unloading gasoline, except in the case of an emergency, unless the gasoline transport tank has successfully completed the annual certification testing requirements in (c) of this subsection, and such certification is confirmed either by:

(A) Have on file with each gasoline loading or unloading facility at which gasoline is transferred a current leak test certification for the transport tank; or

(B) Display a sticker near the department of transportation certification plate required by 49 CFR 178.340-10b which:

(I) Shows the date that the gasoline tank truck last passed the test required in (c) of this subsection;

(II) Shows the identification number of the gasoline tank truck tank; and

(III) Expires not more than one year from the date of the leak tight test.

(iii) The owner or operator of a vapor collection system shall:

(A) Operate the vapor collection system and the gasoline loading equipment during all loadings and unloadings of transport tanks equipped for emission control such that:

(I) The tank pressure will not exceed a pressure of eighteen inches of water or a vacuum of six inches of water;

(II) The concentration of gasoline vapors is below the lower explosive limit (LEL, measured as propane) at all points a distance of one inch from potential leak sources; and

(III) There are no visible liquid leaks except for a liquid leak of less than four drops per minute at the product loading connection during delivery.

(IV) Upon disconnecting transfer fittings, liquid leaks do not exceed ten milliliters (0.34 fluid ounces) per disconnect averaged over three disconnects.

(B) Repair and retest a vapor collection system that exceeds the limits of (b)(iii)(A) of this subsection within fifteen days.

(iv) The department or local air authority may, at any time, monitor a gasoline transport tank and vapor collection system during loading or unloading operations by the procedure in (c) of this subsection to confirm continuing compliance with this section.

(c) Testing and monitoring.

(i) The owner or operator of a gasoline transport tank or vapor collection system shall, at his own expense, demonstrate compliance with (a) and (b) of this subsection, respectively. All tests shall be made by, or under the direction of, a person qualified to perform the tests and approved by the department.

(ii) Testing to determine compliance with this section shall use procedures approved by the department.

(iii) Monitoring to confirm continuing leak tight conditions shall use procedures approved by the department.

(d) Recordkeeping.

(i) The owner or operator of a gasoline transport tank or vapor collection system shall maintain records of all certification tests and repairs for at least two years after the test or repair is completed.

(ii) The records of certification tests required by this section shall, as a minimum, contain:

(A) The transport tank identification number;

(B) The initial test pressure and the time of the reading;

(C) The final test pressure and the time of the reading;

(D) The initial test vacuum and the time of the reading;

(E) The final test vacuum and the time of the reading;

(F) At the top of each report page the company name, date, and location of the tests on that page; and

(G) Name and title of the person conducting the test.

(iii) The owner or operator of a gasoline transport tank shall annually certify that the transport tank passed the required tests.

(iv) Copies of all records required under this section shall immediately be made available to the department, upon written request, at any reasonable time.

(e) Preventing evaporation. All persons shall take reasonable measures to prevent the spilling, discarding in sewers, storing in open containers, or handling of gasoline in a manner that will result in evaporation to the ambient air.

[Statutory Authority: RCW 70.94.331, 93-13-011 (Order 92-47), § 173-491-040, filed 6/7/93, effective 7/8/93; 91-14-101 (Order 90-63), § 173-491-040, filed 7/2/91, effective 8/2/91.]

WAC 173-491-050 Compliance schedules. (1)

Fixed-roof gasoline storage tanks. All fixed-roof gasoline storage tanks subject to WAC 173-491-040(1) in western Washington counties shall comply no later than December 31, 1993. All fixed-roof gasoline storage tanks subject to WAC 173-491-040(1) in eastern Washington counties shall comply no later than July 31, 1996.

(2) Gasoline loading terminals. All gasoline loading terminals subject to WAC 173-491-040(2) in western Washington counties shall comply no later than December 31, 1993. All gasoline loading terminals subject to WAC 173-491-040(2) in eastern Washington counties shall comply no later than July 31, 1996.

(3) Bulk gasoline plants. All bulk gasoline plants subject to the requirements of WAC 173-491-040(3) in western Washington counties shall comply no later than December 31, 1993. All bulk gasoline plants subject to WAC 173-491-040(3) in eastern Washington counties shall comply no later than July 31, 1996.

(4) Gasoline dispensing facilities - Stage I. All gasoline dispensing facilities subject to the requirements of WAC 173-491-040(4) shall comply no later than December 31, 1993, or whenever the facility is upgraded, whichever is earliest.

(5) Gasoline dispensing facilities - Stage II. All gasoline dispensing facilities subject to the requirements of WAC 173-491-040(5) shall comply:

(a) When upgraded except any gasoline dispensing facility upgraded or with new tank(s) installed after the

effective date of this regulation but before May 1, 1992, need not comply earlier than May 1, 1992.

(b) For businesses which own ten or more gasoline dispensing facilities in the state of Washington, facilities subject to Stage II requirements as indicated in WAC 173-491-040 (5)(a) must comply according to the following schedule:

(i) Fifty percent of all gasoline dispensing facilities with an annual throughput greater than 1.2 million gallons by May 1, 1993.

(ii) All remaining gasoline dispensing facilities with an annual throughput greater than 1.2 million gallons must comply by May 1, 1994.

(iii) Businesses which own ten or more gasoline dispensing facilities in King, Pierce, Snohomish, and Clark counties must, in addition, meet the following requirements at their facilities within King, Pierce, Snohomish, and Clark counties:

(A) At least fifty percent of the gasoline dispensing facilities with an annual throughput greater than 840,000 gallons must comply by May 1, 1994;

(B) The remaining gasoline dispensing facilities with an annual throughput greater than 840,000 gallons must comply by May 1, 1995.

(iv) All gasoline dispensing facilities must be in compliance not later than December 31, 1998.

(v) In meeting this requirement, businesses that lease some facilities and operate others must ensure that the percentage of facilities owned and operated which are required to comply with this provision at least equals the percentage of leased facilities required to comply with this provision.

(c) For businesses which own fewer than ten gasoline dispensing facilities in the state of Washington:

(i) All facilities with an annual throughput of 1.2 million gallons must comply by May 1, 1994;

(ii) All remaining facilities must comply by December 31, 1998.

[Statutory Authority: RCW 70.94.331, 93-13-068 (Order 92-47), § 173-491-050, filed 6/17/93, effective 7/18/93; 93-03-089 (Order 92-42), § 173-491-050, filed 1/20/93, effective 2/20/93; 91-14-101 (Order 90-63), § 173-491-050, filed 7/2/91, effective 8/2/91.]

Chapter 173-492 WAC

MOTOR FUEL SPECIFICATIONS FOR OXYGENATED GASOLINE

WAC

173-492-010	Policy and purpose.
173-492-020	Applicability.
173-492-030	Definitions.
173-492-040	Compliance requirements.
173-492-050	Registration requirements.
173-492-060	Labeling requirements.
173-492-070	Control areas and control periods.
173-492-080	Enforcement and compliance.
173-492-090	Unplanned conditions.
173-492-100	Severability.

WAC 173-492-010 Policy and purpose. The purpose of this regulation is to reduce carbon monoxide emissions from gasoline powered motor vehicles, through the winter-time use of oxygenated gasolines, in areas that are either

known or expected to exceed health-based air quality standards.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-010, filed 11/30/92, effective 12/1/92.]

WAC 173-492-020 Applicability. This regulation shall apply to all gasoline offered for sale in the control areas and over the control periods defined in WAC 173-492-070.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-020, filed 11/30/92, effective 12/1/92.]

WAC 173-492-030 Definitions. The following words and phrases shall have the following meanings:

"Authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source.

"Blender" means a person who owns oxygenated gasoline which is sold or dispensed from an oxygenate blending facility for use in a control area during a control period.

"Control area" means an area in which only oxygenated gasoline under the oxygenated gasoline program of this chapter may be sold or dispensed. Each control area is a county or group of counties administered by a separate air pollution control authority.

"Control period" means the period during which oxygenated gasoline must be sold or dispensed within the control area.

"Ecology" means the Washington state department of ecology.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly known or sold as gasoline.

"Large volume blender" means blenders that blend and offer for sale or sell one million gallons or more, but less than fifteen million gallons, of oxygenated gasoline per month on average during a control period within a control area.

"Medium volume blender" means blenders that blend and offer for sale or sell one hundred thousand gallons or more, but less than one million gallons, of oxygenated gasoline per month on average during a control period within a control area.

"Oxygenate" means any substance which, when added to gasoline, increases the amount of oxygen in the gasoline blend. Lawful use of any combination of these substances requires that they be "substantially similar" under section 211 (f)(1) of the federal Clean Air Act (CAA), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of section 211 (f)(4) of the CAA.

"Oxygenated gasoline" means gasoline which contains a measurable amount of oxygenate, generally an alcohol or ether.

"Small volume blender" means blenders that blend and offer for sale or sell less than one hundred thousand gallons of oxygenated gasoline per month on average during a control period within a control area.

"Very large volume blender" means blenders that blend and offer for sale or sell fifteen million gallons or more of oxygenated gasoline per month on average during a control period within a control area.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-030, filed 11/30/92, effective 12/1/92.]

WAC 173-492-040 Compliance requirements. (1) Retail sales. No gasoline intended as a final product for fueling of motor vehicles within the control areas and control periods as defined in WAC 173-492-070 shall be offered for sale, sold or dispensed by any person unless the gasoline has at least 2.0% oxygen content by weight.

(2) Average blend requirements. Over each two-month interval during the control period, gasoline intended as a final product for fueling of motor vehicles within the control areas defined in WAC 173-492-070 supplied by blenders to purchasers within the control areas defined in WAC 173-492-070 shall average at least 2.7% oxygen by weight, and in no case be less than 2.0% oxygen content by weight.

(3) Reports. Blenders shall provide periodic reports, as stipulated in the blenders registration, to ecology or the authority summarizing how the requirements of subsection (2) of this section were met. With prior approval from ecology or the authority, a credit trading program may be used to comply with these requirements. Such reports shall be on forms provided by ecology or the authority.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-040, filed 11/30/92, effective 12/1/92.]

WAC 173-492-050 Registration requirements. Each blender shall register with ecology or the authority each year, in each control area where a blender offers for sale, sells, or dispenses gasoline. Each request for registration shall be on forms supplied by ecology or the authority and shall be accompanied by a fee to compensate for the cost of administering the registration program, including on-site inspections necessary to verify compliance with these requirements. The location of each blender facility shall be included in the information provided by the blender at registration. The fee for a control area shall be based on the volume of oxygenated gasoline sold or offered for sale by the blender in that control area to comply with the provisions of WAC 173-492-040. The following fee table shall apply to blenders who register for the 1992-1993 control periods:

Small Volume Blender	\$ 500
Medium Volume Blender	\$ 1,000
Large Volume Blender	\$ 10,000
Very Large Volume Blender	\$ 25,000

Registration fees to cover the 1993-1994 control periods and beyond shall be set by regulation by ecology or the authority.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-050, filed 11/30/92, effective 12/1/92.]

WAC 173-492-060 Labeling requirements. In addition to other labeling requirements, fuel dispensing

systems delivering oxygenated gasoline shall be conspicuously labeled during the control periods and in the control areas stated in WAC 173-492-070 as follows:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-060, filed 11/30/92, effective 12/1/92.]

WAC 173-492-070 Control areas and control periods. Beginning in 1992, the oxygenated gasoline requirements of this chapter shall apply to the following control areas during the following control periods:

CONTROL AREA	COUNTIES	CONTROL PERIOD	
		BEGINNING	ENDING
Puget Sound	King, Pierce, Snohomish	November 1	February 29
Southwest	Clark	November 1	February 29
Spokane	Spokane	September 1	February 29

[Statutory Authority: Chapter 70.94 RCW and 42 USC 7545 Sec. 211(m). 94-07-040 (Order 93-20), § 173-492-070, filed 3/9/94, effective 4/9/94. Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-070, filed 11/30/92, effective 12/1/92.]

WAC 173-492-080 Enforcement and compliance.

(1) Compliance with the requirements of this section shall be monitored and enforced by ecology or the authority. Noncompliance shall be subject to the penalties and other remedies provided in chapter 70.94 RCW.

(2) Ecology or the authority may designate any appropriate agency of the state to assist in the compliance monitoring of this regulation. Ecology shall make every effort to coordinate compliance monitoring of this regulation with the current duties of the department of agriculture division of weights and measures.

(3) Compliance with the standards set forth in this section shall be determined by use of testing methods approved by ecology. The maximum accuracy tolerance of this method shall be limited to +/-0.3% oxygen by weight, or an equivalent tolerance when measured by volume.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-080, filed 11/30/92, effective 12/1/92.]

WAC 173-492-090 Unplanned conditions. An unplanned condition, such as an unforeseen emergency or "act of God," which may interfere with compliance to this chapter, shall be reported to ecology or the authority as soon as possible. The responsible party shall also submit a full written report within ten days to ecology or the authority, including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence. Compliance with the requirements of this section does not relieve the responsible party from the

responsibility to maintain continuous compliance with all the requirements of this chapter nor from the resulting liabilities for failure to comply. Ecology or the authority must consider the circumstances of the unplanned condition, and may use the circumstances when determining enforcement.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-090, filed 11/30/92, effective 12/1/92.]

WAC 173-492-100 Severability. The provisions of this regulation are severable and if any provision is held invalid, the application of such provision to the other circumstances and the remainder of this regulation shall not be affected.

[Statutory Authority: Chapter 70.94 RCW and 1990 42 USC 7545 Sec. 211(m). 92-24-057 (Order 91-58), § 173-492-100, filed 11/30/92, effective 12/1/92.]

Chapter 173-495 WAC WEATHER MODIFICATION

WAC

- 173-495-010 Purpose.
- 173-495-020 Definitions.
- 173-495-030 Requirement for licenses and permits.
- 173-495-040 Requirements for exempt activities.
- 173-495-045 Requirements for a regular license.
- 173-495-050 Requirements for a restricted license.
- 173-495-060 Procedures for issuing license.
- 173-495-065 Period of license.
- 173-495-070 Permit requirements.
- 173-495-080 Permittee's report of operations—Requirement.
- 173-495-100 Revocation, suspension, modification.
- 173-495-120 Proof of financial responsibility.

WAC 173-495-010 Purpose. This chapter, promulgated under chapters 43.37 and 70.94 RCW establishes the responsibilities for the supervision and control of all weather modification activities within the state, and representation by the state in all interstate contacts relating to weather modification and control. This regulation provides the basic framework for carrying out the state's responsibility for such a program through the establishment of license and permit requirements and procedures, reporting, and fee requirements. The provisions of this chapter shall apply to all weather modification activities in all parts of the state except as specifically exempted in this chapter.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-010, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-010, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, words and phrases as used in this chapter shall have the following meanings:

- (1) "Operation" means the performance of weather modification and control activities using a single permit or license under contract for the purpose of producing or attempting to produce a weather modifying effect within a geographical area.
- (2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension

of investigative findings of theories of a scientific or technical nature into practical application for experimental and demonstration purposes. This includes the experimental production and testing of models, devices, equipment, materials, and processing.

(3) "Weather modification and control" means changing or attempting to change or control by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-020, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-020, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-030 Requirement for licenses and permits. No person shall engage in weather modification activities except under and in accordance with a license and a permit issued by ecology, unless specifically exempt from this requirement in WAC 173-495-040.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-030, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-030, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-040 Requirements for exempt activities. The following weather modification and control activity shall be exempt from the license requirement of RCW 43.37.100, the permit requirements of RCW 43.37.100, and the liability requirements of RCW 43.37.190:

(1) All research and experiments related to weather modification control conducted within laboratories.

(2) Those weather modification operations designed to alleviate sudden, unexpected, hazardous conditions which require expeditious localized action for:

(a) Protection against fire

(b) Prevention of frost

(c) Dispersal of fog

(3) Field research and development by institutions of higher learning.

(4) Any person(s) proposing to conduct weather modification and control activities as described in subsection (2) of this section shall notify air programs, department of ecology, headquarters offices in Olympia, Washington, before proceeding of the type of activity to be carried out, the person carrying out the activity and the materials and technique of application to be used.

(5) Any person proposing to conduct weather modification and control activities as described in subsection (3) above shall provide a written description of the proposed program, notice of actual operations ten days prior to commencement, and quarterly reports of operations and status to the Headquarters Office Department of Ecology, Olympia, Washington.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-040, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-040, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-045 Requirements for a regular license. All applicants for a weather modification license shall be certified professional members of the American Meteorological Society or possess the academic achievements and professional experience necessary to receive such certification. In cases where the applicant is an organization,

the individual or individuals who will be in control and in charge of the weather modification and control activities shall be required to meet the above standard.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-045, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-045, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-050 Requirements for a restricted license. (1) A restricted license may be issued to an applicant when:

(a) The applicant's proposed weather modification activities are limited solely to those designed to disperse fog over airports; and

(b) The applicant will be fully advised of the pertinent weather information by the meteorologist on duty during the airport fog dispersal activities.

(2) Applicants for restricted licenses are not required to meet the qualifications otherwise imposed by WAC 173-495-040.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-050, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-050, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-060 Procedures for issuing license.

(1) Any person or organization desiring to obtain a license or restricted license shall make an application to ecology on the form prescribed, listing name, business address, etc.

(2) Ecology may require additional information of the applicant to determine competency in the field of meteorology. Such additional information shall be requested of the applicant by certified mail, and shall be submitted in writing.

(3) Prior to the issuance of any license, the applicant shall pay a fee of \$100 to the state of Washington.

(4) The application shall be deemed received by ecology when received at the Headquarters Offices, Department of Ecology, Olympia, Washington, 98504.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-060, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-060, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-065 Period of license. (1) Licenses issued pursuant to chapter 43.37 RCW and these regulations shall be effective for a period of one year, to terminate at the end of the calendar year of issuance.

(2) No later than thirty days prior to the end of the calendar year, the licensee may request a renewal of the license. Ecology shall review the license renewal request after receiving a renewal fee of one hundred dollars made payable to the state of Washington.

(3) In the determination of whether or not to grant a license renewal, ecology shall consider information provided by the applicant of the facts and circumstances used to issue the original permit that were changed or altered. If ecology determines that the licensee no longer meets the requirements of competency in the field of meteorology, ecology may refuse to renew said license.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-065, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-065, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-070 Permit requirements. (1) Each weather modification operation not specifically exempted by statute or these regulations shall require a permit. A separate permit shall be issued for each operation.

(2) A license holder desiring to conduct a weather modification operation shall submit an application for a permit to ecology.

(3) The permit applicant must hold a valid weather modification license from the state of Washington.

(4) The applicant shall publish notice of intention at least once a week for three consecutive weeks in a legal newspaper having general circulation and published within any county in which the operation is to be conducted or affected. If no legal newspaper is published within the appropriate county, publication shall be made in a legal newspaper having a general circulation within the county.

(5) Proof of publication of the notice of intention shall be filed by the licensee with ecology within fifteen days from the date of last publication of the notice.

(6) The notice of intention shall contain at least the following:

(a) The name and address of the licensee;

(b) The nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;

(c) The area in which and the appropriate time during which the operation will be conducted;

(d) The area intended to be affected by the operation; and

(e) The materials and methods to be used in conducting the operation.

(7) The applicant shall furnish proof of financial responsibility, as described in WAC 173-495-120 of this chapter.

(8) The applicant shall pay a permit fee of one and one-half percent of the estimated cost of the operation. The estimated cost will be computed by ecology from available data.

(9) Prior to issuance of a permit, ecology shall state in writing that the weather modification and control activities proposed have been determined to be for the general welfare and public good.

(10) Ecology shall hold an open public hearing at its headquarters office in Olympia prior to any such permit issuance.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-070, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-070, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-080 Permittee's report of operations—Requirement. The permittee shall be required to maintain reports on all operations on a daily basis, and submit twice a month (1st day and 15th day) to ecology. The semi-monthly reports shall include the following information:

(1) Number of days under contract.

(2) Number of days of operation and number of hours of each day, for all stations operated.

(3) The consumption rate and name of seeding agent used.

(4) A brief summary statement evaluating the past fifteen day period in regard to the seeding potential and experience.

(5) Location of operations.

(6) Name and mailing address of each individual, other than the licensee, participating or assisting in the operation.

(7) A brief statement of projected plans for the coming fifteen day period.

(8) In the event operations are unexpectedly terminated, a special report covering that fraction of the half-month period of operation is required. All reports must be post-marked not later than one day after due date.

(9) All such records are public records which shall be open to public inspection.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-080, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-080, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-100 Revocation, suspension, modification. (1) All permits authorized by RCW 43.37.110 shall contain the following provisions: "Ecology may, if it appears that continuing operation under this permit will cause immediate injury to persons or property, terminate or otherwise modify the terms of this permit in order to alleviate an emergency situation by giving notice to the permittee by telegram or other writing."

(2) All permits authorized by RCW 43.37.110 may be revoked, suspended, or modified when ecology has reason to believe that good cause exists and that the revocation, suspension, or modification is required for the general welfare and public good. Any such revocation, suspension, or modification shall not be undertaken prior to written notice by certified mail to the permittee. Opportunity for comment by the permittee shall be allowed. Any final ecology decision shall be in writing.

(3) In the event the applicant desires to appeal any permit revocation, modification, or suspension action by ecology such appeal must be filed with the pollution control hearings board in Olympia within thirty days of ecology's action. An appeal does not constitute a stay.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-100, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-100, filed 12/29/77. Formerly chapter 508-20 WAC.]

WAC 173-495-120 Proof of financial responsibility. A permit applicant shall furnish proof of financial responsibility to ecology by one of the following:

(1) Copy of insurance policy or binder for the operator.

(2) A current balance sheet showing sufficient assets to demonstrate financial responsibility.

(3) Bond for safe performance.

(4) Such other information as the applicant may provide ecology, in writing, if one of the alternate methods contained in subsections (1) through (3) of this section, is not feasible or available, provided the applicant explains the infeasibility or unavailability.

[Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-495-120, filed 9/17/90, effective 10/18/90; Order DE 77-29, § 173-495-120, filed 12/29/77.]

Chapter 173-500 WAC

WATER RESOURCES MANAGEMENT PROGRAM
ESTABLISHED PURSUANT TO THE WATER
RESOURCES ACT OF 1971

WAC

173-500-010	Background.
173-500-020	Purpose.
173-500-030	Authority.
173-500-040	Water resource inventory areas.
173-500-050	Definitions.
173-500-060	General provisions.
173-500-070	Regulation review.
173-500-080	Critical water recourse situation response process.
173-500-990	Map—Water resources inventory areas sub-basins.

WAC 173-500-010 Background. (1) The Water Resources Act of 1971 (chapter 90.54 RCW) sets forth fundamentals of water resource policy to insure that the waters of the state will be protected and fully utilized for the greatest benefit to the people of the state of Washington and, in relation thereto, to provide direction to the department of ecology and other state agencies and officials in carrying out water and related resource programs.

(2) The department was directed, through the adoption of appropriate rules, to develop and implement a comprehensive state water program which would provide a process for making decisions on future water resource allocations and uses.

(3) The act provides that the department of ecology may develop a water program in regional segments so that immediate attention may be given to waters of a give physio-economic region of the state or to specific critical problems of water allocation and use.

(4) The act further directed the department of ecology to modify existing regulations and adopt new regulations to insure that existing regulatory programs are in accord with the water resource policies of the act.

[Statutory Authority: Chapters 43.27A and 90.54 RCW. 88-13-037 (Order 88-11), § 173-500-010, filed 6/9/88; Order DE 75-23, § 173-500-010, filed 1/6/76.]

WAC 173-500-020 Purpose. The purpose of this chapter is to set forth a program which will provide guidelines to facilitate the further development of the water resources to the extent of their availability for further appropriation and implement the legislative intent as contained in RCW 90.54.040(1). The program shall, where appropriate:

(1) Identify and foster development of water resource projects;

(2) Declare preferences or priorities of use by categories;

(3) Set forth streams closed to future appropriation;

(4) Establish flows on perennial streams of the state in amounts necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values;

(5) Allocate quantities for beneficial uses;

(6) Reserve water for future beneficial use;

(7) Withdraw waters from additional appropriation when sufficient information or data are lacking for the making of sound decisions;

(8) Establish criteria for limit beyond which further appropriation will not be made;

(9) Designate areas within the state to be used for management purposes; and

(10) Be guided by the declaration of fundamentals contained in RCW 90.54.020.

[Order DE 75-23, § 173-500-020, filed 1/6/76.]

WAC 173-500-030 Authority. This regulation is promulgated by the department of ecology under the authority of chapter 90.54 RCW.

[Statutory Authority: Chapters 43.27A and 90.54 RCW. 88-13-037 (Order 88-11), § 173-500-030, filed 6/9/88; Order DE 75-23, § 173-500-030, filed 1/6/76.]

WAC 173-500-040 Water resource inventory areas. For the purposes of this chapter, the state is divided into 62 areas known as water resource inventory areas (WRIAs). The names and numbers of these areas are as follows and are shown on the attached map:

WATER RESOURCES INVENTORY AREAS

WRIA Number, Name

01. Nooksack
02. San Juan
03. Lower Skagit-Samish
04. Upper Skagit
05. Stillaguamish
06. Island
07. Snohomish
08. Cedar-Sammamish
09. Duwamish-Green
10. Puyallup-White
11. Nisqually
12. Chambers-Clover
13. Deschutes
14. Kennedy-Goldsborough
15. Kitsap
16. Skokomish-Dosewallips
17. Quilcene-Snow
18. Elwah-Dungeness
19. Lyre-Hoko
20. Soleduck-Hoh
21. Queets-Quinault
22. Lower Chehalis
23. Upper Chehalis
24. Willapa
25. Grays-Elokoman
26. Cowlitz
27. Lewis
28. Salmon-Washougal
29. Wind-White Salmon
30. Klickitat
31. Rock-Glade
32. Walla Walla
33. Lower Snake
34. Palouse
35. Middle Snake
36. Esquatzel Coulee
37. Lower Yakima
38. Naches

39. Upper Yakima
40. Alkali-Squilchuck
41. Lower Crab
42. Grand Coulee
43. Upper Crab-Wilson
44. Moses Coulee
45. Wenatchee
46. Entiat
47. Chelan
48. Methow
49. Okanogan
50. Foster
51. Nespelem
52. Sanpoil
53. Lower Lake Roosevelt
54. Lower Spokane
55. Little Spokane
56. Hangman
57. Middle Spokane
58. Middle Lake Roosevelt
59. Colville
60. Kettle
61. Upper Lake Roosevelt
62. Pend Oreille

[Order DE 75-23, § 173-500-040, filed 1/6/76.]

WAC 173-500-050 Definitions. For purposes of this chapter and subsequent regulations formulated for planning and management within individual water resource inventory areas, the following definitions shall be used:

(1) "**Allocation**" means the designating of specific amounts of the water resource for specific beneficial uses.

(2) "**Appropriation**" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses.

(3) "**Base flow**" means a level of streamflow established in accordance with provisions of chapter 90.54 RCW required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values.

(4) "**Beneficial uses**" are uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.

(5) "**Consumptive use**" means use of water whereby there is a diminishment of the water source.

(6) "**Department**" means the Washington state department of ecology.

(7) "**Hydrograph**" is a graph showing the variations of streamflow (or stream discharge) with respect to time during a year as determined at a specific cross-sectional location on the stream.

(8) "**Low flow**" means those flow level limitations appearing as provisions on permits and certificates issued by the department, or its predecessors, prior to the effective dates of chapters 173-501 through 173-599 WAC.

(9) "**Nonconsumptive use**" is a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source.

(10) "**Perennial stream**" means a stream the natural flow of which is normally continuous at any given location.

(11) "**Stream management unit**" means stream segments, reaches, or tributaries, each containing a control station, that are identified on stream reach maps in adopted water resource management program documents as units for defining base flow levels.

(12) "**Water right**" means a right to make beneficial use of public waters of the state.

[Order DE 75-23, § 173-500-050, filed 1/6/76.]

WAC 173-500-060 General provisions. (1) The provisions of this chapter shall apply to chapters 173-501 through 173-599 WAC unless the language of said chapters is clearly to the contrary.

(2) As sufficient data are obtained for each WRIA and/or grouping thereof in the state to enable the department to formulate a water resource planning and management program for such area, the department shall by regulation establish policies for the beneficial use of public waters pursuant to RCW 90.54.040.

(3) Water rights established prior to the effective date of rules adopted under chapters 173-500 and 173-501 through 173-599 WAC shall not be affected by such rules.

(4) **Low flow limitations to prevail** (1) Notwithstanding the establishment of base flows established hereunder, existing low flow limitations shall remain in effect.

(5) **Base flow provisions for water rights.**

(a) Surface water and/or ground water appropriation permits, issued subsequent to the effective dates of chapters 173-501 through 173-599 WAC, that will allow either direct diversion from or have a measurable effect on streams where base flow limitations of this chapter, and any such permits or certificates shall be appropriately conditioned to assure maintenance of said base flows.

(b) The base flow provisions for any water right located in a stream management unit shall specifically describe the base flow levels for the control station in that unit and shall refer generally to other downstream base flow requirements that may also become controlling and critical to the use of water under such right.

(6) **Base flow changes.** If it becomes necessary to change a control station location or to add new control stations to improve management capability, the department shall develop streamflow relationships, by accepted engineering procedures, between previously established control station locations and the new location for use in regulating water rights that are subject to base flow limitations.

(7) **Minimum water flows and levels.** The provisions of this chapter shall in no manner be interpreted to preclude utilization of chapter 90.22 RCW.

(8) **Priorities or allocation by use categories - limitations.** Nothing in chapters 173-501 through 173-599 WAC relating to priorities or allocations by use shall be construed to apply to water rights or the historic water use patterns that predate the individual management regulations.

[Order DE 75-23, § 173-500-060, filed 1/6/76.]

WAC 173-500-070 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.27A and 90.54 RCW. 88-13-037 (Order 88-11), § 173-500-070, filed 6/9/88.]

WAC 173-500-080 Critical water recourse situation response process. In areas subject to the department of ecology's jurisdiction, where there may be current or anticipated critical water resource or related water quality concerns, the local government(s), the state or the affected federally recognized tribe(s) may request that representatives from all three governmental entities and, as needed, appropriate federal agencies agree to the designation of the area as a critical water resource situation. All represented parties must agree to the designation. Upon designation, an intergovernmental group will be convened.

The purpose of the intergovernmental group is to cooperatively design a consultation strategy to address the problem(s) which triggered this critical situation response process.

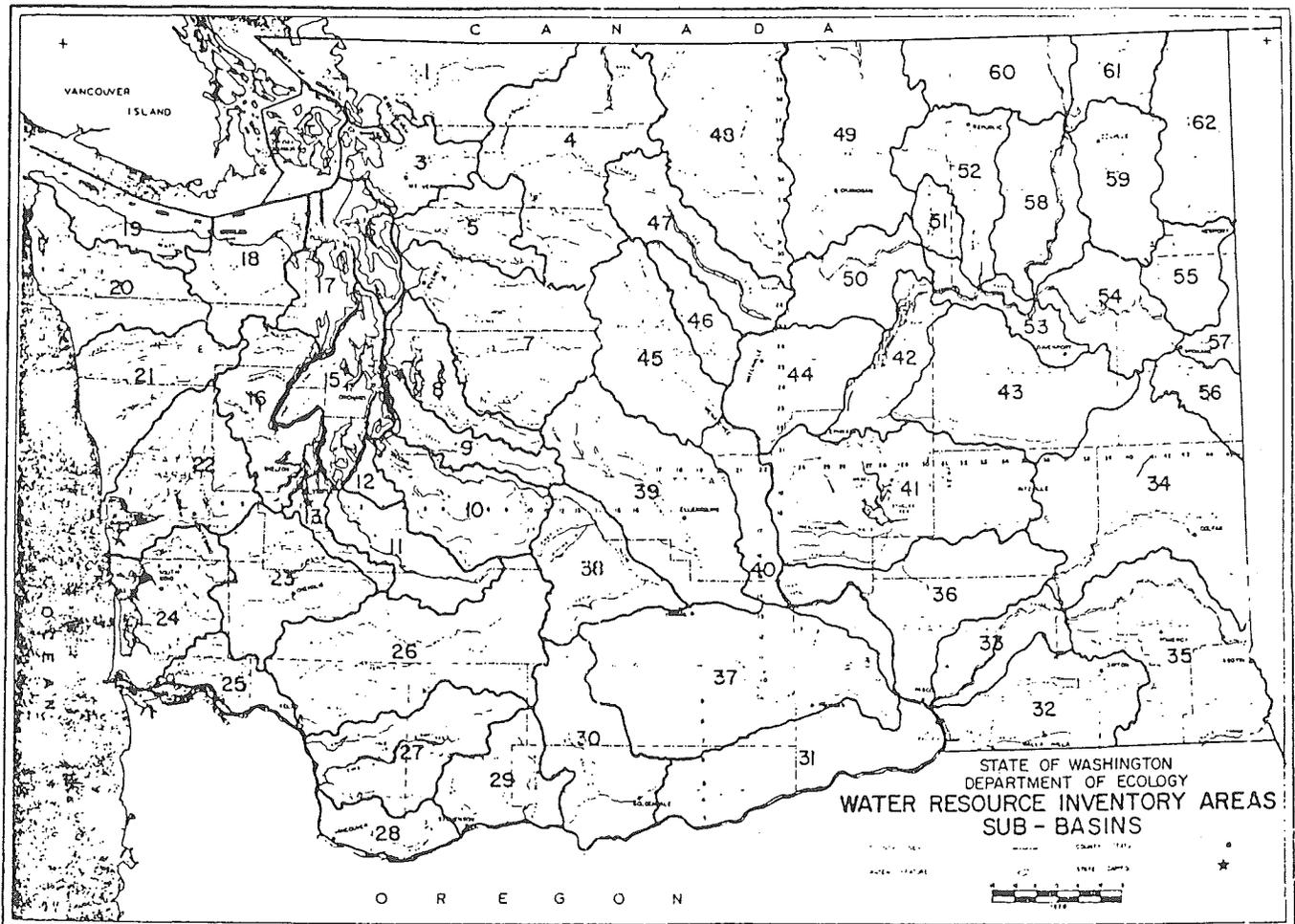
The legal rights and remedies available to the three governmental entities shall not be compromised or abridged by participation in the critical situation response process. However, all of the parties agree to undertake a good faith effort to resolve the critical water resource situation without first resorting to legal action.

When the intergovernmental group determines that a critical water resource situation exists or requires further evaluation or data collection, the parties will consider applying those tools necessary to protect the resources. These tools must be exercised within 12 months or as otherwise agreed to by the parties, and include, but are not limited to: Targeted conservation, efficiency, reuse; compliance and enforcement; dispute resolution assistance, memoranda of understanding and other agreements; local government restrictions on permit issuance or moratoria; basin withdrawal by adoption of administrative regulations under RCW 90.54.050 or limited state permit issuance.

[Statutory Authority: Chapters 34.05 and 90.54 RCW. 91-18-011 (Order 91-25), § 173-500-080, filed 8/23/91, effective 9/23/91.]

WAC 173-500-990 Map—Water resources inventory areas sub-basins.

WATER RESOURCES INVENTORY AREAS SUB-BASINS.



[Order DE 75-23, Map (codified as WAC 173-500-990), filed 1/6/76.]

Chapter 173-501 WAC
INSTREAM RESOURCES PROTECTION
PROGRAM—NOOKSACK WATER RESOURCE
INVENTORY AREA (WRIA) 1

WAC

173-501-010	General provision.
173-501-020	Purpose.
173-501-030	Establishment of instream flows.
173-501-040	Surface water source limitations to further consumptive appropriation.
173-501-050	Lakes.
173-501-060	Ground water.
173-501-070	Exemptions.
173-501-080	Policy statement for future permitting actions.
173-501-090	Enforcement.
173-501-095	Appeals.
173-501-100	Regulation review.

WAC 173-501-010 General provision. These rules apply to waters within the Nooksack water resource inventory area (WRIA 1), as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (Minimum water flows and levels), and in accordance with chapter 173-500 WAC (Water resources management program).

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-010, filed 12/4/85.]

WAC 173-501-020 Purpose. Chapter 90.54 RCW (Water Resources Act of 1971) requires that utilization and management of waters of the state be guided by a number of fundamentals, including:

Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial. (RCW 90.54.020(1))

The quality of the natural environment shall be protected and, where possible, enhanced as follows:

Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(a))

Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which

will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(b))

The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Nooksack water resource inventory area with instream flows and levels necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values, as well as recreation and water quality.

In administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-020, filed 12/4/85.]

WAC 173-501-030 Establishment of instream flows.

(1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township and Range	Stream Management Reach
Anderson Creek Gage # WDOE-2109-00	1.4 Section 19 T. 39 N., R. 4 E.	From confluence with Nooksack River to headwaters, including all tributaries.
Bells Creek Gage # WDOE-2073-00	0.5 Section 21 T. 39 N., R. 5 E.	From confluence with Nooksack River to headwaters, including all tributaries.
Bertrand Creek Gage # WDOE-2124-00	1.0 Section 26 T. 40 N., R. 2 E.	From U.S./Canada border to confluence with Nooksack River, including all tributaries.
California Creek Gage # WDOE-2134-00	3.0 Section 21 T. 40 N., R. 1 E.	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
Canyon Creek Gage # WDOE-2045-00	0.2 Section 35 T. 40 N., R. 6 E.	From confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Canyon Creek at Kulshan Gage # 12-2085-00	0.2 Section 27 T. 39 N., R. 5 E.	From confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Cornell Creek Gage # WDOE-2057-00	0.6 Section 1 T. 39 N., R. 6 E.	From the confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Dakota Creek near Blaine Gage #12-2140-00	3.5 Section 9 T. 40 N., R. 1 E.	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
Deer Creek Gage # WDOE-2130-50	0.2 Section 28 T. 39 N., R. 2 E.	From the confluence with Tenmile Creek to headwaters, including all tributaries.

Fishtrap Creek at Lynden Gage # 12-2120-00	6.9 Section 16 T. 40 N., R. 3 E.	From U.S./Canada border to confluence with Nooksack River, including all tributaries.
Gallop Creek Gage # WDOE-2056-00	0.3 Section 7 T. 39 N., R. 7 E.	From the confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Hutchinson Creek Gage # WDOE-2101-00	1.8 Section 36 T. 38 N., R. 5 E.	From confluence with South Fork Nooksack River to headwaters, including all tributaries.
Johnson Creek Gage # WDOE-2149-00	0.5 Section 35 T. 41 N., R. 4 E.	From U.S./Canada border to headwaters including all tributaries.
Kendall Creek Gage # 12-2065-00	0.1 Section 3 T. 39 N., R. 5 E.	From the confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Maple Creek Gage # WDOE-2059-00	0.8 Section 30 T. 40 N., R. 6 E.	From confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Nooksack River (at Deming) 12-2105-00	36.6 Section 31 T. 39 N., R. 5 E.	From confluence with Smith Creek to confluence of North Fork and Middle Fork Nooksack Rivers.
Nooksack River (at Ferndale) 12-2131-00	5.8 Section 29 T. 39 N., R. 2 E.	From influence of mean annual high tide at low instream flow levels to confluence with, and including, Smith Creek.
Nooksack River (Middle Fork) 12-2080-00	5.0 Section 13 T. 38 N., R. 5 E.	From confluence with North Fork to headwaters.
Nooksack River (North Fork) 12-2072-00	44.1 Section 10 T. 39 N., R. 5 E.	From confluence with Middle Fork to headwaters.
Nooksack River (South Fork) 12-2090-00	5.0 Section 19 T. 38 N., R. 5 E.	From confluence with Nooksack River (mainstem) to headwaters.
Porter Creek Gage # WDOE-2084-00	0.7 Section 11 T. 38 N., R. 5 E.	From the confluence with M. Fk. Nooksack R. to headwaters, including all tributaries.
Racehorse Creek Gage # WDOE-2071-00	1.5 Section 11 T. 39 N., R. 5 E.	From confluence with N. Fk. Nooksack River to headwaters, including all tributaries.
Saar Creek Gage # 12-2155-00	0.2 Section 31 T. 41 N., R. 5 E.	From U.S./Canada border to headwaters, including all tributaries.
Silver Creek Gage # WDOE-2132-00	2.0 Section 4 T. 38 N., R. 2 E.	From confluence with Nooksack River to headwaters, including all tributaries.
Skookum Creek near Wickersham Gage # 12-2095-00	0.1 Section 27 T. 37 N., R. 5 E.	From confluence with South Fork Nooksack River to headwaters, including all tributaries.
Smith Creek Gage # WDOE-2111-00	0.8 Section 22 T. 39 N., R. 4 E.	From confluence with Nooksack River to headwaters, including all tributaries.

Sumas River near Sumas Gage # 12-2145-00	2.1 Section 2 T. 41 N., R. 4 E.	From U.S./Canada border to headwaters including all tributaries.
Tenmile Creek at Laurel Gage # 12-2129-00	4.4 Section 13 T. 39 N., R. 2 E.	From confluence with Nooksack River to headwaters, including all tributaries.
Terrell Creek Gage # WDOE-2133-00	2.2 Section 31 T. 40 N., R. 1 E.	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
Wiser Lake Creek Gage # WDOE-2126-00	0.7 Section 2 T. 39 N., R. 2 E.	From confluence with Nooksack River to headwaters, including all tributaries.

(2) Instream flows are established for the stream management units in WAC 173-501-030(1) as follows:

Instream Flows in the Nooksack WRIA
(Instantaneous cubic feet per second)

Month Day	WDOE-2109-00 Anderson Cr.	WDOE-2073-00 Bells Cr.	WDOE-2124-00 Bertrand Cr.	WDOE-2134-00 California Cr.
Jan. 1	50	4*	90*	40*
15	50	4*	90*	40*
Feb. 1	50	4*	90*	40*
15	50	3*	90*	40*
Mar. 1	50	2*	90*	40*
15	50	2*	90*	25*
Apr. 1	40	3*	80*	18*
15	31	4*	60*	13*
May 1	25*	5*	50*	9*
15	20*	6*	40*	6*
Jun. 1	16*	6*	33*	4*
15	13*	6*	25*	3*
Jul. 1	10*	3*	21*	2*
15	8*	2*	17*	2*
Aug. 1	6*	1*	13*	2*
15	6*	1*	13*	2*
Sep. 1	6*	1*	13*	2*
15	6*	1*	13*	2*
Oct. 1	8*	1*	13*	2*
15	11*	2*	20*	2*
Nov. 1	15*	3*	30*	4*
15	20	4*	40*	7*
Dec. 1	30	4*	60*	15*
15	50	4*	90*	40*

*Denotes closure period. No further consumptive rights issued for use during this time.

Month Day	WDOE-2045-00 Canyon Creek	WDOE-2085-00 Canyon (Lk) Cr.	WDOE-2057-00 Cornell Creek
Jan. 1	150	50	20
15	150	50	20
Feb. 1	150	50	20
15	150	50	20
Mar. 1	150	50	20
15	150	50	20
Apr. 1	150	50	20
15	150	50	20
May 1	150	50	20
15	150	50	20
Jun. 1	150	50	15
15	150	50	9

Jul.	1	150*	50*	25*
	15	80*	30*	3*
Aug.	1	40*	15*	3*
	15	40*	10*	3*
Sep.	1	40*	10*	3*
	15	40*	10*	3*
Oct.	1	55*	20*	5*
	15	80*	23*	10*
Nov.	1	90*	27*	20*
	15	110	32	20
Dec.	1	130	40	20
	15	150	43	20

Month	Day	12-2140-00	WDOE-	12-2120-00
		Dakota Creek	2130-50	Fishtrap Cr.
Jan.	1	60*	10*	55*
	15	60*	10*	55*
Feb.	1	60*	10*	55*
	15	60*	10*	55*
Mar.	1	60*	10*	55*
	15	40*	10*	55*
Apr.	1	30*	8*	45*
	15	20*	6*	35*
May	1	15*	5*	30*
	15	10*	4*	25*
Jun.	1	7*	3*	20*
	15	5*	2*	15*
Jul.	1	4*	2*	12*
	15	3*	1*	10*
Aug.	1	3*	1*	8*
	15	3*	1*	8*
Sep.	1	3*	1*	8*
	15	3*	1*	8*
Oct.	1	3*	2*	18*
	15	4*	2*	20*
Nov.	1	5*	3*	30*
	15	10*	4*	40*
Dec.	1	20*	5*	55*
	15	60*	7*	55*

Month	Day	WDOE-	WDOE-	WDOE-	12-2065-00
		Gallop Creek	Hutchinson Creek	Johnson Creek	Kendall Cr.
Jan.	1	12	60	60*	10*
	15	12	60	60*	10*
Feb.	1	12	60	60*	10*
	15	12	60	60*	10*
Mar.	1	12	60	60*	10*
	15	12	60	60*	10*
Apr.	1	12	60	60*	10*
	15	12	60	45*	10*
May	1	12	60	35*	10*
	15	12	60	25*	10*
Jun.	1	12	60	20*	10*
	15	12	60	15*	10*
Jul.	1	12*	60*	12*	10*
	15	8*	40*	9*	6*
Aug.	1	6*	25*	9*	4*
	15	5*	15*	9*	3*
Sep.	1	5*	15*	9*	3*
	15	5*	15*	9*	3*
Oct.	1	5*	25*	9*	5*
	15	5*	30*	9*	6*
Nov.	1	8*	35*	13*	7*
	15	12	40	20*	8*
Dec.	1	12	50	30*	9*
	15	12	60	60*	10*

Month	Day	WDOE-2059-00	12-2105-00	12-2131-00
		Maple Creek	Nooksack R. (at Deming)	Nooksack R. (at Ferndale)
Jan.	1	20	2050	2900
	15	20	2050	2900
Feb.	1	20	2150	2900
	15	30	2350	2900
Mar.	1	30	2350	2900
	15	30	2350	2900
Apr.	1	30	2350	2900
	15	30	2350	2900
May	1	30	3325	2900
	15	30	3400	3500
Jun.	1	30	3400	3500
	15	30	3400	3500
Jul.	1	20*	3400	3500
	15	20*	2950	3000
Aug.	1	20*	1700	2400
	15	10*	1700	1900
Sep.	1	10*	1700	1800
	15	10*	1700	1700
Oct.	1	20*	1700	1700
	15	20*	2050	2050
Nov.	1	20*	2050	2300
	15	20	2050	2500
Dec.	1	20	2050	2900
	15	20	2050	2900

Month	Day	12-2080-00	12-2072-00	12-2090-00
		Nooksack River (Middle Fork)	Nooksack River (North Fork nr. Deming)	Nooksack River (South Fork)
Jan.	1	275	1100	650
	15	275	1100	650
Feb.	1	380	1100	650
	15	380	1100	850
Mar.	1	380	1100	850
	15	380	1100	850
Apr.	1	380	1100	850
	15	380	1100	850
May	1	380	1100	850
	15	450	2000	850
Jun.	1	525	2000	850
	15	525	2000	850
Jul.	1	525	2000	850*
	15	400	2000	550*
Aug.	1	275	1100	300*
	15	275	1100	300*
Sep.	1	275	1100*	300*
	15	275	1100*	300*
Oct.	1	275	1100*	300*
	15	275	1100*	650*
Nov.	1	275	1100*	650
	15	275	1100	650
Dec.	1	275	1100	650
	15	275	1100	650

Month	Day	WDOE-	WDOE-	WDOE-
		Porter Creek	Racehorse Cr.	Saar Creek
Jan.	1	10	60	35*
	15	10	60	35*
Feb.	1	10	60	35*
	15	10	60	35*
Mar.	1	10	60	35*
	15	10	60	35*
Apr.	1	10	60	35*
	15	10	80	35*
May	1	10	80	35*
	15	10	90	35*
Jun.	1	10	90	35*
	15	10	90	35*

Jul.	1	10*	50*	22*
	15	6*	35*	15*
Aug.	1	3*	20*	9*
	15	3*	20*	6*
Sep.	1	3*	20*	6*
	15	3*	20*	6*
Oct.	1	3*	20*	12*
	15	6*	30*	14*
Nov.	1	10*	35*	17*
	15	10	40	19*
Dec.	1	10	47	23*
	15	10	55	35*

May	1	70*	30*	8*	6*
	15	60*	22*	5*	5*
Jun.	1	40*	17*	4*	4*
	15	35*	12*	3*	3*
Jul.	1	25*	10*	2*	2*
	15	20*	7*	2*	2*
Aug.	1	20*	5*	2*	2*
	15	20*	5*	2*	2*
Sep.	1	20*	5*	2*	2*
	15	20*	6*	2*	2*
Oct.	1	20*	7*	2*	2*
	15	20*	10*	2*	2*
Nov.	1	35*	15*	3*	3*
	15	60*	20*	5	6
Dec.	1	80*	30*	7	8
	15	100*	40*	12	11

Month Day WDOE-2132-00 Silver Creek 12-2095-00 Skookum Cr. WDOE-2111-00 Smith Creek

Jan.	1	12	115	40
	15	12	115	40
Feb.	1	12	115	40
	15	12	115	40
Mar.	1	12	115	40
	15	12	115	40
Apr.	1	12	115	40
	15	12	115	60
May	1	12*	115	60*
	15	9*	115	60*
Jun.	1	7*	115	60*
	15	6*	115	40*
Jul.	1	4*	115*	35*
	15	3*	66*	25*
Aug.	1	3*	66*	15*
	15	3*	66*	10*
Sep.	1	3*	66*	10*
	15	3*	66*	10*
Oct.	1	4*	66*	15*
	15	4*	80*	20*
Nov.	1	6*	115*	23*
	15	10	115	25
Dec.	1	12	115	30
	15	12	115	35

Month Day	12-2145-00 Sumas River	12-2129-00 Tenmile Cr.	WDOE-2133-00 Terrell Cr.	WDOE-2126-00 Wisner Lk. Cr.
Jan.	1	100*	40*	12
	15	100*	40*	12
Feb.	1	100*	40*	12
	15	100*	40*	12
Mar.	1	100*	40*	12
	15	100*	40*	12
Apr.	1	100*	40*	12
	15	100*	40*	12

(3) Instream flow hydrographs, as represented in Appendix A of the document entitled Nooksack Instream Resources Protection Program, shall be used for identification of instream flows on those days not specifically identified in WAC 173-501-030(2).

(4) Future consumptive water right permits issued hereafter for diversion of surface water in the Nooksack WRIA and perennial tributaries shall be expressly subject to instream flows established in WAC 173-501-030 (1) through (3) as measured at the appropriate gage, preferably the nearest one downstream and at all other downstream control stations, except for those uses described in WAC 173-501-070 (1) through (3).

(5) Projects that would reduce the flow in a section of stream's length (e.g., hydroelectric projects that withdraw streamflow from some length of the channel) are considered consumptive with respect to the affected stream reach. Such projects will be subject to instream flow requirements as specified by the department. These flows will be those established in WAC 173-501-030 (1) through (3) and WAC 173-501-040, or may be flows specifically tailored to that particular project and stream reach. When studies are required to determine such reach and project-specific flow requirements, the department will require the project proponent to conduct such studies in consultation with affected state and federal agencies and Indian tribes.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-030, filed 12/4/85.]

WAC 173-501-040 Surface water source limitations to further consumptive appropriation. (1) The following table indicates the status of streams, tributaries and lakes affected by this chapter.

Source Name	Tributary To	Former Administrative Status	Status Under Regulation	Period of Closure	Flow Established
Anderson Creek	Nooksack River	low flow	partial year closure	May 1-Oct. 31	WAC 173-501-030(2)
Bells Creek	North Fork Nooksack	open	closure	year round	WAC 173-501-030(2)
Bertrand Creek	Nooksack River	closure	closure	year round	WAC 173-501-030(2)
Black Slough	Nooksack - South Fork	low flow	low flow		
California Creek	Drayton Harbor	closure	closure	year round	WAC 173-501-030(2)
Canyon Creek	North Fork Nooksack	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Canyon (Lake) Creek	Middle Fork Nooksack	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Chuckanut Creek	Chuckanut Bay	low flow	closure	year round	natural flow
Colony Creek (incl. Whitehall)	Samish Bay	open	closure	year round	natural flow

Cornell Creek	North Fork Nooksack	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Dakota Creek	Drayton Harbor	closure	closure	year round	WAC 173-501-030(2)
Deer Creek	Barrett Lake (Tenmile)	closure	closure	year round	WAC 173-501-030(2)
Fishtrap Creek (incl. Double Ditch)	Nooksack River	closure	closure	year round	WAC 173-501-030(2)
Fourmile Creek	Tenmile Creek	closure	closure	year round	WAC 173-501-030(2)
Gallop Creek	North Fork Nooksack	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Hutchinson Creek	South Fork Nooksack	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Johnson Creek	Sumas River	closure	closure	year round	WAC 173-501-030(2)
Kamm Ditch/ Stickney Slough	Nooksack River	closure	closure	year round	natural flow
Kendall Creek	North Fork Nooksack	open	closure	year round	WAC 173-501-030(2)
Maple Creek	North Fork Nooksack	open	closure	July 1-Oct. 31	WAC 173-501-030(2)
Nooksack River - mainstem	Bellingham Bay	low flow	minimum flow (new flow)		WAC 173-501-030(2)
Nooksack River - Middle Fk.	Nooksack River	low flow	minimum flow (new flow)		WAC 173-501-030(2)
Nooksack River - North Fk.	Nooksack River	low flow	partial year closure	Sept. 1-Oct. 31	WAC 173-501-030(2)
Nooksack River - South Fk.	Nooksack River	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Oyster Creek	Samish Bay	open	closure	year round	natural flow
Padden Creek	Bellingham Bay	open	closure	year round	natural flow
Porter Creek	Middle Fork Nooksack	open	partial year closure	July 1-Oct. 1	WAC 173-501-030(2)
Racehorse Creek	North Fork Nooksack	open	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Saar Creek	Vedder Canal-Canada	open	closure	year round	WAC 173-501-030(2)
Saxon Creek	South Fork Nooksack	open	closure	year round	natural flow
Silver Creek	Nooksack River	low flow	partial year closure	May 1-Oct. 31	WAC 173-501-030(2)
Skookum Creek	South Fork Nooksack	low flow	partial year closure	July 1-Oct. 31	WAC 173-501-030(2)
Smith Creek	Nooksack River	low flow	partial year closure	May 1-Oct. 31	WAC 173-501-030(2)
Squalicum Creek	Bellingham Bay	closure	closure	year round	
Sumas River	Vedder Canal-Canada	closure	closure	year round	WAC 173-501-030(2)
Tenmile Creek	Nooksack River	closure	closure	year round	WAC 173-501-030(2)
Terrell Creek	Birch Bay	open	partial year closure	May 1-Oct. 31	WAC 173-501-030(2)
Thompson Creek	Glacier Cr./N. Fk.	open	partial year closure	July 1-Oct. 31	natural flow
Unnamed Stream - Elder Ditch/Scott Ditch	Nooksack River	low flow	low flow		
Unnamed stream - White Creek	Colony Creek	closure	closure		
Whatcom Creek*	Bellingham Bay	open	closure	year round	natural flow
Wiser Lake Creek	Nooksack River	low flow	partial year closure	May 1-Oct. 31	WAC 173-501-030(2)
Lummi Indian Reservation Streams		closure	closure		
Barrett Lake	Tenmile Creek	closure	closure		NA
Green Lake	Fourmile Creek	closure	closure		NA
Lake Terrell	Terrell Creek	closure	closure		NA
Lake Whatcom**	Whatcom Creek	court-ordered	closure		
Wiser Lake	Wiser Lake Creek	lake level	closure	year round	NA
		closure	closure		

For streams listed as "natural flow," insufficient data are available to develop instream flows outside the closure period. Water right applications for consumptive use will be considered on a case by case basis in consultation with the departments of fisheries and game; tribes will also be notified.

Streams which are not specifically listed in this regulation are affected by the regulation if they are tributary to streams or lakes listed herein; otherwise such streams are not affected.

*No exemptions. See WAC 173-501-070(2).

**Lake Whatcom and its tributaries are closed to all further consumptive appropriation; however, any water right applications for consumptive use which were on file with the department of ecology on August 7, 1985 shall be exempt from the closure through the period extending one year from the effective date of this chapter.

(2) When a project (as described in WAC 173-501-030(5)) is proposed on a stream that is closed to further

appropriations, the department shall deny the water right application unless the project proponent can adequately demonstrate that the project does not conflict with the intent of the closure.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-040, filed 12/4/85.]

WAC 173-501-050 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-050, filed 12/4/85.]

WAC 173-501-060 Ground water. If department investigations determine that there is significant hydraulic continuity between surface water and the proposed ground water source, any water right permit or certificate issued shall be subject to the same conditions as affected surface waters. If department investigations determine that withdrawal of ground water from the source aquifers would not interfere with stream flow during the period of stream closure or with maintenance of minimum instream flows, then applications to appropriate public ground waters may be approved.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-060, filed 12/4/85.]

WAC 173-501-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, perfected riparian rights, federal Indian and non-Indian reserved rights, appropriative or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Single domestic, (including up to 1/2 acre lawn and garden irrigation and associated noncommercial stockwatering) shall be exempt from the provisions established in this chapter, except that Whatcom Creek is closed to any further appropriation, including otherwise exempted single domestic use. For all other streams, when the cumulative impact of single domestic diversions begins to significantly affect the quantity of water available for instream uses, then any water rights issued after that time shall be issued for in-house use only, if no alternative source is available.

(3) Nonconsumptive uses which are compatible with the intent of this chapter may be approved.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-070, filed 12/4/85.]

WAC 173-501-080 Policy statement for future permitting actions. (1) No rights to divert or store public surface waters of WRIA 1 shall hereafter be granted which shall conflict with the purpose of this chapter except as provided in RCW 90.54.020 (3)(a).

(2) Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate minimum instream flow in all perennial streams and rivers as well as the water levels in all lakes in the Nooksack WRIA by encouraging the use of alternate sources of water which include (a) ground water, (b) storage water, or (c) acquisition of existing water rights.

[Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-080, filed 12/4/85.]

WAC 173-501-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-501-090, filed 6/9/88. Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-090, filed 12/4/85.]

WAC 173-501-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-501-095, filed 6/9/88.]

WAC 173-501-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-501-100, filed 6/9/88. Statutory Authority: RCW 90.54.020 (3)(a) and 90.54.040 (1) and (2). 85-24-073 (Order 85-19), § 173-501-100, filed 12/4/85.]

Chapter 173-507 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—SNOHOMISH RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 7

WAC

173-507-010	General provision.
173-507-020	Establishment of instream flows.
173-507-030	Surface water source limitations to further consumptive appropriations.
173-507-040	Ground water.
173-507-050	Exemptions.
173-507-060	Future rights.
173-507-070	Enforcement.
173-507-075	Appeals.
173-507-080	Regulation review.

WAC 173-507-010 General provision. These rules apply to surface waters within the Snohomish River basin, WRIA-7 (see WAC 173-500-040). Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program, applies to this chapter 173-507 WAC.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-010, filed 9/6/79.]

WAC 173-507-020 Establishment of instream flows. (1) Instream flows are established for stream management units with monitoring to take place at certain control stations as follows:

STREAM MANAGEMENT UNIT INFORMATION

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township and Range	Affected Stream Reach Including Tributaries
12.1330.00 So. Fk. Skykomish River	51.6 28-27-10E	From confluence with N. Fk. Skykomish River to headwaters.
12.1381.50 Sultan River	5.1 17-28-8E	From mouth to headwaters.
12.1411.00 Skykomish River	25.0 12-27-6E	From mouth to headwaters, excluding So. Fk. Skykomish River and Sultan River.

Flow ID	Flow Description	From	To
12.1430.00 No. Fk. Snoqualmie	2.2 26-24-8E	From mouth to headwaters.	
12.1445.00 Snoqualmie River	40.0 19-24-8E	From Snoqualmie Falls to headwaters, excluding No. Fork Snoqualmie River.	
12.1485.00 Tolt River	8.7 31-26-8E	From mouth to headwaters.	
12.1490.00 Snoqualmie River	23.0 9-25-7E	From confluence with Harris Creek to Snoqualmie Falls, excluding Tolt River.	
12. Snoqualmie River	2.5 26-27-6E	From mouth to confluence with Harris Creek, including Harris Creek.	
12.1554.00 Pilchuck River	1.9 18-28-6E	From mouth to headwaters.	
12.1508.00 Snohomish River	20.4 16-27-6E	From influence of mean annual high tide at low base flow levels to confluence with Skykomish River and Snoqualmie River, excluding Pilchuck River.	

(2) Instream flows established for the stream management units in WAC 173-507-020(1) are as follows:

INSTREAM FLOWS IN THE SNOHOMISH RIVER BASIN
(in Cubic Feet per Second)

Month	Day	12.1330.00 So.Fk. Skykomish	12.1411.00 Skykomish	12.1430.00 No.Fk* Snoqualmie	No.Fk.** Snoqualmie
Jan.	1	900	2200	260	200
	15	900	2200	260	200
Feb.	1	900	2200	260	200
	15	900	2200	260	200
Mar.	1	900	2200	260	200
	15	900	2200	300	200
Apr.	1	1100	2650	300	200
	15	1250	3250	300	200
May	1	1250	4000	300	200
	15	1250	4900	300	200
June	1	1250	4900	300	200
	15	1250	4900	300	200
July	1	1250	3250	300	200
	15	950	2170	195	140
Aug.	1	650	1450	130	100
	15	450	1000	130	100
Sept.	1	450	1000	130	100
	15	450	1000	130	100
Oct.	1	550	1300	130	130
	15	700	1700	165	165
Nov.	1	900	2200	210	200
	15	900	2200	260	200
Dec.	1	900	2200	260	200
	15	900	2200	260	200

*Normal year flows must be maintained at all times unless a critical condition is declared by the director. The director, or his designee, may authorize, in consultation with the state departments of fisheries and wildlife, a reduction in instream flows during a critical condition period. At no time are diversions subject to this regulation permitted for any reason when flows fall below the following critical year flows, except where a declaration of overriding considerations of public interest is made by the director.

**Critical year flows represent flows below which the department believes substantial damage to instream values will occur.

Month	Day	12.1381.50 Sultan	12.1445.00 Snoqualmie (above Falls)	12.1485.50 Tolt River*	Tolt River**
Jan.	1		1550	280	190
	15		1550	280	190
Feb.	1		1550	280	190
	15		1550	280	190
Mar.	1		1550	280	190
	15		1550	280	190
Apr.	1		1550	280	190
	15		1550	280	190
May	1		1550	280	190
	15		1550	280	190
June	1		1550	280	190
	15		1550	280	165
July	1		1550	280	140
	15		1100	240	120
Aug.	1		770	170	120
	15		600	120	120
Sept.	1		600	120	120
	15		600	120	120
Oct.	1		820	190	185
	15		1100	280	190
Nov.	1		1550	280	190
	15		1550	280	190
Dec.	1		1550	280	190
	15		1550	280	190

*Normal year flows must be maintained at all times unless a critical condition is declared by the director. The director, or his designee, may authorize, in consultation with the state departments of fisheries and wildlife, a reduction in instream flows during a critical condition period. At no time are diversions subject to this regulation permitted for any reason when flows fall below the following critical year flows, except where a declaration of overriding considerations of public interest is made by the director.

**Critical year flows represent flows below which the department believes substantial damage to instream values will occur.

Month	Day	12.1490.00 Snoqualmie (Carnation)	12. Snoqualmie (mouth)	12.1554.00 Pilchuck R.	12.1508.00 Snohomish R.
Jan.	1	2500	2800	300	6000
	15	2500	2800	300	6000
Feb.	1	2500	2800	300	6000
	15	2500	2800	300	6000
Mar.	1	2500	2800	300	6000
	15	2500	2800	300	6000
Apr.	1	2500	2800	300	6000
	15	2500	2800	300	6500
May	1	2500	2800	300	7200
	15	2500	2800	300	8000
June	1	2500	2800	300	8000
	15	2500	2800	300	8000
July	1	1850	2180	220	5700
	15	1300	1550	160	4000
Aug.	1	950	1080	120	2800
	15	700	800	85	2000
Sept.	1	700	800	85	2000
	15	700	800	85	2000
Oct.	1	1050	1200	130	2900
	15	1650	1850	200	4000
Nov.	1	2500	2800	300	6000
	15	2500	2800	300	6000
Dec.	1	2500	2800	300	6000
	15	2500	2800	300	6000

(3) Instream flow hydrographs, as represented in the document entitled "Snohomish River instream resource protection program," shall be used for definition of instream

flows on those days not specifically identified in WAC 173-507-020(2).

(4) All consumptive water rights hereafter established shall be expressly subject to the instream flows established in WAC 173-507-020 (1) through (3).

(5) At such time as the departments of fisheries and/or wildlife and the department of ecology agree that additional stream management units should be defined, other than those specified in WAC 173-507-020(1), the department of ecology shall identify additional control stations and management units on streams and tributaries within the basin and shall set instream flows where possible for those stations as provided in chapters 90.22 and 90.54 RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-507-020, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-020, filed 9/6/79.]

WAC 173-507-030 Surface water source limitations to further consumptive appropriations. (1) The department, having determined further consumptive appropriations would harmfully impact instream values, adopts instream flows as follows confirming surface water source limitations previously established administratively under authority of chapter 90.03 RCW and RCW 75.20.050.

LOW FLOW LIMITATIONS

Stream	Limitation	Point of Measurement
Evans Creek, Tributary to Lake Beecher	No diversion when flow drops below 2.0 cfs.	800 ft. So. and 800 ft. east of center of Sec. 7, T. 27 N., R. 6 E.W.M.
Foye Creek Tributary to Riley Slough	No diversion when flow drops below 4.0 cfs.	750 ft. So. and 325 ft. east of N1/4 cor. of Sec. 18, T. 27 N., R. 6 E.W.M.
French Creek, Tributary to Snohomish River	No diversion when flow drops below 0.75 cfs.	125 ft. No. and 1300 ft. west of E1/4 of Sec. 20, T. 28 N., R. 6 E.W.M.
Langlois Creek Tributary to Tolt River	No diversion when flow drops below 3.0 cfs.	1040 ft. No. and 1250 ft. east of SW1/4 cor. of Sec. 22, T. 25 N., R. 7 E.W.M.
Tate Creek, Tributary to No. Fk. Snoqualmie River	No diversion when flow drops below 2.0 cfs.	900 ft. east and 870 ft. No. of W1/4 cor. of Sec. 26, T. 24 N., R. 8 E.W.M.
Tulalip Creek, Tributary to Tulalip Bay	No diversion when flow drops below 2.5 cfs.	1125 ft. west and 125 ft. No. of S1/4 cor. of Sec. 22, T. 30 N., R. 4 E.W.M.
Unnamed Stream (Coon Creek), Tributary to Pilchuck River.	No diversion when flow drops below 1.0 cfs.	480 ft. No. and 240 ft. west of center of Sec. 19, T. 30 N., R. 7 E.W.M.
Unnamed Stream (Coon Creek), Tributary to Pilchuck River	One-half of low flow must be bypassed.	800 ft. east and 1100 ft. So. of W1/4 cor. of Sec. 19, R. 30 N., R. 7 E.W.M.
Unnamed Stream, Tributary to Cherry Creek	No diversion when flow drops below 1.0 cfs.	1000 ft. So. and 400 ft. west of NE cor. of Sec. 16, T. 26 N., R. 7 E.W.M.

Unnamed Stream, Tributary to McCoy Creek	No diversion when flow drops below 0.5 cfs.	600 ft. west and 100 ft. No. of SE cor. of Sec. 5, T. 27 N., R. 8 E.W.M.
Unnamed Stream, Tributary to Snoqualmie River	No diversion when flow drops below 30.0 cfs.	350 ft. west and 900 ft. No. of SE cor. of Sec. 5, T. 27 N., R. 8 E.W.M.
Unnamed Stream (Solberg Creek), Tributary to Snoqualmie River	No diversion when flow drops below 2.0 cfs.	600 ft. west and 1050 ft. No. of E cor. of Sec. 12, T. 25 N., R. 6 E.W.M.
Unnamed Stream, Tributary to Snoqualmie River	One-half of low flow must be bypassed.	500 ft. So. and 1120 ft. east of center Sec. 28, T. 25 N., R. 7 E.W.M.
Unnamed Stream, Tributary to Snoqualmie River	No diversion when flow falls below 1.0 cfs.	600 ft. No. of E1/4 cor. of Sec. 28, T. 25 N., R. 7 E.W.M.
Wood Creek, Tributary to Snohomish River	No diversion when flow drops below 0.75 cfs.	335 ft. No. and 130 ft. east of S1/4 cor. of Sec. 8, T. 28 N., R. 5 E.W.M.
Woods Creek Tributary to Skykomish River	No diversion when flow drops below 11.0 cfs.	Immediately below confl. of West Fork in SE1/4NW1/4 Sec. 33, T. 28 N., R. 7 E.W.M.
Woods Creek, Tributary to Skykomish River	No diversion when flow drops below 6.0 cfs.	Immediately above said confl. of West Fork.
Woods Creek, Tributary to Skykomish River	No diversion when flow drops below 2.5 cfs.	Immediately above confl. of Roesigner Cr. in NE1/4NW1/4 of Sec. 3, T. 28 N., R. 7 E.W.M.
Woods Creek, Tributary to Skykomish River	No diversion when flow drops below 0.5 cfs.	Roesigner Creek, immediately above said confl. with Woods Creek.
Woods Creek, Tributary to Skykomish River	No diversion when flow drops below 5.0 cfs.	West Fork, immediately above said confl. with Woods Creek.
Woods Creek, Tributary to Skykomish River	No diversion when flow drops below 2.5 cfs.	West Fork when it crosses the No. line of Sec. 5, T. 28 N., R. 7 E.W.M.
Unnamed Lake (Morris Lake), Tributary to Horseshoe Lake	No diversion when flow drops below 1.0 cfs.	Lake outlet at NE1/4NE1/4 of Sec. 9, T. 25 N., R. 7 E.W.M.

Note: Affected stream reaches extend from mouth to headwaters and include all tributaries in the contributing drainage area unless specifically excluded.

(2) The department, having determined there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the following streams to further consumptive appropriation for the periods indicated. These closures confirm surface water source limitations previously established administratively under authority of chapter 90.03 RCW and RCW 75.20.050.

SURFACE WATER CLOSURES

Stream	Date of Closure	Period of Closure
Griffin Creek, Tributary to Snoqualmie River	9/22/53	All year
Harris Creek, Tributary to Snoqualmie River	1/20/44	All year
Little Pilchuck Creek, Tributary to Pilchuck River	5/6/52	All year
May Creek, Tributary to Wallace River	10/13/53	All year
Patterson Creek, Tributary to Snoqualmie River	2/19/52	All year
Quilceda Creek, Tributary to Ebey Slough	6/10/46	All year
Raging River, Tributary to Snoqualmie River	9/20/51	All year
Unnamed Stream (Bodell Creek), Tributary to Pilchuck River	9/6/51	All year

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-030, filed 9/6/79.]

WAC 173-507-040 Ground water. In future permitting actions relating to ground water withdrawals, the natural interrelationship of surface and ground waters shall be fully considered in water allocation decisions to assure compliance with the meaning and intent of this regulation.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-040, filed 9/6/79.]

WAC 173-507-050 Exemptions. (1) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric or water storage reservoir or related facilities.

(2) Domestic inhouse use for a single residence and stock watering, except that related to feed lots, shall be exempt.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-050, filed 9/6/79.]

WAC 173-507-060 Future rights. No right to divert or store public surface waters of the Snohomish WRIA 7 shall hereafter be granted which shall conflict with the instream flows and closures established in this chapter. Future rights for nonconsumptive uses, subject to the conditions herein established, may be granted.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-060, filed 9/6/79.]

WAC 173-507-070 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Title 173 WAC—page 1054]

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-507-070, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-070, filed 9/6/79.]

WAC 173-507-075 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-507-075, filed 6/9/88.]

WAC 173-507-080 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-507-080, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-003 (Order DE 79-8), § 173-507-080, filed 9/6/79.]

Chapter 173-508 WAC

**INSTREAM RESOURCES PROTECTION
PROGRAM—CEDAR-SAMMAMISH BASIN,
WATER RESOURCE INVENTORY AREA (WRIA) 8**

WAC

173-508-010	Authority.
173-508-020	Purpose.
173-508-030	Closures and instream flows.
173-508-040	Table 1—Cedar-Sammamish basin—WRIA 8.
173-508-050	Ground water.
173-508-060	Instream flows for the Cedar River.
173-508-070	Future rights.
173-508-080	Exemptions.
173-508-090	Enforcement.
173-508-095	Appeals.
173-508-100	Regulation review.

WAC 173-508-010 Authority. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resource management program).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-010, filed 9/6/79. Formerly chapter 173-30 WAC.]

WAC 173-508-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in Lake Washington drainages with instream flows and levels necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, navigational values, and to preserve water quality.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-020, filed 9/6/79.]

WAC 173-508-030 Closures and instream flows. (1) The department of ecology has determined that additional diversions of water from the Lake Washington drainage system would deplete instream flows and lake levels required

to support the uses described in WAC 173-508-020. Therefore, lakes and streams contributing to the Lake Washington drainage above the Hiram M. Chittenden Locks, excluding the Cedar River drainage, shall be closed to further consumptive appropriations. Regulation to protect instream flows in the Cedar River and its tributaries shall be undertaken pursuant to WAC 173-508-060.

(2) WAC 173-508-040—Table 1, includes specific named and unnamed surface water sources in water resource inventory area 8 with restrictions indicated. All tributaries in the Lake Washington drainage not specifically included in Table 1 are closed.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-030, filed 9/6/79.]

WAC 173-508-040 Table 1—Cedar-Sammamish basin—WRIA 8.

Stream or Lake	Tributary to	Restriction
(Little) Bear Creek	Sammamish River	Closure
Cedar River (including tributaries)	Lake Washington	Instream Flow Levels
Coal Creek	Lake Washington	Closure
Cottage Lake Creek and tributaries, Bear Creek	Sammamish River	Closure
Evans Creek		Closure
Haller Lake	Thornton Creek	Closure
Issaquah Creek	Sammamish Lake	Closure
N. Fork Issaquah		Closure
E. Fork Issaquah		Closure
Unnamed Stream		Closure
Fifteen Mile Creek		Closure
Holder Creek		Closure
Carey Creek		Closure
Lake Washington	Puget Sound	Closure
Sammamish River	Lake Washington	Closure
Lake Sammamish	Sammamish River	Closure
Tibbetts Creek	Sammamish Lake	Closure
Pine Lake and Unnamed Stream (Pine Lake Creek)	Sammamish Lake	Closure
Laughing Jacobs Creek	Sammamish Lake	Closure
Larson Lake (including tributaries)	Lake Washington	Closure
Lyon Creek	Lake Washington	Closure
Martha Lake	Swamp Creek	Closure
May Creek	Lake Washington	Closure
McAleer Creek		Closure
Lake Ballinger (McAleer Lake)	Lake Washington	Closure
Mercer Slough	Lake Washington	Closure
Kelsey Creek		Closure
Kinsley Creek		Closure
Mercer Slough Creek		Closure
North Creek	Sammamish River	Closure
Silver Lake		Closure
Pipers Creek	Puget Sound	Closure
Rock Creek	Cedar River	Closure
Swamp Creek	Sammamish River	Closure
Unnamed Springs	Sammamish Lake	Closure
Unnamed Stream (11-26-3E)	Puget Sound	Closure
Unnamed Stream (12-24-5E)	Sammamish Lake	Closure
Unnamed Stream (Jones Creek)	Cedar River	Closure
Unnamed Stream (Juanita Creek)	Lake Washington	Closure
Unnamed Stream (Northrup Creek)	Lake Washington	Closure
Unnamed Stream (Wildcat Creek)	Sammamish River	Closure
Thornton Creek	Lake Washington	Closure

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-040, filed 9/6/79.]

WAC 173-508-050 Ground water. In future permitting actions relating to ground water withdrawals, the natural

interrelationship of surface and ground waters shall be fully considered in water allocation decisions to assure compliance with the intent of this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-050, filed 9/6/79.]

WAC 173-508-060 Instream flows for the Cedar River. (1) The instream flows established in this section apply to waters of the Cedar River and affect the entire watershed drained by the Cedar River including all tributaries thereto.

(2) Instream flows established in this section shall be measured at the existing U.S. Geological Survey gaging station No. 12.1190.00 on the Cedar River at Renton, Washington.

(3) Except as provided herein (critical year flows), water flows in the Cedar River and tributaries thereto shall, to the extent depletion under existing rights and natural flow conditions permit, be maintained throughout each year at levels which, during the time periods designated, do not fall below the following measurements:

(a) Normal Year Flow

January 1 to June 20:	370 cfs
June 20 to July 15:	Linear decrease from 370 cfs on June 20 to 130 cfs on July 15
July 15 to September 10:	130 cfs
September 10 to September 20:	Linear increase from 130 cfs on September 10 to 200 cfs on September 20
September 20 to October 1:	200 cfs
October 1 to October 10:	Linear increase from 200 cfs on October 1 to 370 cfs on October 10
October 10 to January 1:	370 cfs

Normal year flows must be maintained at all times unless a critical condition is declared by the director. If natural Cedar River flows fall below the 1 in 10 year Cedar River flow frequency, the director, or his designee, may authorize flows below the normal year flows, but not lower than the critical year flow except where a declaration of overriding considerations of public interest is made by the director. All requests to deplete below the established instream flow level will be considered on a case-by-case basis.

(b) Critical Year Flow

January 1 to June 15:	250 cfs
June 15 to July 1:	Linear decrease from 250 cfs on June 15 to 110 cfs on July 1
July 1 to October 1:	110 cfs

October 1 to November 1:	Linear increase from 110 cfs on October 1 to 250 cfs on November 1
November 1 to January 1:	250 cfs

Critical year flows represent flows below which the department believes substantial damage to instream values will occur. Critical year flows are expected to be met unless natural Cedar River flows fall below the one in fifty year Cedar River flow frequency.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-060, filed 9/6/79.]

WAC 173-508-070 Future rights. No water rights to divert or store public surface waters of the Cedar-Sammamish basin WRIA 8 shall hereafter be granted which shall conflict with the instream flows and closures established in this chapter. Future rights for nonconsumptive uses may be granted under the provisions of this chapter.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-508-070, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-070, filed 9/6/79.]

WAC 173-508-080 Exemptions. (1) Nothing in this chapter shall affect any existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter; nor shall it affect existing rights relating to the operation of any navigation, hydroelectric or water storage reservoir or related facilities.

(2) Domestic inhouse use for a single residence and stock watering, except that related to feedlots, shall be exempt from this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-080, filed 9/6/79.]

WAC 173-508-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-508-090, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-090, filed 9/6/79.]

WAC 173-508-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-508-095, filed 6/9/88.]

WAC 173-508-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-508-100, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 79-10-002 (Order DE 79-9), § 173-508-100, filed 9/6/79.]

Chapter 173-509 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—GREEN-DUWAMISH RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 9

WAC

173-509-010	Purpose.
173-509-015	Background.
173-509-020	General provision.
173-509-030	Establishment of instream flows.
173-509-040	Surface water source limitations to further consumptive appropriations.
173-509-050	Ground water.
173-509-060	Future rights.
173-509-070	Exemptions.
173-509-080	Enforcement.
173-509-085	Appeals.
173-509-090	Regulation review.
173-509-100	Implementation.

WAC 173-509-010 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Green-Duwamish drainage basin with instream flows and levels necessary for preservation and protection of wildlife, fish, scenic, aesthetic and other environmental values, recreational and navigational values, and to preserve water quality. Nothing in this chapter shall preclude the future issuance of regulations and/or signing of intergovernmental agreements which attempt to optimize the total public use of the basin water resources, providing they are consistent with the intent of this chapter. The instream flow rules presented here are for preservation of the existing resources so that when future planning or development occurs on this river these resources will be available.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-010, filed 6/6/80.]

WAC 173-509-015 Background. The Green-Duwamish River basin has been modified significantly since settlement of the area. Urbanization in the lower basin has influenced water quality and diversions for municipal and industrial water supply have altered the stream flow of the Green-Duwamish River. Ground water has been developed for consumptive use within the basin. The White River originally had a confluence with the Green River near Auburn but since 1906 it has been diverted into the Puyallup River. A dam on the Black River near Tukwila prevents water from the Green River from flowing into Lake Washington during periods of high flow. In 1913 the city of Tacoma commenced diversions for municipal and industrial uses. Since 1962 the Green-Duwamish River has been influenced by the operation of the Howard A. Hanson Dam, a Corps of Engineers flood control project with authorization to provide instream flow maintenance of at least 110 cfs for fisheries conservation purposes. The operation has also considered drinking water quality requirements of the city of Tacoma.

The Green-Duwamish River basin is a natural rearing and spawning area primarily for steelhead trout and chinook, coho and chum salmon. Fish hatcheries are located on tributary streams and these contribute to total numbers of fish produced by the river system. The river itself and the shoreline also offer easily accessible recreational opportunities.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-015, filed 6/6/80.]

WAC 173-509-020 General provision. These rules apply to all waters within the Green-Duwamish River basin, WRIA 9 (see WAC 173-500-040). This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resources management program). The provisions of this chapter apply, as a matter of state law, to future water right authorizations issued pursuant to the state's water rights codes.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-020, filed 6/6/80.]

WAC 173-509-030 Establishment of instream flows.

(1) Instream flows are established for stream management units with monitoring to take place at certain control stations as follows:

STREAM MANAGEMENT UNIT INFORMATION

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township and Range	Affected Stream Reach Including Tributaries
12.1130.00 Green River near Auburn, WA	32.0 17-21-5	From influence of mean annual high tide at low instream flow levels (approximately River Mile 11.0) to USGS Gage #12.1067.000
12.1067.00 Green River near Palmer, WA	60.4 13-21-7	From USGS Gage #12.1067.000 to headwaters.

The Palmer gage will be used to condition future water rights upstream from that gage. The Auburn gage will be used to condition future water right appropriations downstream from the Palmer gage. If it becomes necessary to change a control station location to improve measurement accuracy or management capability, the department shall do so under provisions in WAC 173-500-060(6).

(2) Instream flows established for the stream management units in WAC 173-509-030(1) are as follows:

INSTREAM FLOWS FOR FUTURE WATER RIGHTS IN THE
GREEN-DUWAMISH RIVER BASIN
(in Cubic Feet per Second)

Month	Day	12.1130.00 Normal Year Green River Near Auburn	12.1067.00 Normal Year Green River Near Palmer	12.1067.00 Critical Year Green River Near Palmer
Jan.	1	650	300	300
	15	650	300	300
Feb.	1	650	300	300
	15	650	300	300
Mar.	1	650	300	300
	15	650	300	300
Apr.	1	650	300	300
	15	650	300	300
May	1	650	300	300
	15	650	300	300
June	1	650	300	300
	15	650	300	210
July	1	550	300	150
	15	300	150	150
Aug.	1	300	150	150
	15	300	150	150
Sept.	1	300	150	150
	15	300	150	150
Oct.	1	300	190	150
	15	350	240	150
Nov.	1	550	300	190
	15	550	300	240
Dec.	1	650	300	300
	15	650	300	300

(a) Future water right holders subject to regulation by the Palmer gage will not be allowed to continue diversions when flows fall below the normal year instream flows at the Palmer gage unless a critical condition is declared by the director. The director, or his designee, may authorize, in consultation with the state departments of fisheries and wildlife, a reduction in instream flows during a critical condition period. At no time will diversions subject to regulation by the Palmer gage be continued when flows fall below the critical year instream flows at Palmer. At no time will diversions subject to regulation by the Auburn gage be continued when flows fall below the normal year instream flows at Auburn. When a declaration of overriding considerations of public interest is made by the director, these requirements may be modified or waived. A declaration of overriding consideration because of drought conditions shall not be made when natural flows equal or exceed the one-in-fifty year low flow condition. The director shall consult with the directors of the state departments of wildlife and fisheries before making a declaration of overriding consideration. Any declaration of critical conditions or overriding considerations of public interest made by the director shall be communicated to all basin resource agencies, water purveyors, and local general purpose governments, and include the reason for such declaration and its expected duration.

(b) The director will consider declaring a critical period when:

(1) In the spring the basin runoff volume forecast of May 1 is not adequate to meet the sum of any rights which the city of Tacoma may have established through historical usage prior to the adoption of this regulation plus the normal

year instream flows plus the volume required to replenish the conservation storage.

(2) In the summer and fall the sum of the reservoir inflows extrapolated from current observations plus the volume of water in storage at Howard A. Hanson Dam is not adequate to meet the sum of any rights which the city of Tacoma may have established through historical usage prior to the adoption of this regulation plus the normal year instream flows. Within five days the director will inform the major affected water right holders of the extent of the allowed deviation from the normal year instream flows. Once a deviation from normal year instream flows is allowed, the water resources shall be evaluated at least every 7 days to see if additional deviation is warranted. Before allowing deviation from the normal year instream flows, water conservation practices and use of other sources shall be considered.

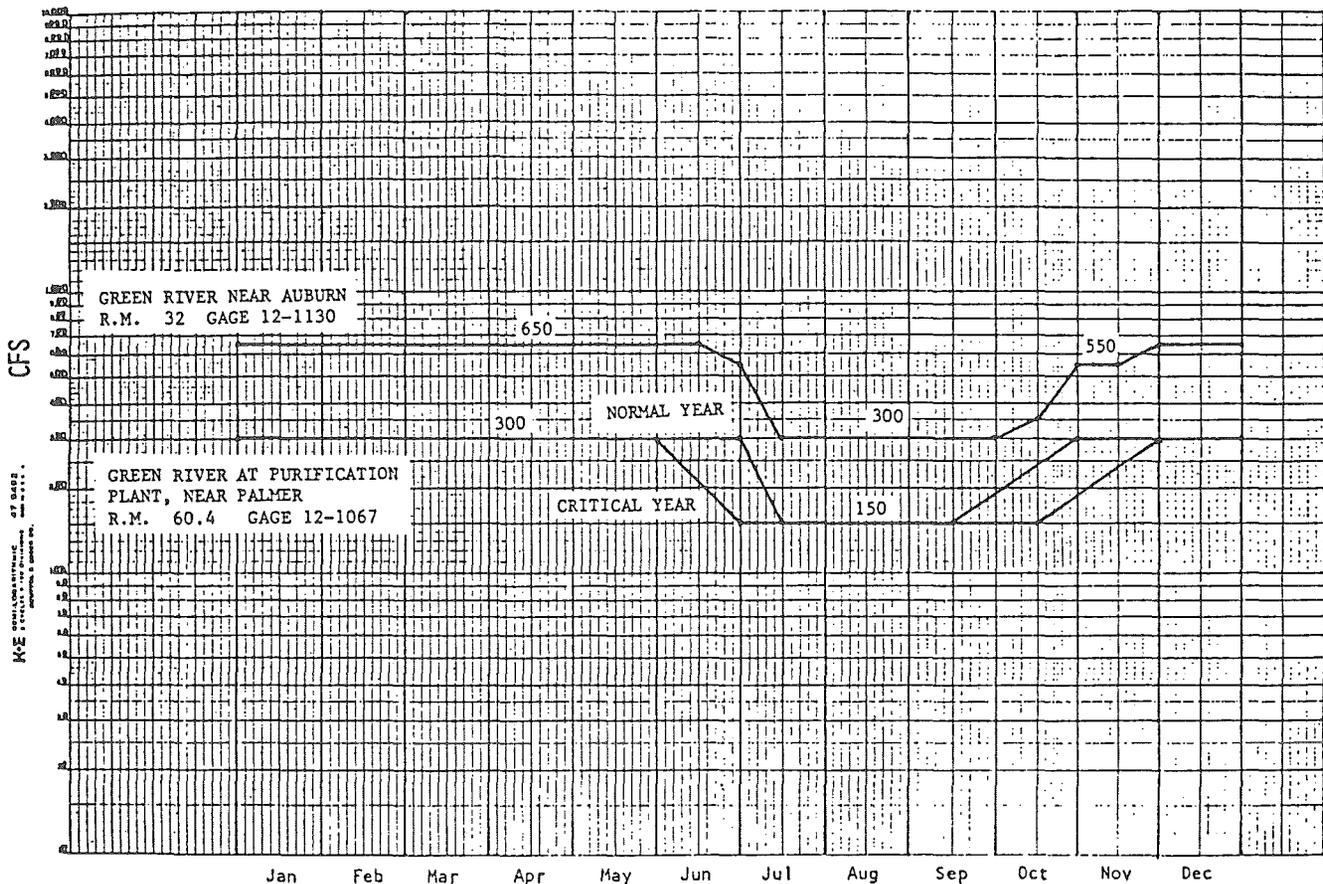
(c) In addition to other necessary provisions, any diversion of the natural flow, including diversion to storage under future water rights shall cease (or be regulated to the extent necessary) when the flow at the applicable control station falls below (or is less than) the instream flows established by this regulation and made a condition of said

future water right. Said future water rights are subject to the rights and authority of the Corps of Engineers to utilize for storage and conservation flows, the natural inflow to the Howard A. Hanson reservoir and to all other prior water right holders' authorized use of natural flows, including any rights that the city of Tacoma may have established through historical usage. The use of stored waters is not to be impaired, limited, or diminished by this regulation.

The department recognizes that from time to time the Corps of Engineers may establish a minimum reservoir level which is necessary to provide conservation flows with a high measure of assurance. When the reservoir falls below this level it may be necessary for the Corps of Engineers to replenish conservation storage. When this occurs, water rights subject to the provisions of this chapter may be temporarily regulated or diminished and the actual stream discharge diminished.

(3) Instream flows, as represented in Figure 1, shall be used for definition of instream flows on those days not specifically identified in WAC 173-509-030(2).

FIGURE 1 - PROPOSED INSTREAM FLOWS FOR FUTURE WATER RIGHTS IN THE GREEN-DUWAMISH RIVER BASIN



(4) All consumptive water rights hereafter established shall be expressly subject to the instream flows established in WAC 173-509-030 (1) through (3). However, nothing in

this section shall prohibit the release or diversion of stored water or the use of any water course as a means for its conveyance in accordance with RCW 90.03.030.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-509-030, filed 6/9/88. Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-030, filed 6/6/80.]

WAC 173-509-040 Surface water source limitations to further consumptive appropriations. (1) The department, having determined there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the following streams to further consumptive appropriation for the periods indicated. These closures confirm surface water source limitations previously established administratively under authority of chapter 90.03 RCW and RCW 75.20.050.

SURFACE WATER CLOSURES

Stream	Date of Administrative Closure	Period of Administrative Closure
All tributaries of Green River SE1/4SE1/4 sec. 14, T.32 N., R.4E.	8/19/53	All year
Deep Creek (including Hyde Lk.), tributary to Deep Lake NW1/4SE1/4 sec. 18, T.21N., R.7E.	4/17/53	All year
Unnamed stream (Des Moines Creek, Tributary to Puget Sound SW1/4SW1/4 sec. 8, T.22N., R.4E.	8/22/52	All year
Unnamed stream (Garrison Creek), Tributary to Black River (indirect) NW1/4NW1/4NW1/4 sec. 6, T.22N., R.5E.	10/18/51	All year
Unnamed stream (Miller Creek) (Maybrook Creek), Tributary to Puget Sound NE1/4NE1/4 sec. 36, T.23N., R.3E.	1/7/46	All year
Unnamed stream (Springbrook Creek), Tributary to Black River NE1/4SE1/4SW1/4 sec. 13, T.23N., R.4E.	11/14/45	All year

(2) The department, having determined that maximum lake levels have been established by court decree for certain lakes in WRIA 9, adopts the following lake levels. These maximum lake levels confirm lake levels previously established by order of the superior court for King County.

MAXIMUM LAKE LEVELS

Lakes	Lake Level Established	Date of Order
Angle Lake	349.27 ft. at MSL	4/21/75
Star Lake	324.46 ft. at MSL	9/20/50
Lake Sawyer (Tributary to Covington Creek)	518.94 ft. at MSL	8/5/52

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-040, filed 6/6/80.]

(1995 Ed.)

WAC 173-509-050 Ground water. Future groundwater withdrawal permits will not be affected by this chapter unless such withdrawal would clearly have an adverse impact upon the surface water system contrary to the intent and objectives of this chapter.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-050, filed 6/6/80.]

WAC 173-509-060 Future rights. No right to divert or store public waters of the Green-Duwamish River basin, WRIA 9, shall be granted which shall conflict with the purposes of this chapter: *Provided however*, Withdrawals of water which would conflict with said purposes may be authorized in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-060, filed 6/6/80.]

WAC 173-509-070 Exemptions. (1) Nothing in this chapter shall affect water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric or water storage reservoir or related facilities, including but not limited to: (a) Howard Hanson Dam storage and operation as authorized in the Flood Control Act of May 17, 1950; (b) any existing right the city of Tacoma may have.

(2) Domestic inhouse use for a single residence and stock watering, except that related to feed lots, shall be exempt from the provisions of this chapter.

(3) Storage projects may be approved if they are not in conflict with the purposes of this chapter.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-070, filed 6/6/80.]

WAC 173-509-080 Enforcement. In the enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-509-080, filed 6/9/88. Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-080, filed 6/6/80.]

WAC 173-509-085 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-509-085, filed 6/9/88.]

WAC 173-509-090 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. The director shall initiate a review of the rules by appointing a committee of major affected water

right holders, basin resource management interests, and governmental agencies.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-509-090, filed 6/9/88. Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-090, filed 6/6/80.]

WAC 173-509-100 Implementation. In the event the COE is authorized to change the operation of Howard Hanson Dam in order to meet the stream flows established in this chapter and so advises the director, these regulations shall be reviewed by the department within 180 days of the COE authorization to determine, what, if any, amendments are required to maintain the integrity and purpose of this chapter.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. 80-07-005 (Order DE 79-32), § 173-509-100, filed 6/6/80.]

Chapter 173-510 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—PUYALLUP RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 10

WAC

173-510-010	General provision.
173-510-020	Purpose.
173-510-030	Establishment of instream flows.
173-510-040	Surface water source limitations to further consumptive appropriations.
173-510-050	Ground water.
173-510-060	Lakes.
173-510-070	Exemptions.
173-510-080	Future rights.
173-510-090	Enforcement.
173-510-095	Appeals.
173-510-100	Regulation review.

WAC 173-510-010 General provision. These rules apply to waters within the Puyallup River basin, WRIA 10, as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-010, filed 3/21/80.]

WAC 173-510-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Puyallup River basin with instream flows and levels necessary to provide protection for wildlife, fish, scenic-aesthetic, environmental values, recreation, navigation, and to preserve high water quality standards.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-020, filed 3/21/80.]

WAC 173-510-030 Establishment of instream flows.

(1) Stream management units and associated control stations are established as follows:

STREAM MANAGEMENT UNIT INFORMATION

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township, and Range	Affected Stream Reach(es)
12-0965.00 Upper Puyallup River	12.2 25-20-4E	Confluence with Puyallup River to the headwaters including all tributaries
12-0957.00 Carbon River	0.1 13-19-4E	From the confluence with the White River to the headwaters including all tributaries, excluding the Carbon River.
12-1015.00 Lower Puyallup River	6.6 20-20N-R4E	From the influence of mean annual high tide at low base flow levels to the confluence with the White River including all tributaries and excluding the White River.

(2) Instream flows are established for the stream management units in WAC 173-510-030(1) as follows:

INSTREAM FLOWS IN THE PUYALLUP RIVER BASIN

		(cubic feet per second)		
		12-0965.00 Puyallup River (At Alderton)	12-1015.00 Puyallup River	12-0957.00 Carbon River
Month	Day			
Jan	1	700	1400	600
	15	700	1400	550
Feb	1	750	1400	550
	15	800	1500	550
Mar	1	800	1600	550
	15	850	1700	550
Apr	1	900	1800	600
	15	950	1900	700
May	1	950	2000	900
	15	1000	2000	900
Jun	1	1050	2000	600
	15	1050	2000	500
Jul	1	1050	2000	450
	15	1050	1750	400
Aug	1	900	1500	350
	15	800	1300	350
Sep	1	600	1150	350
	15	500	1000	350
Oct	1	500	1000	350
	15	500	1000	550
Nov	1	600	1000	550
	15	700	1100	600
Dec	1	700	1200	700
	15	700	1300	700

(3) Instream flow hydrographs, as represented in the document entitled "Puyallup River basin instream resource protection program," shall be used for definition of instream flows on those days not specifically identified in WAC 173-510-030(2).

(4) All consumptive water rights hereafter established shall be expressly, subject to instream flows established in WAC 173-510-030(1) through (3).

(5) At such time as the department of fisheries and/or department of wildlife and the department of ecology shall agree that additional stream management units should be

identified other than those specified in WAC 173-510-030(1), the department of ecology shall identify additional control stations and management units on streams and tributaries within the basin and shall further protect instream flows where possible for those stations as provided in chapters 90.22 and 90.54 RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-510-030, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-030, filed 3/21/80.]

WAC 173-510-040 Surface water source limitations to further consumptive appropriations. (1) The department of ecology, having determined unlimited consumptive appropriations would harmfully impact instream values, adopts instream flows as follows confirming surface water source limitations previously established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050.

LOW FLOW LIMITATIONS

Stream Number Stream Name Section, Township, Range of Stream Mouth or Lake Outlet	Limitation
10.0594 Unnamed stream, tributary to Puyallup River NE1/4SE1/4, Sec. 8, T.18N, R.5E	No diversion when flow falls to 0.10 cfs.
10.0415 Unnamed stream, (Taylor Creek) tributary of Carbon River NW1/4SW1/4, Sec. 33, T.19N., R.5E	No diversion when flow falls to 1.0 cfs.
10.0402 Unnamed stream, (Van Ogle Creek) tributary to Puyallup River NW1/4SE1/4, Sec. 30, T.20N, R.5E	No diversion when discharge into the Puyallup River drops to 1.0 cfs.
Unnamed stream, (Canyon Creek) tributary to Puyallup River SE1/4NE1/4, Sec. 24, T. 20N, R.3E	No diversion when flow falls to 1.0 cfs.

(2) The following stream and lake closures are adopted confirming surface water source limitations previously established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050.

EXISTING SURFACE WATER CLOSURES

Stream Number Stream Name Section, Township, Range	Date of Closure	Period of Closure
10.0414 Voight Creek, tributary to Carbon River NW1/4SW1/4, Sec. 33, T.19N., R.5E	2/26/75	All year
10.0589 Unnamed stream (Lawrence Creek), tributary to Puyallup River NW1/4NE1/4, Sec. 25, T.19N, R.4E	2/26/75	All year
Unnamed springs, tributary to Puyallup River SE1/4,NE1/4, Sec. 35, T.20N, R.4E	12/14/64	All year
10.0006 Hylebos Creek Hylebos Creek, drains into Commencement Bay and Puget Sound NW1/4NE1/4, Sec. 27, T.21N, R.3E	4/26/76	All year

10.0406 Fennel Creek, tributary to Puyallup River SE1/4SE1/4, Sec. 6, T.19N, R.5E	2/26/75	All year
North Lake Sec. 15, T.21N, R.4E	8/19/47	All year

(3) The department, having determined that further consumptive appropriations would harmfully impact instream values, closes the following streams and lakes in WRIA 10 to further consumptive appropriations.

NEW SURFACE WATER CLOSURES

Stream Number Stream or Lake Name Section, Township, Range of Stream Mouth or Lake Outlet	Period of Closure
10.0429 South Prairie Creek and all tributaries, tributary to Carbon River SW1/4SE1/4, Sec. 27, T.19N, R.5E	All year
10.0027 Clarks Creek and all tributaries, tributary to Puyallup River NE1/4NE1/4, Sec. 19, T.20N, R.4E	All year
10.0600 Kapowsin Creek and all tributaries, tributary to Puyallup River SW1/4SW1/4, Sec. 20, T.18N, R.5E	All year
10.0031 -.0397 White River and all tributaries SW1/4SE1/4, Sec 23, T.20N, R.4E	All year
Kapowsin Lake SE1/4NE1/4, Sec. 5, T.17N., R.5E	All year
10.0603 -.0607 Ohop Creek and all tributaries source of Kapowsin Lake SE1/4NW1/4, Sec. 18, T.17N., R.3E	All year
10.0022 Clear Creek and all tributaries, tributary to Puyallup River NW1/4SW1/4, Sec. 11, T.20N., R.3E	All year
10.0410 Canyon Falls Creek and all tributaries, tributary to Puyallup River Sec. 7, T.19N., R.5E	All year
10.0596 Fiske Creek and all tributaries, tributary to Puyallup River SW1/4SW1/4, Sec. 17, T.18N., R.5E	All year
10.0006 Hylebos Creek and all tributaries, tributary to Commencement Bay NW1/4NE1/4, Sec. 27, T.21N., R.3E	All year
10.0620 Le Dout Creek and all tributaries, tributary to Puyallup River NW1/4NW1/4, Sec. 28, T.17N., R.6E	All year
10.0622 Niesson Creek and all tributaries, tributary to Puyallup River NE1/4SE1/4, Sec. 33, T.17N., R.6E	All year
10.0017 Wapato Creek and all tributaries, tributary to Commencement Bay NW1/4SW1/4, Sec. 27, T.21N., R.3E	All year

10.0035
 Unnamed Stream (Strawberry Creek), (Salmon Creek)
 and all tributaries, tributary to White River
 NE1/4SE1/4, Sec. 13, T.20N., R.4E

All year

Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-090, filed 3/21/80.]

10.0621
 Kellogg Creek and all tributaries, tributary
 to Puyallup River
 SE1/4SW1/4, Sec. 28, T.17N., R.6E

All year

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-040, filed 3/21/80.]

WAC 173-510-050 Ground water. In future permitting actions relating to ground water withdrawals, particularly from shallow aquifers, a determination shall be made as to whether the proposed withdrawal will have a direct, and measurable, impact on stream flows in streams for which closures and instream flows have been adopted (WAC 173-510-040). If the determination affirms such interrelationship, the provisions of WAC 173-510-040 shall apply.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-050, filed 3/21/80.]

WAC 173-510-060 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-060, filed 3/21/80.]

WAC 173-510-070 Exemptions. (1) Nothing in this chapter shall affect water rights, riparian, appropriative, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Domestic in-house use for a single residence and stock watering shall be exempt except that use related to feedlots.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-070, filed 3/21/80.]

WAC 173-510-080 Future rights. No rights to divert or store public surface waters of the Puyallup WRIA 10 shall hereafter be granted which shall conflict with the purpose of this chapter as stated in WAC 173-510-02 [WAC 173-510-020].

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-080, filed 3/21/80.]

WAC 173-510-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-510-090, filed 6/9/88. Statutory Authority:

WAC 173-510-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-510-095, filed 6/9/88.]

WAC 173-510-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-510-100, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-04-047 (Order DE 79-31), § 173-510-100, filed 3/21/80.]

Chapter 173-511 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—NISQUALLY RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 11

WAC

173-511-010	General provision.
173-511-020	Purpose.
173-511-030	Establishment of instream flows.
173-511-040	Surface water source limitations to further consumptive appropriations.
173-511-050	Ground water.
173-511-060	Lakes.
173-511-070	Exemptions.
173-511-080	Future rights.
173-511-090	Enforcement.
173-511-095	Appeals.
173-511-100	Regulation review.

WAC 173-511-010 General provision. These rules apply to waters within the Nisqually River basin, WRIA 11, as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-010, filed 2/2/81.]

WAC 173-511-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Nisqually River basin with instream flows and levels necessary to provide protection for wildlife, fish, scenic, aesthetic, environmental values, recreation, navigation, and to preserve water quality.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-020, filed 2/2/81.]

WAC 173-511-030 Establishment of instream flows. (1) Stream management units and associated control stations are established as follows:

STREAM MANAGEMENT UNIT INFORMATION

Control Station No. Stream Management Unit Name	Control Station Location, River Mile and Section, Township and Range	Affected Stream Reach
New gage Nisqually River	4.3 9, 18N, 1E	From influence of mean annual high tide at low base flow levels to the outlet of the Centralia City Light Power Plant.
12-0895-00 Nisqually River	21.8 28, 17N, 2E	From outlet of the Centralia City Light Power Plant at river mile 12.6 to Centralia City Light Power canal diversion at river mile 26.2, including all tributaries.
12-0884-00 Nisqually River	32.6 21, 16N, 3E	From the Centralia City Light Power canal diversion at river mile 26.2 to gage 12-0865-00 near the La Grande Power Plant, including all tributaries except the Mashel River.
12-0825-00 Nisqually River	57.8 29, 15N, 6E	From gage 12-0865-00 near the La Grande Power Plant to the headwaters including all tributaries.
12-0870-00 Mashel River	3.25 11, 16N, 4E	From mouth upstream to the headwaters including all tributaries.

August	1	800	370(closed)	800(closed)
	15	800	370(closed)	650(closed)
September	1	600	370(closed)	600(closed)
	15	600	370(closed)	600(closed)
October	1	700	550(closed)	700(closed)
	15	700	550(closed)	700(closed)
November	1	700	600	700
	15	700	600	700
December	1	800	600	800
	15	900	600	900

*New gage to be established.

Month	Day	Upper Reach of the Nisqually River	Mashel River
		USGS Gage 12-0825-00 RM 57.8	USGS Gage 12-0870-00 RM 3.25
January	1	450	100
	15	450	100
February	1	450	100
	15	450	100
March	1	450	100
	15	450	100
April	1	450	100
	15	450	100
May	1	450	100
	15	450	80
June	1	600	80(closed)
	15	650	70(closed)
July	1	550	50(closed)
	15	500	40(closed)
August	1	450	30(closed)
	15	400	30(closed)
September	1	350	20(closed)
	15	300	20(closed)
October	1	300	20(closed)
	15	300	20(closed)
November	1	350	40
	15	400	70
December	1	450	100
	15	450	100

(2) Instream flows established for the stream management unit described in WAC 173-511-030(1) are as follows:

INSTREAM FLOWS IN THE NISQUALLY RIVER BASIN
(in Cubic Feet per Second)

Month	Day	Lower Reach of the Nisqually River	Bypass Reach of the Nisqually River	Mid Reach of the Nisqually River
		USGS Gage 12-* RM 4.3	USGS Gage 12-0895-00 RM 21.8	USGS Gage 12-0884-00 RM 32.6-
January	1	900	600	900
	15	900	600	900
February	1	900	600	900
	15	900	600	900
March	1	900	600	900
	15	900	600	900
April	1	900	600	900
	15	900	600	900
May	1	900	600	900
	15	900	600	900
June	1	900	500(closed)	800(closed)
	15	850	450(closed)	800(closed)
July	1	800	400(closed)	800(closed)
	15	800	400(closed)	800(closed)

(3) Instream flow hydrographs, as represented in the document entitled "Nisqually River basin instream resource protection program," shall be used for identification of instream flows on those days not specifically identified in WAC 173-511-030(2).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-030, filed 2/2/81.]

WAC 173-511-040 Surface water source limitations to further consumptive appropriations. (1) The department has determined that (a) certain streams exhibit low summer flows or have a potential for going dry thereby inhibiting anadromous fish passage during critical life stages, and (b) historic flow regimes and current uses of certain other streams indicate that no water is available for additional appropriation. Based upon these determinations the following streams and lakes are closed to further appropriation for the periods indicated:

NEW SURFACE WATER CLOSURES

Stream or Lake Section, Township, and Range of Mouth or Outlet	Tributary to	Period of Closure				
			Harts Lake and outlet streams SW1/4SE1/4 Sec. 1, T16N, R2E	Nisqually River	Low Flow (0.5 cfs bypass)	10/7/44
			Horn Creek SW1/4NE1/4 Sec. 1, T16N, R2E	Nisqually River	Closure	7/22/74
Mashel River NE1/4SW1/4 Sec. 29, T16N, R4E and all tributaries	Nisqually River	June 1 - Oct. 31	Muck Creek and all tributaries SW1/4SW1/4 Sec. 36, T18N, R1E	Nisqually River	Closure	5/26/48
Red Salmon Creek (Mounts Creek) NE1/4NW1/4 Sec. 33, T19N, R1E and all tributaries	Nisqually River	April 1 - Oct. 31	Ohop Creek and all tributaries SW1/4NE1/4 Sec. 25, T16N, R3E	Nisqually River	Closure	2/15/52
Clear Creek NE1/4SE1/4 Sec. 21, T18N, R1E and all tributaries	Nisqually River	April 1 - Oct. 31	Ohop Lake NE1/4SE1/4 Sec. 10, T16N, R1E	Ohop Creek	Lake Level (523 ft)	3/25/66
Tanwax Creek NW1/4NE1/4 Sec.20, T16N, R3E and all tributaries	Nisqually River	April 1 - Oct. 31	Thompson Creek and all tributaries SE1/4NE1/4 Sec. 11, T17N, R1E	Nisqually River	Low Flow (1.0 cfs bypass)	11/19/51
McAllister Creek (except Medicine Creek) NW1/4N1/4 Sec. 6, T18N, R1E and all tributaries	Puget Sound	all year	Unnamed Stream and all tributaries SW1/4NW1/4 Sec. 11, T15N, R4E	Alder Lake (Nisqually River)	Closure	4/28/64
Lake Saint Clair SE1/4NW1/4 Sec. 6, T17N, R1E		all year	Unnamed Stream and all tributaries SW1/4SE1/4 Sec. 17, T17N, R2E	Centralia Canal (Nisqually River)	Low Flow (0.75 cfs bypass)	11/19/51
Toboton Creek (above Hopson Road) SW1/4SW1/4 Sec. 19, T16N, R3E and all tributaries	Nisqually River	April 1 - Nov. 30	Unnamed Stream and all tributaries SE1/4SE1/4 Sec. 27, T17N, R2E	Nisqually River	Low Flow (0.50 cfs bypass)	12/6/50
Lackamas Creek SE1/4SE1/4 Sec. 13, T16N, R2E and all tributaries	Nisqually River	April 1 - Nov. 30	Yelm Creek and all tributaries SW1/4SW1/4 Sec. 12, T.17N, R1E	Nisqually River	Closure	8/7/51
Murray Creek NW1/4NW1/4 Sec. 16, T17N, R2E	Nisqually River	April 1 - Nov. 30	[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-040, filed 2/2/81.]			
Bypass Reach, Nisqually River NE1/4SE1/4 Sec. 11, T17N, R1E	Puget Sound	June 1 - Oct. 31	WAC 173-511-050 Ground water. Future ground water withdrawal proposals will not be affected by this chapter unless it is verified that such withdrawal would clearly have an adverse impact upon the surface water system contrary to the intent and objectives of this chapter.			
Mid Reach, Nisqually River SE1/4NW1/4 Sec. 1, T16N, R2E	Puget Sound	June 1 - Oct. 31	[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-050, filed 2/2/81.]			

(2) The following stream and lake low flows and closures are adopted confirming surface water source limitations previously established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050.

EXISTING SURFACE WATER SOURCE LIMITATIONS
CURRENT ADMINISTRATIVE STATUS OF STREAMS AND LAKES

NISQUALLY BASIN, WRIA 11

Stream	Tributary to	Action	Dates
Eaton Creek SE1/4NW1/4 Sec. 6, T17N, R1E	Lake St. Clair	Closure	12/1/53

WAC 173-511-060 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-060, filed 2/2/81.]

WAC 173-511-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, riparian, appropriate, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the

operation of any navigation, hydroelectric or water storage reservoir or related facilities.

(2) If, upon detailed analysis, appropriate and environmentally sound proposed storage facilities are found to be compatible with this chapter, such facilities may be approved.

(3) Domestic use for a single residence shall be exempt from the provisions of this chapter; provided that, if the cumulative effects of numerous single domestic diversions and/or withdrawals would seriously affect the quantity of water available for instream uses, then only domestic in-house use shall be exempt if no alternative source is available.

(4) Stock-watering use, except that related to feedlots, shall be exempt from the provisions established in this chapter.

(5) Future rights for nonconsumptive uses may be granted.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-070, filed 2/2/81.]

WAC 173-511-080 Future rights. No rights to divert or store public surface waters of the Nisqually River basin, WRIA 11, shall hereafter be granted, except as provided in WAC 173-511-070, which shall conflict with the purpose of this chapter as stated in WAC 173-511-020.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-080, filed 2/2/81.]

WAC 173-511-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-511-090, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-090, filed 2/2/81.]

WAC 173-511-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-511-095, filed 6/9/88.]

WAC 173-511-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-511-100, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-028 (Order DE 80-42), § 173-511-100, filed 2/2/81.]

Chapter 173-512 WAC
INSTREAM RESOURCES PROTECTION
PROGRAM—CHAMBERS-CLOVER CREEKS
BASIN, WATER RESOURCE INVENTORY AREA
(WRIA) 12

WAC

173-512-010	Authority.
173-512-020	Purpose.
173-512-030	Surface water closures.
173-512-040	Ground water.
173-512-050	Future rights.
173-512-060	Exemptions.
173-512-070	Enforcement.
173-512-075	Appeals.
173-512-080	Regulation review.

WAC 173-512-010 Authority. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flow and levels), and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-010, filed 12/12/79.]

WAC 173-512-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Chambers-Clover creeks drainage basin with instream flows and levels necessary to provide for preservation and protection of wildlife, fish, scenic, aesthetic and other environmental values, recreational and navigational values, and to preserve water quality.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-020, filed 12/12/79.]

WAC 173-512-030 Surface water closures. The department of ecology, having determined that further consumptive appropriations would harmfully impact instream values closes the following streams and lakes in Water Resource Inventory Area 12 to further consumptive appropriations:

SURFACE WATER CLOSURES

Stream or Lake	Tributary to
Chambers Creek and all tributaries, including among others:	Puget Sound
Leach Creek	Chambers Creek
Flett Creek	Chambers Creek
Steilacoom Lake	Chambers Creek
Ponce De Leon Creek	Steilacoom Lake
Clover Creek and all tributaries, including among others:	
North Fork Clover Creek	Clover Creek
Spanaway Creek	Clover Creek
Morey Creek	Clover Creek
Spanaway Lake	Spanaway Creek
Tule Lake	Spanaway Creek

Unnamed Stream (Crystal Springs Creek) including tributaries
 Sequalitchew Creek and all tributaries, including among others:
 Sequalitchew Lake
 American Lake
 Murray Creek (and tributaries)
 Puget Sound
 Puget Sound
 Sequalitchew Creek
 Sequalitchew Lake
 American Lake

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-030, filed 12/12/79.]

WAC 173-512-040 Ground water. In future permitting actions relating to ground water withdrawals, the natural interrelationship of surface and ground waters shall be fully considered in water allocation decisions to assure compliance with the intent of this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-040, filed 12/12/79.]

WAC 173-512-050 Future rights. No water rights for consumptive uses of waters from the streams and lakes listed in WAC 173-512-030 shall hereafter be granted. Future rights for nonconsumptive uses may be granted subject to the provisions of this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-050, filed 12/12/79.]

WAC 173-512-060 Exemptions. (1) Nothing in this chapter shall affect any existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter; nor shall it affect existing rights relating to the operation of any navigation, hydroelectric or water storage reservoir or related facilities.

(2) Stock watering use, except that related to feed lots, shall be exempt from the surface water closures established in this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-060, filed 12/12/79.]

WAC 173-512-070 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-512-070, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-070, filed 12/12/79.]

WAC 173-512-075 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-512-075, filed 6/9/88.]

WAC 173-512-080 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing

conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-512-080, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-01-012 (Order 79-23), § 173-512-080, filed 12/12/79.]

Chapter 173-513 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—DESCHUTES RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 13

WAC

- 173-513-010 General provision.
- 173-513-020 Purpose.
- 173-513-030 Establishment of instream flows.
- 173-513-040 Surface water source limitations to further consumptive appropriations.
- 173-513-050 Ground water.
- 173-513-060 Lakes.
- 173-513-070 Exemptions.
- 173-513-080 Future rights.
- 173-513-090 Enforcement.
- 173-513-095 Appeals.
- 173-513-100 Regulation review.

WAC 173-513-010 General provision. These rules apply to waters within the Deschutes River basin, WRIA 13, as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-010, filed 6/24/80.]

WAC 173-513-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Deschutes River basin with instream flows and levels necessary to provide protection for wildlife, fish, scenic, aesthetic, environmental values, recreation, navigation, and water quality.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-020, filed 6/24/80.]

WAC 173-513-030 Establishment of instream flows. (1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name	Control Station Location, River Mile and Section, Township and Range	Affected Stream Reach
12.0800-00 Deschutes River	3.4 Sec. 35-18N-2W	From the confluence of the Deschutes River with Capitol Lake upstream to the Deschutes Falls at river mile 41.

(2) Instream flows established for the stream management unit described in WAC 173-513-030(1) are as follows:

INSTREAM FLOWS IN THE DESCHUTES RIVER BASIN
(in Cubic Feet per Second)

Month	Day	USGS Gage 212-0800-00 Deschutes River
Jan.	1	400
	15	400
Feb.	1	400
	15	400
Mar.	1	400
	15	400
Apr.	1	350
	15	(Closed)
May	1	(Closed)
	15	(Closed)
June	1	(Closed)
	15	(Closed)
July	1	(Closed)
	15	(Closed)
Aug.	1	(Closed)
	15	(Closed)
Sept.	1	(Closed)
	15	(Closed)
Oct.	1	(Closed)
	15	(Closed)
Nov.	1	150
	15	200
Dec.	1	300
	15	400

(3) Instream flow hydrograph, as represented in the document entitled "Deschutes River basin instream resource protection program," shall be used for identification of instream flows on those days not specifically identified in WAC 173-513-030(2).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-030, filed 6/24/80.]

WAC 173-513-040 Surface water source limitations to further consumptive appropriations. (1) The department of ecology, having determined that further consumptive appropriations would harmfully impact instream values, closes the following streams and lakes to further consumptive appropriation for the periods indicated.

New Surface Water Closures

Stream or Lake Section, Township and Range of Mouth or Outlet	Tributary to	Period of Closure
Deschutes River below Deschutes Falls (river mile 41) NW1/4SW1/4 Sec. 26, T. 18N., R. 2W.	Puget Sound (Budd Inlet)	Apr. 15 to Nov. 1
Deschutes River above Deschutes Falls (river mile 41) and all tribu- taries of Deschutes River E1/2NE1/4 Sec. 10, T. 15N., R. 3E. (Deschutes Falls)		All year
McLane Creek and all tributaries SW1/4NW1/4 Sec. 33, T. 18N., R. 2W.	Puget Sound (Eld Inlet)	All year

Woodland Creek and all tributaries SW1/4NW1/4 Sec. 19, T. 19N., R. 1W.	Puget Sound (Henderson Inlet)	All year
Long Lake SE1/4NE1/4 Sec. 22, T. 18N., R. 1W.	Woodland Creek	All year
Patterson Lake SE1/4SW1/4 Sec. 35, T. 18N., R. 1W.	Woodland Creek	All year
Hicks Lake NE1/4SW1/4 Sec. 27, T. 18N., R. 1W.	Woodland Creek	All year

(2) The following stream and lake low flows and closures are adopted confirming surface water source limitations previously established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050.

Existing Low Flow Limitations and Closures

Stream Section, Township and Range of Mouth	Tributary to	Action
Percival Creek SW1/4NE1/4 Sec. 22, T. 18N., R. 2W.	Capital Lake	Closure
Unnamed Stream NW1/4NW1/4 Sec. 33, T. 19N., R. 2W.	Puget Sound (Eld Inlet)	Low Flow (1.5 cfs)
Unnamed Stream NW1/4NW1/4 Sec. 25, T. 19N., R. 2W.	Gull Harbor	Low Flow (1.0 cfs)
Woodward Creek SW1/4NW1/4 Sec. 19, T. 19N., R. 1W.	Woodward Bay	Closure

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-040, filed 6/24/80.]

WAC 173-513-050 Ground water. Future ground water withdrawal proposals will not be affected by this chapter unless it is verified that such withdrawal would clearly have an adverse impact upon the surface water system contrary to the intent and objectives of this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-050, filed 6/24/80.]

WAC 173-513-060 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-060, filed 6/24/80.]

WAC 173-513-070 Exemptions. (1) Nothing in this chapter shall affect water rights, riparian, appropriative, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Domestic use for a single residence and stock watering, except that use related to feedlots, shall be exempt from the provisions of this chapter if no alternative source is available. If the cumulative effects of numerous single domestic diversions would seriously affect the quantity of water available for instream uses, then only domestic in-house use shall be exempt.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-070, filed 6/24/80.]

WAC 173-513-080 Future rights. No rights to divert or store public surface waters of the Deschutes River basin, WRIA 13, shall hereafter be granted which shall conflict with the purpose of this chapter as stated in WAC 173-513-020.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-080, filed 6/24/80.]

WAC 173-513-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-513-090, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-090, filed 6/24/80.]

WAC 173-513-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-513-095, filed 6/9/88.]

WAC 173-513-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-513-100, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 80-08-019 (Order DE 80-11), § 173-513-100, filed 6/24/80.]

Chapter 173-514 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—KENNEDY-GOLDSBOROUGH WATER RESOURCE INVENTORY AREA (WRIA)

WAC

- 173-514-010 General provision.
- 173-514-020 Purpose.
- 173-514-030 Establishment of instream flows.
- 173-514-040 Surface water source limitations to further consumptive appropriation.
- 173-514-050 Lakes.
- 173-514-060 Exemptions.
- 173-514-070 Future rights.

- 173-514-080 Enforcement.
- 173-514-085 Appeals.
- 173-514-090 Regulation review.

WAC 173-514-010 General provision. These rules apply to waters within the Kennedy-Goldsborough water resource inventory area (WRIA 14), as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), chapter 75.20 RCW (State Fisheries Code) and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-010, filed 1/23/84.]

WAC 173-514-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Kennedy-Goldsborough water resource inventory area with instream flows and levels necessary to provide protection for wildlife, fish, scenic, aesthetic, and environmental values, recreation, navigation, and water quality.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-020, filed 1/23/84.]

WAC 173-514-030 Establishment of instream flows. (1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name	Control Station By River Mile and Sec. Township, & Range	Stream Management Reach
12-0740-00 Shumocher Creek	.02 Sec.7, T.21N., R.2WWM	From Mason Lake to headwaters including all tributaries.
WDOE-0745-50 Sherwood Creek	0.14 Sec.20, T.22N., R.1WWM	From influence of mean annual high tide at low instream flow levels to Mason Lake, including Mason Lake and all tributaries.
12-0750-00 Deer Creek	0.8 Sec.20, T.21N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
12-0755-00 Cranberry Creek	0.5 Sec.36, T.21N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including Cranberry Lake, Lake Limerick and all tributaries.
12-0760-00 Johns Creek	2.5 Sec.3, T.20N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
WDOE-0770-50 Goldsborough Creek	0.23 Sec.20, T.20N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.

WDOE-0775-50 Mill Creek	3.1 Sec.25, T.20N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including Lake Isabella and all tributaries.	Mar 1 50 45 85 15 50 45 85
12-0780-00 Skookum Creek	3.0 Sec.19, T.19N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.	Apr 1 50 45 85 15 40 45 85 May 1 31 34 85* 15 23.5 26 85* Jun 1 18 20 85* 15 14 15.5 69* Jul 1 10.5 12 55* 15 8 9 52* Aug 1 8 7 48* 15 8 7 45* Sept 1 8 7 45* 15 8 7 45* Oct 1 8* 7* 45* 15 15* 7* 50* Nov 1 28* 18* 50 15 50* 45* 50 Dec 1 50 45 50 15 50 45 50
WDOE-0785-50 Kennedy Creek	0.06 Sec.32, T.19N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including Summit Lake and all tributaries.	
WDOE-0787-00 Perry Creek	1.06 Sec.13, T.18N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.	

*Denotes closure period to all consumptive uses

(2) Instream flows are established for the stream management units in WAC 173-514-030(1) as follows:

Instream Flows in the Kennedy-Goldsborough WRIA
(Instantaneous cubic feet per second)

Month	Day	12-0740-00 Shumochoer Creek	WDOE 0745-50 Sherwood Creek	12-0750-00 Deer Creek
Jan	1	20	60	55
	15	20	60	55
Feb	1	20	60	55
	15	20	60	55
Mar	1	20	60	55
	15	20	60	55
Apr	1	20	60	55
	15	20	60	46
May	1	17	48	39
	15	14	37	33
Jun	1	12	29	28
	15	10	23	23.5
Jul	1	8.6	17.5	20
	15	7.2	14	20
Aug	1	6	11	20
	15	6	11	20
Sep	1	6	11	20
	15	6	11	20
Oct	1	6	11*	20*
	15	6	19*	20*
Nov	1	11	34*	33*
	15	20	60*	55*
Dec	1	20	60	55
	15	20	60	55

*Denotes closure period to all consumptive uses

Instream Flows in the Kennedy-Goldsborough WRIA
(Cont'd)
(Instantaneous cubic feet per second)

Month	Day	12-0755-00 Cranberry Creek	12-0760-00 Johns Creek	WDOE-0770-50 Goldsborough Creek
Jan	1	50	45	50
	15	50	45	50
Feb	1	50	45	50
	15	50	45	85

Instream Flows in the Kennedy-Goldsborough WRIA
(Cont'd)
(Instantaneous cubic feet per second)

Month	Day	WDOE 0775-50 Mill Creek	12-0765-00 Skookum Creek	WDOE-0785-50 Kennedy Creek	WDOE-0787-00 Perry Creek
Jan	1	65	40	60	30
	15	65	40	60	30
Feb	1	65	40	60	30
	15	65	40	60	30
Mar	1	65	40	60	30
	15	65	40	60	30
Apr	1	65	40	60	21
	15	65	40	46	14
May	1	55	26*	35*	10*
	15	46	16.5*	27*	6.8*
Jun	1	40	11*	20*	4.6*
	15	33	7*	16*	3.2*
Jul	1	28	4.6*	12*	2.2*
	15	24	3*	9*	1.5*
Aug	1	20	3*	7*	1*
	15	20	3*	7*	1*
Sep	1	20	3*	7*	1*
	15	20	3*	7*	1*
Oct	1	20	3*	7*	1*
	15	20	5.6*	14*	2.5*
Nov	1	35	15	29*	5.4
	15	65	40	60*	13
Dec	1	65	40	60	30
	15	65	40	60	30

*Denotes closure period to all consumptive uses

(3) Instream flow hydrographs, as represented in the document entitled "Kennedy-Goldsborough instream resources protection program, figs. 2-7, pgs. 26-28," shall be used for identification of instream flows on those days not specifically identified in WAC 173-514-030(2).

(4) Future consumptive water right permits issued hereafter for diversion of surface water in the Kennedy-Goldsborough WRIA and perennial tributaries shall be expressly subject to instream flows established in WAC 173-514-030 (1) through (3) as measured at the appropriate gage, preferably the nearest one downstream, except from those exempted uses described in WAC 173-514-060 (1) through (3).

(5) Projects that would reduce the flow in a portion of a stream's length (e.g.: Hydroelectric projects that bypass a portion of a stream) will be considered consumptive only with respect to the affected portion of the stream and will be subject to specific instream flow requirements as specified by the department for the bypassed reach notwithstanding WAC 173-514-030 (1) through (3) and 173-514-040 if detailed, project-specific instream flow studies for the bypassed reach, as may be required, demonstrate that a different flow requirement is appropriate. The department may require the project proponent to conduct such studies.

(6) If department investigations determine that withdrawal of ground water from the source aquifers would not interfere significantly with stream flow during the period of stream closure or with maintenance of minimum flows, then applications to appropriate public ground waters may be approved and permits or certificates issued.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-030, filed 1/23/84.]

WAC 173-514-040 Surface water source limitations to further consumptive appropriation. (1) The department, having determined further consumptive appropriation for all uses would harmfully impact instream values, closes the following streams including tributaries for the period indicated:

(a) Stream Name	Tributary to	Closure Period
Alderbrook Creek	Hood Canal	May 1 - October 31
Campbell Creek	Oakland Bay	May 1 - October 31
Elson Creek	Skookum Inlet	May 1 - October 31
Fawn Lake Outlet	Skookum Inlet	May 1 - October 31
Jones Creek	Pickering Passage	May 1 - October 31
Jarrell Creek	Jarrell Cove	May 1 - October 31
Little Creek	Skookum Creek	May 1 - October 31
Melaney Creek	Oakland Bay	May 1 - October 31
Shelton Creek	Oakland Bay	May 1 - October 31
Twahnoh Creek	Hood Canal	May 1 - October 31
Uncle John Creek	Oakland Bay	May 1 - October 31

The minimum flow during the closure period on the streams listed above is the natural flow. Because insufficient flow data is available to develop instream flows outside the closure period, minimum flows for any water right application for consumptive use will be considered on a case by case basis in consultation with the departments of fisheries and game (RCW 75.20.050).

(b) Stream Name	Closure Period
Kennedy Creek	May 1 - November 15
Cranberry Creek	September 16 - November 15
Deer Creek	September 16 - November 15
Johns Creek	September 16 - November 15
Sherwood Creek	September 16 - November 15
Perry Creek	May 1 - October 31

Because sufficient hydrologic data is available for the above streams, a minimum flow is established during the closed and nonclosed period in WAC 173-514-030(2).

(2) Except as noted in the footnotes, the following existing surface water source limitations, previously established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050 are hereby confirmed and adopted for the period indicated:

Stream*/ Tributary to	Action	Period
Goldsborough Creek - Oakland Bay	Closure+	May 1 - October 31
Gosnell Creek - Isabella Lake	Low flow (10 cfs)	All year
Jarrell Creek - Jarrell Cove	Low flow@ (.30 cfs)	May 1 - October 31
Johns Creek - Oakland Bay	Low flow@ (4 cfs)	Sept. 16 - November 15
Kennedy Creek - Totten Inlet	Low flow@ (3 cfs)	May 1 - November 15
Schneider Creek - Totten Inlet	Closure#	May 1 - October 31
Skookum Creek - Skookum Inlet	Closure+	May 1 - October 31
Summit Lake - Kennedy Creek	Lake level	All year
Unnamed Stream - Mill Creek	Low flow (2 cfs)	All year
Sec.34, T.20N R.3 EWM		

*Closures and low flow limitations also apply to tributaries of these streams.

@Superseded by a new action in this section.

#The minimum flow during the closure period is the natural flow.

+Minimum flows are specified in WAC 173-514-030(2).

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-040, filed 1/23/84.]

WAC 173-514-050 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-050, filed 1/23/84.]

WAC 173-514-060 Exemptions. (1) Nothing in this chapter shall affect existing water rights, riparian, appropriate, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Single domestic and stockwatering use, except that related to feedlots, shall be exempt from the provisions established in this chapter. If the cumulative impacts of numerous single domestic diversions would significantly affect the quantity of water available for instream uses, then only single domestic in-house use shall be exempt if no alternative source is available.

(3) Nonconsumptive uses which are compatible with the intent of the chapter may be approved.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-060, filed 1/23/84.]

WAC 173-514-070 Future rights. No rights to divert or store public surface waters of the Kennedy-Goldsborough WRIA 14, shall hereafter be granted which shall conflict with the purpose of this chapter.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-070, filed 1/23/84.]

WAC 173-514-080 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-514-080, filed 6/9/88. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-080, filed 1/23/84.]

WAC 173-514-085 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-514-085, filed 6/9/88.]

WAC 173-514-090 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-514-090, filed 6/9/88. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 84-04-014 (Order DE 83-34), § 173-514-090, filed 1/23/84.]

Chapter 173-515 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—KITSAP WATER RESOURCE INVENTORY AREA (WRIA) 15

WAC

- 173-515-010 General provision.
- 173-515-020 Purpose.
- 173-515-030 Establishment of instream flows.
- 173-515-040 Surface water closures.
- 173-515-050 Groundwater.
- 173-515-060 Lakes.
- 173-515-070 Exemptions.
- 173-515-080 Future rights.
- 173-515-090 Enforcement.
- 173-515-095 Appeals.
- 173-515-100 Regulation review.

WAC 173-515-010 General provision. These rules apply to waters within the Kitsap water resource inventory area (WRIA) 15 as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-010, filed 7/24/81.]

WAC 173-515-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Kitsap water resource inventory area (WRIA) 15 with instream flows and levels necessary to provide for preservation and protection of wildlife, fish, scenic, aesthetic and other environmental values, recreational and navigational values, and to preserve water quality.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-020, filed 7/24/81.]

WAC 173-515-030 Establishment of instream flows. (1) The following instream flows are established for each stream listed, from the point of influence of mean high tide at low flow to the stream's headwaters including tributaries except where indicated otherwise. Monitoring will take place at the control locations indicated.

INSTREAM FLOWS IN THE KITSAP WATER RESOURCE INVENTORY AREA (WRIA) 15

*WAC 173-515-040(2) closes certain streams to additional consumptive appropriations during specific time periods. These closures are indicated by asterisks in the following table. Such closures supersede the indicated instream flow. The Union River closure extends upstream to McKenna Falls (RM 6.7).

**Stream numbers correlate with Plate I, instream resources protection program, Kitsap water resource inventory area (WRIA) 15.

Stream Number**	#7	#44	#60
Stream Name	Union River	Tahuya River	Rendsland Cr.
Gage Number	12-0635.00	12-0680.00	
River Mile	2	2.5	near mouth
Sec., Twp., Rge.	20,23N.,1W.	12,22N.,3W.	19,22N.,3W.

Month	Day	cfs	cfs	cfs
Jan.	1	65*	90	18
	15	65*	90	18
Feb.	1	65*	90	18
	15	65*	90	18
Mar.	1	59*	90	18
	15	53*	90	18
Apr.	1	48*	72	18
	15	44*	58	16
May	1	40*	47	13.5
	15	36*	38	12
June	1	33*	31	10*
	15	29*	25*	9*
July	1	27*	18*	8*
	15	24*	12*	7*
Aug.	1	22*	8.5*	6*
	15	20*	5.5*	5*
Sept.	1	20*	5.5*	5*
	15	20*	5.5*	5*
Oct.	1	20*	7*	5*
	15	20*	13*	7*
Nov.	1	27*	25	9.5
	15	35*	48	13
Dec.	1	47*	90	18
	15	65*	90	18

Stream Number**	#70	#96	#113
Stream Name	Dewatto River	Anderson Cr.	Stavis Cr.
Gage Number	12-0685.00		12-0695.00
River Mile	1.5	0.1	0.75
Sec., Twp., Rge.	23,23N.,3W.	17,24N.,2W.	25,25N.,2W.

Month	Day	cfs	cfs	cfs
Jan.	1	75	10.5	15
	15	75	10.5	15
Feb.	1	75	10.5	15
	15	75	10.5	15
Mar.	1	75	10.5	15
	15	75	10.5	15
Apr.	1	60	10.5	14
	15	49	10	13
May	1	39	9	12
	15	32	8.5	11
June	1	25	8	10
	15	22*	7.5	9.5
July	1	20*	7	9
	15	17.5*	6.5	8
Aug.	1	15.5*	6	7.5
	15	13.5*	6	7
Sept.	1	13.5*	6	7
	15	13.5*	6	7
Oct.	1	13.5*	6.5	7
	15	17*	7	8.5
Nov.	1	21	8	10.5
	15	39	8.5	12.5
Dec.	1	75	9.5	15
	15	75	10.5	15

Stream Number**	#121	#124	#192
Stream Name	Big Beef Cr.	Anderson Cr.	Grover's Cr.
Gage Number	12-0695.50		
River Mile	0.25	near mouth	near mouth
Sec., Twp., Rge.	22,25N.,1W.	13,25N.,1W.	4,26N.,2E.

Month	Day	cfs	cfs	cfs
Jan.	1	40	8	5.5
	15	40	8	5.5
Feb.	1	40	8	5.5
	15	40	8	5.5
Mar.	1	40	8	5.5
	15	40	8	5.5
Apr.	1	31	8	5.5
	15	24	6	4.5
May	1	18	4.5	4
	15	14*	3.5	3.5
June	1	11*	3*	3*
	15	8.5*	2*	2.5*
July	1	6.5*	1.5*	2.5*
	15	5*	1.5*	2*
Aug.	1	4*	1*	2*
	15	4*	1*	2*
Sept.	1	4*	1*	2*
	15	4.5*	1*	2.5*
Oct.	1	5.5*	1.5*	3*
	15	6*	1.5*	3.5*
Nov.	1	7*	2.5*	4
	15	12	4.5	4.5
Dec.	1	22	8	5.5
	15	40	8	5.5

Stream Number**	#223	#248	#259
Stream Name	Steel Creek	Strawberry/Kochs/Cooks	Dickerson Cr.
Gage Number			
River Mile	near mouth	near mouth	Confluence with Chico Cr.
Sec., Twp., Rge.	14,25N.,1E.	20,25N.,1E.	8,24N.,1E.

Month	Day	cfs	cfs	cfs
Jan.	1	6	7	3*
	15	6	7	3*
Feb.	1	6	7	3*
	15	6	7	3*
Mar.	1	6	7	3*
	15	6	7	3*
Apr.	1	6	7	2.5*
	15	5	5.5	2.5*
May	1	4.5	4.5	2*
	15	4	3.5	2*
June	1	3.5*	2.5*	1.5*
	15	3*	2*	1.5*
July	1	3*	1.5*	1.5*
	15	2.5*	1.5*	1.5*
Aug.	1	2.5*	1*	1*
	15	2.5*	1*	1*
Sept.	1	2.5*	1*	1*
	15	3*	1*	1*
Oct.	1	3.5*	1*	1*
	15	4*	1.5*	1.5*
Nov.	1	4.5	2.5	1.5*
	15	5	4	1.5*
Dec.	1	6	7	3*
	15	6	7	3*

Stream Number**	#259	#268	#294
Stream Name	Chico Cr.	Gorst Cr.	Curley Cr.
Gage Number			
River Mile	near mouth	0.1	0.1
Sec., Twp., Rge.	5,24N.,1E.	32,24N.,1E.	4,23N.,2E.

Month	Day	cfs	cfs	cfs
Jan.	1	15*	25	40
	15	15*	25	40
Feb.	1	15*	25	40
	15	15*	25	40
Mar.	1	15*	25	40
	15	15*	21	40
Apr.	1	15*	18	31
	15	13.5*	15	25
May	1	12*	13	20
	15	11*	11	16
June	1	10*	10.5	12.5
	15	9*	10	10*
July	1	8.5*	9	8*
	15	8*	8.5	6.5*
Aug.	1	7.5*	8	5*
	15	7*	7.5	5*
Sept.	1	7*	7.5	5*
	15	7*	7.5	5*
Oct.	1	7*	8	5*
	15	8*	8.5	8*
Nov.	1	9*	9	14
	15	11.5*	15	23
Dec.	1	15*	25	40
	15	15*	25	40

Stream Number**	#313	#321	#354
Stream Name	Olalla Cr.	Crescent Cr.	Purdy Cr.
Gage Number			12-0728.00
River Mile	near mouth	near mouth	0.1
Sec., Twp., Rge.	4,22N.,2E	32,22N.,2E.	24,22N.,1E.

Month	Day	cfs	cfs	cfs
Jan.	1	13	9	7
	15	13	9	7
Feb.	1	13	9	7
	15	13	9	7
Mar.	1	13	9	7
	15	13	9	6
Apr.	1	13	9	5.5
	15	11	7.5	5
May	1	9.5	7	4.5
	15	8.5	6	4
June	1	7.5*	5*	3.5*
	15	6.5*	4.5*	3*
July	1	5.5*	4*	3*
	15	5*	3.5*	2.5*
Aug.	1	5*	3.5*	2.5*
	15	5*	3.5*	2.5*
Sept.	1	5*	3.5*	2.5*
	15	6*	4*	3*
Oct.	1	7*	5*	3*
	15	8*	5.5*	3.5*
Nov.	1	9	6.5	4.5
	15	11	7.5	5.5
Dec.	1	13	9	7
	15	13	9	7

future water right actions involving said parties: *Provided*, That, said actions must be consistent with the requirements of chapters 90.03 and 90.44 RCW, and satisfy the general intent of chapter 173-515 WAC.

(2) Instream flow hydrographs, as represented in the document entitled "instream resources protection program," shall be used for definition of instream flows on those days not specifically identified in WAC 173-515-030(1).

(3) All consumptive water rights hereafter established shall be expressly subject to instream flows and closures established in WAC 173-515-030(1) and 173-515-040 (1) through (3). Closures override the instream flows where both are shown except as provided in WAC 173-515-070.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-030, filed 7/24/81.]

WAC 173-515-040 Surface water closures. (1) The department, having determined there are no waters available for further appropriation, closes the following streams to further consumptive appropriation. These closures confirm surface water source limitations previously established administratively under authority of chapter 90.03 RCW and RCW 75.20.050.

Surface Water Closures

**Stream numbers correlate with Plate I, instream resources protection program, Kitsap water resource inventory area (WRIA) 15.

Stream Number**	#369	#415	#425
Stream Name	Lackey Cr.	Rocky Cr.	Coulter Cr.a/
Gage Number			
River Mile	near mouth	0.1	0.1
Sec., Twp., Rge.	31,21N.,1E.	27,22N.,1W	9,22N.,1W.

Month	Day	cfs	cfs	cfs
Jan.	1	5	18	18
	15	5	18	18
Feb.	1	5	18	18
	15	5	18	18
Mar.	1	5	18	18
	15	4.5	18	18
Apr.	1	4	14.5	18
	15	3.5	11.5	17
May	1	3	9	16.5
	15	2.5	7.5	15.5
June	1	2.5*	6*	15
	15	2*	5.5*	14.5
July	1	2*	5*	13.5
	15	2*	4.5*	13
Aug.	1	1.5*	4.5*	13
	15	1.5*	4*	13
Sept.	1	1.5*	4*	13
	15	1.5*	4*	13
Oct.	1	2*	4*	13
	15	2*	5*	14
Nov.	1	2*	6	15
	15	2.5*	7	16.5
Dec.	1	3	18	18
	15	4	18	18

Stream Number**	Stream or Lake Name	Tributary to	Date of Original Closure
	Stansberry Lake and tributaries Sec. 19, T.22N., R.1E.	Carr Inlet	5-17-66
	Mission Lake and tributaries Outlet: NE1/4NW1/4 Sec. 32, T.24N.,R.1W.	Mission Creek	7-19-78
#12	Mission Creek and tributaries NW1/4NE1/4 Sec. 1, T.22N., R.2W.	Hood Canal	12-5-51
#57	Unnamed Stream and tributaries Sec. 20, T.21N., R.4W.	Hood Canal	11-3-48
#117	Seabeck Creek and tributaries SE1/4SW1/4 Sec. 20, T.25N., R.1W.	Seabeck Bay	8-27-54
#158	Unnamed Stream (Gamble Creek, Christianson Creek) and tributaries SW1/4SW1/4 Sec. 20, T.27N., R.2E.	Port Gamble	8-15-75
#207	Unnamed Stream (Dogfish Creek, Harding Creek) and tributaries NE1/4NE1/4 Sec. 15, T.26N., R.1E.	Liberty Bay	8-21-75
#245	Barker Creek and tributaries SW1/4SW1/4 Sec. 22, T.25N., R.1E.	Dyes Inlet	2-21-61
#246	Clear Creek and tributaries SE1/4SW1/4 Sec. 16, T.25N., R.1E.	Dyes Inlet	7-27-53

a/ Relating to the waters of Coulter Creek, the department is cognizant of a settlement agreement resulting from Cause No. 14262, in the superior court of the state of Washington for Mason County, "*Peter E. Overton, et al., v. Washington Department of Fisheries, et al.*"

Although the department of ecology was not a party in this litigation, the department will, to the extent possible, give full consideration to the intent of the settlement agreement in any

#259 Chico Creek and tributaries above confluence of Dickerson Creek, (excluding Wildcat Lake). Sec. 5, T.24N., R.1E.	Chico Bay	11-3-52	#70 Dewatto River and tributaries NW1/4SE1/4 Sec. 27, T.22N., R.3W.	Hood Canal	June 15-Oct. 31
#259 Kitsap Creek and tributaries Sec. 5, T.24N., R.1E.	Chico Creek	7-2-42	#121 Big Beef Creek and tributaries SW1/4SE1/4 Sec. 15, T.25N., R.1W.	Hood Canal	May 15-Oct. 31
#259 Unnamed Stream and tributaries SE1/4SW1/4 Sec. 17, T.24N., R.1E.	Kitsap Lake	12-8-52	#124 Anderson Creek and tributaries NW1/4NW1/4 Sec. 13, T.26N., R.1W.	Hood Canal	June 1-Oct. 31
#279 Blackjack Creek and tributaries NE1/4SE1/4 Sec. 25, T.24N., R.1E.	Sinclair Inlet	4-5-60	#192 Grover's Creek and tributaries NW1/4SW1/4 Sec. 4, T.26N., R.2E.	Puget Sound	June 1-Oct. 15
#285 Unnamed Stream (Sullivan Creek) and tributaries NE1/4SW1/4 Sec. 19, T.24N., R.2E.	Sinclair Inlet	5-9-75	#223 Unnamed Stream (Steel Creek) and tributaries SE1/4SE1/4 Sec. 14, T.25N., R.1E.	Port Orchard	June 1-Oct. 15
#294 Salmonberry Creek and tributaries NW1/4SE1/4 Sec. 18, T.23N., R.2E.	Long Lake	1-7-48	#248 Unnamed Stream and tributaries (Strawberry/Cook's/Koch's Creek) SE1/4NE1/4 Sec. 20, T.25N., R.1E.	Dyes Inlet	June 1-Oct. 31
#356 Burley Creek and tributaries, SW1/4NW1/4 Sec. 12, T.22N., R.1E.	Burley Lagoon	5-10-51	#259 Dickerson Creek and tributaries SW1/4NW1/4 Sec. 7, T.24N., R.1E.	Chico Creek	All year
#367 Minter Creek and tributaries SW1/4NE1/4 Sec. 29, T.22N., R.1E.	Henderson Bay	12-28-73	#259 Chico Creek and tributaries below confluence of Dickerson Creek SW1/4SW1/4 Sec. 5, T.25N., R.1E.	Chico Bay	All year
#402 Unnamed Stream (Dutcher Creek) and tributaries NE1/4NE1/4 Sec. 15, T.21N., R.1W.	Dutcher Cove	3-10-54	#294 Curley Creek and tributaries NE1/4NE1/4 Sec. 18, T.23N., R.2E.	Yukon Harbor	June 15-Oct. 15
#510 Judd Creek and tributaries NE1/4NE1/4 Sec. 18, T.22N., R.3E.	Quartermaster Harbor	5-10-51	#313 Olalla Creek and tributaries SE1/4NE1/4 Sec. 4, T.22N., R.2E.	Colvos Passage	June 1-Oct. 15
			#321 Crescent Creek and tributaries SE1/4SW1/4 Sec. 32, T. 22N., R.2E.	Gig Harbor	June 1-Oct. 15
			#354 Purdy Creek and tributaries NE1/4NW1/4 Sec. 12, T.22N., R.1E.	Henderson Bay	June 1-Oct. 31
			#369 Lackey Creek and tributaries SE1/4SW1/4 Sec. 31, T.21N., R.1E.	Carr Inlet	June 1-Nov. 15
			#415 Rocky Creek and tributaries SE1/4SE1/4 Sec. 27, T.22N., R.1E.	Case Inlet	June 1-Oct. 31

(2) The department has determined that (a) certain streams exhibit low summer flows and have a potential for drying up or inhibiting anadromous fish passage during critical life stages, and (b) historic flow regimes and current uses of certain other streams indicate that no water is available for additional appropriation. Based upon these determinations and in accordance with the general intent of RCW 75.20.050, the following streams are closed to further appropriation for the periods indicated:

New Surface Water Closures

**Stream numbers correlate with Plate I, instream resources protection program, Kitsap water resource inventory area (WRIA) 15.

Stream Number**	Stream Name	Tributary to	Period of Closure
Sec., Twp., Rge. at Mouth			
#7	Union River and tributaries from the mouth to McKenna Falls (R.M. 6.7) SE1/4SW1/4 Sec. 29, T.23N., R.1W.	Hood Canal	All year
#44	Tahuya River and tributaries SE1/4SE1/4 Sec. 22, T.22N., R.3W.	Hood Canal	June 15-Oct. 15
#60	Rendsland Creek and tributaries NW1/4NW1/4 Sec. 19, T.22N., R.3W.	Hood Canal	June 1-Oct. 31

(3) In the Kitsap basin numerous small streams with estimated mean annual flow of 5 cfs or less have been identified as having high instream values for anadromous fish, aesthetics, water quality, and/or recreation. In accordance with the general intent of RCW 75.20.050 the department has determined that the total natural flow of these streams is required for protection and preservation of instream resources, and that no water is available for additional consumptive appropriation. The natural flow, in effect, constitutes the minimum flow for protection of the instream resources. The following streams possess such characteristics and are therefore closed year-round to further consumptive appropriation.

New Surface Water Closures

**Stream numbers correlate with Plate I, instream resources protection program, Kitsap water resource inventory area (WRIA) 15.

Stream Number** Stream Name Sec., Twp., Rge. at Mouth	Tributary to	
		#241 Mosher Creek and tributaries SW1/4NE1/4 Sec. 34, T.25N., R.1E. Dyes Inlet
#13 Little Mission Creek and tributaries SE1/4NW1/4 Sec. 1, T.22N., R.2W.	Hood Canal	#272 Anderson Creek and tributaries SE1/4NE1/4 Sec. 33, T.24N., R.1E. Sinclair Inlet
#18 Stimson Creek and tributaries NW1/4NW1/4 Sec. 11, T.22N., R.2W.	Hood Canal	#275 Ross Creek and tributaries SE1/4SE1/4 Sec. 27, T.24N., R.1E. Sinclair Inlet
#31 Unnamed Stream (Little Shoefly Creek) and tributaries SW1/4NW1/4 Sec. 17, T.22N., R.2W.	Hood Canal	#289 Beaver Creek and tributaries NW1/4SE1/4 Sec. 16, T.24N., R.2E. Rich Passage
#34 Shoefly Creek and tributaries SE1/4SW1/4 Sec. 18, T.22N., R.2W.	Hood Canal	#322 North Creek and tributaries NE1/4SE1/4 Sec. 6, T.21N., R.2E. Gig Harbor
#46 Caldervin Creek and tributaries NE1/4NE1/4 Sec. 28, T.21N., R.3W.	Hood Canal	#342 Unnamed Stream and tributaries NW1/4SE1/4 Sec. 10, T.21N., R.1E. Henderson Bay
#50 Hall Creek and tributaries Sec. 20, T.21N., R.3W.	Hood Canal	#343 Unnamed Stream (Meyer Creek) and tributaries SW1/4SW1/4 Sec. 2, T.21N., R.1E. Hood Canal
#52 Hoddy Creek and tributaries Sec. 20, T.21N., R.3W.	Hood Canal	#407 Unnamed Stream and tributaries SE1/4NW1/4 Sec. 2, T.21N., R.1W. Vaughn Bay
#54 Fay Creek and tributaries Sec. 21, T.20N., R.3W.	Hood Canal	#434 Unnamed stream and tributaries SE1/4SE1/4 Sec. 15, T.25N., R.2E. Murden Cove
#55 Brown Creek and tributaries Sec. 21, T.20N., R.3W.	Hood Canal	#461 Unnamed Stream and tributaries SE1/4NE1/4 Sec. 20, T.25N., R.2E. Fletcher Bay
#56 Unnamed Stream (West Creek) and tributaries Sec. 20, T.22N., R.3W.	Hood Canal	#514 Unnamed Stream (Fisher Creek) and tributaries SW1/4NW1/4 Sec. 19, T.22N., R.3E. Quartermaster Harbor
#101 Harding Creek and tributaries NW1/4SW1/4 Sec. 9, T.24N., R.2W.	Hood Canal	#530 Jod Creek and tributaries NW1/4NW1/4 Sec. 14, T.22N., R.2E. Colvos Passage
#164 Unnamed Stream (Little Boston Creek) and tributaries SW1/4SW1/4 Sec. 5, T.27N., R.2E.	Port Gamble	#540 Needle Creek and tributaries NE1/4SE1/4 Sec. 13, T.23N., R.3E. Colvos Passage
#181 Unnamed Stream and tributaries SE1/4SW1/4 Sec. 26, T.27N., R.2E.	Apple Tree Cove	(4) Closures listed in WAC 173-515-040 (2) and (3) will supersede low flow surface water source limitations previously imposed by administrative authority pursuant to chapter 75.20 RCW.
#184 Unnamed Stream and tributaries NE1/4SW1/4 Sec. 36, T.27N., R.2E.	Apple Tree Cove	(5) Lakes perennially tributary to closed streams are closed to further consumptive appropriation.
#190 Unnamed Stream and tributaries Sec. 9, T.26N., R.2E.	Puget Sound	[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-040, filed 7/24/81.]
#196 Cowling Creek and tributaries NW1/4NW1/4 Sec. 16, T.26N., R.2E.	Miller Bay	WAC 173-515-050 Groundwater. Future groundwater withdrawal proposals will not be affected by this chapter unless it is determined that such withdrawal would clearly have an adverse impact upon the surface water system contrary to the intent and objectives of this chapter.
#198 Thompson Creek and tributaries SW1/4SE1/4 Sec. 29, T.26N., R.2E.	Port Orchard	[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-050, filed 7/24/81.]
#208 Johnson Creek and tributaries SE1/4NW1/4 Sec. 22, T.26N., R.1E.	Liberty Bay	WAC 173-515-060 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear
#213 Scandia Creek and tributaries SW1/4NE1/4 Sec. 27, T.26N., R.1E.	Liberty Bay	

that overriding considerations of the public interest will be served.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-060, filed 7/24/81.]

WAC 173-515-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric or water storage reservoir or related facilities.

(2) If, upon detailed analysis, appropriate and environmentally sound proposed storage facilities are found to be compatible with this chapter, such facilities may be approved but will be subject to the establishment of appropriate protection flows for drought or low runoff periods.

(3) Domestic use for a single residence shall be exempt from the provisions of this chapter. If the cumulative effects of numerous single domestic diversions would seriously affect the quantity of water available for instream uses, then domestic in-house use shall be exempt if no alternative source is available.

(4) Stockwatering use, except that related to feedlots, shall be exempt from the provisions established in this chapter.

(5) Future rights for nonconsumptive uses may be granted.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-070, filed 7/24/81.]

WAC 173-515-080 Future rights. No right to divert or store public surface waters of the Kitsap water resource inventory area (WRIA) 15 shall hereafter be granted which shall conflict with the purpose of this chapter.

[Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-080, filed 7/24/81.]

WAC 173-515-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-515-090, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-090, filed 7/24/81.]

WAC 173-515-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-515-095, filed 6/9/88.]

WAC 173-515-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing

conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-515-100, filed 6/9/88. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-16-003 (Order DE 80-45), § 173-515-100, filed 7/24/81.]

**Chapter 173-522 WAC
WATER RESOURCES PROGRAM IN THE
CHEHALIS RIVER BASIN, WRIA-22 AND 23**

WAC

173-522-010	General provision.
173-522-020	Establishment of base flows.
173-522-030	Future allocation of surface water for beneficial uses.
173-522-040	Priority of future rights during times of water shortage.
173-522-050	Streams closed to further consumptive appropriations.
173-522-060	Effect on prior rights.
173-522-070	Enforcement.
173-522-080	Appeals.
173-522-090	Regulation review.

WAC 173-522-010 General provision. These rules, including any subsequent additions and amendments, apply to waters within and contributing to the Chehalis River basin, WRIA-22 and 23 (see WAC 173-500-040). Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program, applies to this chapter 173-522 WAC.

[Order 75-31, § 173-522-010, filed 3/10/76.]

WAC 173-522-020 Establishment of base flows. (1) Base flows are established for stream management units with monitoring to take place at certain control stations as follows:

STREAM MANAGEMENT UNIT INFORMATION

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township and Range	Affected Stream Reach Including Tributaries
12.0200.00 Chehalis River Conf. w/Elk Creek	101.8 14-13-5W	From confluence with Elk Creek to headwaters except Elk Cr.
12.0205.00 Elk Creek	2.5 18-13-5W	From confluence with Chehalis River to headwaters.
12.0216.30 So. Fork Chehalis R.	0.3 24-13-4W	From mouth to headwaters.
12.0235.00 Chehalis River	77.6 2-13-3W	From confluence with Newaukum River to confluence with Elk Cr., excluding Elk Creek, and Newaukum Rivers.
12.0240.00 S. Fork Newaukum R.	22.8 28-13-1E	From confluence with Lost Creek to headwaters, excluding Lost Creek.
12.0245.00 N. Fork Newaukum River	6.6 35-14-1W	From mouth to headwaters.

Chehalis River Basin—WRIA's 22 and 23

173-522-020

12.0250.00 Newaukum River	4.1 9-13-2W	From mouth to confluence with Lost Cr. on S. Fork Newaukum River, excluding N. Fork Newaukum River.
12.0253.00 Salzer Creek	3.8 22-14-2W	From mouth to headwaters.
12.0264.00 Skookumchuck River	6.4 12-15-2W	From mouth to headwaters.
12.0275.00 Chehalis River at Grand Mound	59.9 22-15-3W	From confluence with Newaukum River to confluence with Prairie Creek.
12.0292.00 Black River	4.1 33-16-4W	From mouth to headwaters.
12.0305.00 Cedar Creek	1.1 14-16-5W	From mouth to headwaters.
12.0309.00 Porter Creek	1.3 22-17-5W	From mouth to headwaters.
12.0310.00 Chehalis River at Porter	33.3 28-17-5W	From confluence with Prairie Creek near Grand Mound to confluence with Porter Creek including Prairie Creek.
12.0325.00 Cloquallum Creek	1.9 36-18-6W	From mouth to headwaters.
12.0342.00 East Fk. Satsop R.	15.9 15-19-6W	From confluence with Dry Run Cr. to headwaters excluding Dry Run Cr.
12.0343.00 Decker Creek	0.3 31-19-6W	From mouth to headwaters.
12.0345.00 Middle Fk. Satsop R.	0.4 36-19-7W	From mouth to headwaters.
12.0350.00 Satsop River	2.3 36-18-7W	From mouth to confl. with Dry Run Cr. on East Fk. Satsop R.
12.0350.02 Chehalis R. below confl. w/Satsop R.	20.0 7-17-6W	From confluence with Porter Ck. to just below confl. with Satsop River.
12.0374.00 Wynoochee River	5.9 27-18-8W	From mouth to headwaters.
12.0380.00 Wishkah River	16.2 22-19-9W	From influence of mean annual high tide at low base flow levels to headwaters. Excluding E. Fk. Wishkah River.
12.0382.90 E. Fk., Wishkah R.	0.9 36-19-9W	From mouth to headwaters.
12.0385.00 W. Fk. Hoquiam River	9.4 14-18-10W	From mouth to headwaters.
12.0385.80 Middle Fk. Hoquiam R.	1.6 4-18-10W	From mouth to headwaters.
12.0386.60 East Fork Hoquiam	7.1 8-18-9W	From mouth to headwaters.
12.0390.00 Humptulips River	24.8 17-20-10W	From influence of mean annual high tide at low base flow levels to headwaters.

12.0174.00 Elk River	3.0 3-16-11W	From influence of mean annual high tide at low base flow levels to headwaters.
12.0175.00 Johns River	6.0 21-16-10W	From influence of mean annual high tide at low base flow levels to headwaters.
12.0180.00 Newskah Creek	3.5 32-17-9W	From influence of mean annual high tide at low base flow levels to headwaters.
12.0185.00 Charley Creek	2.0 21-17-9W	From influence of mean annual high tide at low base flow levels to headwaters.

(2) Base flows established for the stream management units in WAC 173-522-020(1) are as follows:

BASE FLOWS IN THE CHEHALIS RIVER BASIN
(In Cubic Feet per Second)

Month	Day	12.0200.00 Chehalis R. nr. Elk Cr.	12.0205.00 Elk Cr.	12.0216.30 So. Fk. Chehalis R.	12.0235.00 Chehalis R.
Jan.	1	260	100	200	700
	15	260	100	200	700
Feb.	1	260	100	200	700
	15	260	100	200	700
Mar.	1	260	100	200	700
	15	260	100	200	700
Apr.	1	260	100	200	700
	15	260	100	200	700
May	1	195	76	145	525
	15	146	57	105	400
June	1	108	43	75	300
	15	82	32	55	230
July	1	62	25	40	175
	15	46	19	29	130
Aug.	1	37	16	21	98
	15	31	14	15	75
Sep.	1	31	14	15	75
	15	31	14	15	75
Oct.	1	39	15	21	92
	15	49	17	28	115
Nov.	1	88	31	56	215
	15	150	56	105	390
Dec.	1	260	100	200	700
	15	260	100	200	700

Month	Day	12.0240.00 Newaukum R. S. Fork	12.0245.00 Newaukum R. N. Fork	12.0250.00 Newaukum R.	12.0253.00 Salzer Cr.
Jan.	1	125	62	250	11
	15	125	62	250	11
Feb.	1	125	62	250	11
	15	125	62	250	11
Mar.	1	125	62	250	11
	15	125	62	250	11
Apr.	1	125	62	250	11
	15	125	62	250	11
May	1	110	47	210	5.8
	15	88	36	160	2.8
June	1	70	27	118	1.4
	15	56	21	90	.73
July	1	45	16	68	.38
	15	36	12	52	.20
Aug.	1	29	9	38	.10
	15	27	7	35	.05

Sep.	1	27	7	35	.05
	15	27	7	35	.05
Oct.	1	33	8.4	43	.14
	15	40	10	54	.40
Nov.	1	58	19	91	1.35
	15	85	34	150	3.9
Dec.	1	125	62	250	11
	15	125	62	250	11

Feb.	1	130	260	1100	3800
	15	130	260	1100	3800
Mar.	1	130	260	1100	3800
	15	130	260	1100	3800
Apr.	1	130	260	1100	3800
	15	130	260	1100	3800
May	1	115	203	910	2910
	15	103	160	750	2300
June	1	91	125	600	1750
	15	81	98	500	1360
July	1	72	78	425	1085
	15	64	61	360	860
Aug.	1	56	48	300	680
	15	50	38	260	550
Sep.	1	50	38	260	550
	15	50	38	260	550
Oct.	1	54	41	280	640
	15	58	45	300	750
Nov.	1	77	83	475	1305
	15	100	145	720	2220
Dec.	1	130	260	1100	3800
	15	130	260	1100	3800

Month	Day	12.0264.00 Skookumchuck River	12.0275.00 Chehalis R. at Grand M.	12.0292.00 Black R.	12.0305.00 Cedar Cr.
Jan.	1	160	1300	200	90
	15	160	1300	200	90
Feb.	1	160	1300	200	90
	15	160	1300	200	90
Mar.	1	160	1300	200	90
	15	160	1300	200	90
Apr.	1	160	1300	200	90
	15	160	1300	200	90
May	1	160	1000	170	70
	15	130	780	145	54
June	1	103	600	120	40
	15	83	460	104	31
July	1	67	355	88	24
	15	54	275	75	19
Aug.	1	43	210	70	14
	15	35	165	66	11
Sep.	1	35	165	66	11
	15	35	165	66	11
Oct.	1	35	200	68	13.8
	15	35	250	70	17
Nov.	1	59	440	100	30
	15	96	760	140	52
Dec.	1	160	1300	200	90
	15	160	1300	200	90

Month	Day	12-0374.00 Wynoochee River	12-0380.00 Wishkah R.	12-0382.90 Wishkah R. E. Fk.	12-0385.00 Hoquiam R. W. Fk.
Jan.	1	560	135	33	32
	15	560	135	33	32
Feb.	1	560	135	33	32
	15	560	135	33	32
Mar.	1	560	135	33	32
	15	560	135	33	32
Apr.	1	560	135	33	32
	15	560	135	33	32
May	1	560	135	33	32
	15	560	113	27	26
June	1	450	95	21	20
	15	360	80	17	16
July	1	290	68	14	12.8
	15	230	57	11.3	10
Aug.	1	185	47	9	8
	15	150	47	9	8
Sep.	1	150	47	9	8
	15	150	47	9	8
Oct.	1	150	53	10.4	9.4
	15	230	60	12	11
Nov.	1	360	91	20	19
	15	560	135	33	32
Dec.	1	560	135	33	32
	15	560	135	33	32

Month	Day	12.0309.00 Porter Cr.	12.0310.00 Chehalis R. at Porter	12.0325.00 Cloquallum Creek	12.0342.00 Satsop R. E. Fork
Jan.	1	90	2500	150	280
	15	90	2500	150	280
Feb.	1	90	2500	150	280
	15	90	2500	150	280
Mar.	1	90	2500	150	280
	15	90	2500	150	280
Apr.	1	90	2500	150	280
	15	90	2500	150	280
May	1	56	1900	118	240
	15	35	1420	92	210
June	1	29	1060	70	175
	15	24	800	55	152
July	1	21	610	43	130
	15	17	460	34	112
Aug.	1	14.2	340	29	104
	15	12	260	24	95
Sep.	1	12	260	24	86
	15	12	260	24	80
Oct.	1	13.3	320	27	80
	15	15	400	30	80
Nov.	1	28	760	52	125
	15	50	1380	88	185
Dec.	1	90	2500	150	280
	15	90	2500	150	280

Month	Day	12-0385.80 Hoquiam R. M. Fk.	12-0386.60 Hoquiam R. E. Fk.	12-0390.00 Humptulips River	12-0174.00 Elk River
Jan.	1	27	44	600	50
	15	27	44	600	50
Feb.	1	27	44	600	50
	15	27	44	600	50
Mar.	1	27	44	600	50
	15	27	44	600	50
Apr.	1	27	44	600	50
	15	27	44	600	50
May	1	27	44	600	43
	15	21	38	500	37
June	1	16	33	400	31
	15	12.2	29	325	26
July	1	9.5	25	265	22
	15	7.4	22	215	19
Aug.	1	5.6	19	170	16
	15	5.6	19	170	16
Sep.	1	5.6	19	170	16
	15	5.6	19	170	16

Month	Day	12.0343.00 Decker Cr.	12.0345.00 Satsop R. M. Fork	12.0350.00 Satsop R. nr.	12.0350.02 Chehalis R. Satsop
Jan.	1	130	260	1100	3800
	15	130	260	1100	3800

Oct.	1	6.7	19	205	20
	15	8.0	25	250	25
Nov.	1	15	34	390	32
	15	27	44	600	40
Dec.	1	27	44	600	50
	15	27	44	600	50

Month	Day	12-0175.00 Johns River	12-0180.00 Newskah Creek	12-0185.00 Charley Creek
Jan.	1	70	17	14
	15	70	17	14
Feb.	1	70	17	14
	15	70	17	14
Mar.	1	70	17	14
	15	70	17	14
Apr.	1	70	17	14
	15	50	17	14
May	1	50	13.4	11
	15	42	10.7	8.6
June	1	35	8.3	6.7
	15	29	6.5	5.4
July	1	24	5.2	4.2
	15	21	4.1	3.3
Aug.	1	17	3.2	2.5
	15	17	2.5	2
Sep.	1	17	2.5	2
	15	17	2.5	2
Oct.	1	17	3.2	2.6
	15	24	4	3.5
Nov.	1	35	8.4	7.1
	15	49	17	14
Dec.	1	70	17	14
	15	70	17	14

(3) Base flow hydrographs, Appendix 1, pages 19-23 in the document entitled "water resources management program in the Chehalis River basin" dated November, 1975 shall be used for definition of base flows on those days not specifically identified in WAC 173-522-020(2).

(4) All rights hereafter established shall be expressly subject to the base flows established in WAC 173-522-020 (1) through (3).

(5) At such time as the departments of fisheries and/or wildlife provide specific information substantiating the need for flows higher than the flows set forth in WAC 173-522-020(2), the department of ecology agrees to proceed with setting minimum flows as provided under chapter 90.22 RCW within one year from the time of said request, unless agreement to another time frame is reached between parties.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-522-020, filed 6/9/88; Order 75-31, § 173-522-020, filed 3/10/76.]

WAC 173-522-030 Future allocation of surface water for beneficial uses. The department has determined that there are public waters available, subject to base flow, for allocation to beneficial uses from all streams within the Chehalis basin; except for those streams and times declared closed in WAC 173-522-050. The department shall maintain a current tabulation of the amount of water that is available for appropriation at each stream management unit specified under WAC 173-522-020(1).

[Order 75-31, § 173-522-030, filed 3/10/76.]

WAC 173-522-040 Priority of future rights during times of water shortage. (1) Rights established in the future pertaining to waters available for allocation in WAC 173-522-030 shall be subject to a priority of use. Rights for domestic use, including irrigation of lawn and noncommercial garden not to exceed one-half acre, and livestock use excluding feedlot operation, shall be superior to all other consumptive and nonconsumptive uses.

(2) As between rights established in the future within a priority of use, the date of priority shall control with an earlier-dated right being superior to those rights with later dates.

(3) Additional water use priorities may be promulgated, when required, in the future.

[Order 75-31, § 173-522-040, filed 3/10/76.]

WAC 173-522-050 Streams closed to further consumptive appropriations. The department, having determined there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the following streams to further consumptive appropriation. An exception is made for domestic and normal stockwatering where there is no alternative source of water supply.

Surface Water Closures

STREAM	DATE OF CLOSURE	PERIOD OF CLOSURE
Beaver Creek, tributary to S. Fk., Newaukum River	12-5-52	1 May-31 Oct.
Beaver Creek, tributary to Black River	10-28-52	" "
Bunker Creek	1-17-50	" "
Dempsey Creek	11-15-74	" "
Dillenbaugh Creek	8-21-72	" "
Hanaford Creek	5-7-52	" "
Hope Creek & Garrard Creek	8-28-73	" "
Kearney Creek	10-27-52	" "
Lincoln Creek	11-5-48	" "
Middle Fork, Newaukum R.	4-7-50	" "
Mill Creek	3-21-52	" "
Mox Chehalis	4-25-57	" "
Salmon Creek	12-18-56	" "
Rock Creek	4-11-73	" "
Scatter Creek	7-20-50	" "
Stearns Creek	4-28-53	" "
Wildcat Creek	10-28-52	" "
Williams Creek	5-6-52	" "
Wynoochee River	3-9-62	" "
Black River	Date of Adoption	1 July-30 Sept.
Skookumchuck River	" "	" "
S. Fk. Chehalis River	" "	" "
Salzer Creek	" "	1 June-30 Sept.

Note: Affected reach is from mouth to headwaters and includes all tributaries in the contributing drainage area unless specifically excluded.

[Order 75-31, § 173-522-050, filed 3/10/76.]

WAC 173-522-060 Effect on prior rights. Nothing in this chapter shall be construed to lessen, enlarge, or modify the existing rights acquired by appropriation or otherwise.

[Order 75-31, § 173-522-060, filed 3/10/76.]

WAC 173-522-070 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-522-070, filed 6/9/88.]

WAC 173-522-080 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-522-080, filed 6/9/88.]

WAC 173-522-090 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-522-090, filed 6/9/88.]

Chapter 173-531A WAC

WATER RESOURCE PROGRAM FOR THE JOHN DAY-MCNARY POOLS REACH OF THE COLUMBIA RIVER, WRIA 31 AND PARTS OF WRIA'S 32, 33, 36, AND 37

WAC

173-531A-010	Purpose.
173-531A-020	Definitions.
173-531A-030	Existing water rights protected.
173-531A-040	Reservation for future irrigation use.
173-531A-050	Reservation for municipal use.
173-531A-060	Permit conditions.
173-531A-070	Department to review regulation.
173-531A-080	Enforcement.
173-531A-090	Appeals.

WAC 173-531A-010 Purpose. This chapter is adopted in accordance with the water resources management regulation, chapter 173-500 WAC, which was promulgated under the authority of the Water Resources Act of 1971, chapter 90.54 RCW. This chapter applies to the surface waters of the John Day and McNary Pools of the Columbia River and the Lower Snake River.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-010, filed 6/24/80. Formerly WAC 173-531-010.]

WAC 173-531A-020 Definitions. For the purposes of this chapter, the following definitions shall be used.

(1) "Department" means the Washington state department of ecology.

(2) "Reservation" means the designation of specific amounts of the water resources for specific future beneficial uses.

(3) "John Day/McNary Pools Reach," means that part of the Columbia River from John Day Dam upstream to the

upper limits of McNary Pool including the upper limits of the pool in the Snake River, the Yakima River, and the Walla Walla River. This reach extends from river mile 216 to river mile 352 of the Columbia River, and includes the lower 10 miles of the Snake River, the lower 6 miles of the Yakima River, and the lower 9 miles of the Walla Walla River.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-020, filed 6/24/80. Formerly WAC 173-531-020.]

WAC 173-531A-030 Existing water rights protected. Nothing in the chapter shall be construed to lessen, enlarge, or modify existing rights acquired by appropriation or by other means, including federal reserved rights.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-030, filed 6/24/80. Formerly WAC 173-531-030.]

WAC 173-531A-040 Reservation for future irrigation use. (1) One million three hundred twenty thousand acre-feet per year are hereby reserved from the John Day/McNary Pools reach to provide a water supply for the 330,000 acres of irrigation projected to be developed by the year 2020. The 330,000 acres includes lands under existing water right permits, pending applications and land for which appropriation applications have not yet been filed.

(2) The priority dates of existing permits and applications already on file covered by the reservation are the dates of filing with the department. The priority dates of permits issued under applications filed in the future under the reservation shall be the effective date of this regulation (see RCW 90.03.345).

(3) Waters represented by canceled or relinquished applications and permits will still be considered reserved and may be subsequently filed on by interested appropriators.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-040, filed 6/24/80. Formerly WAC 173-531-040.]

WAC 173-531A-050 Reservation for municipal use. (1) Twenty-six thousand acre-feet of water per year is reserved from the John Day/McNary Pools reach to provide for future municipal supply to the year 2020.

(2) The reservation for municipal use does not guarantee any existing or future supply entity a specific quantity of water. Municipal water supply utilities must petition the department for reservation of water, for their particular needs, according to procedures of chapter 173-590 WAC.

(3) The priority dates of water right filings under the municipal reservation shall be the effective date of this regulation.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-050, filed 6/24/80. Formerly WAC 173-531-050.]

WAC 173-531A-060 Permit conditions. All permits issued for waters reserved under WAC 173-531A-040 or 173-531A-050 after the effective date of this chapter shall be subject to the provisions of chapter 173-563 WAC - instream resources protection program for the main stem of the Columbia River.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-060, filed 6/24/80. Formerly WAC 173-531-060.]

WAC 173-531A-070 Department to review regulation. (1) The department, in accordance with applicable statutory provisions, shall review the reservations for future irrigation use and future municipal use at least every five years after adoption of this management regulation.

(2) In reviewing the reservations, the department will evaluate the account of water rights established under the reservations as provided in WAC 173-531A-040(3) and 173-531A-050(2). The department will also evaluate and update the accounts of ground water development and use on lands relating to the reserved waters and reduce the reserved amounts of surface water.

[Statutory Authority: Chapter 90.54 RCW. 80-08-022 (Order DE 80-19), § 173-531A-070, filed 6/24/80.]

WAC 173-531A-080 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-531A-080, filed 6/9/88.]

WAC 173-531A-090 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-531A-090, filed 6/9/88.]

Chapter 173-532 WAC

WATER RESOURCES PROGRAM FOR THE WALLA WALLA RIVER BASIN, WRIA 32

WAC

173-532-010	Purpose.
173-532-020	Definitions.
173-532-030	Base flows.
173-532-040	Streams closed to further consumptive appropriations.
173-532-050	Protection of surface water rights from new appropriators of ground water.
173-532-060	Designation of ground water areas for specific uses.
173-532-070	Closure of ground water aquifer to further appropriation.
173-532-080	Evaluation of ground water applications.
173-532-090	Enforcement.
173-532-100	Appeals.
173-532-110	Regulation review.

WAC 173-532-010 Purpose. This regulation is adopted in accordance with the water resources management regulation, chapter 173-500 WAC, which was promulgated under the authority of the Water Resources Act of 1971, chapter 90.54 RCW. This chapter, including any amendments, applies to all waters that lie within or contribute to the Walla Walla River drainage basin. This chapter sets forth the department's policies to manage the basin's water resources.

[Order DE 77-30, § 173-532-010, filed 12/14/77.]

WAC 173-532-020 Definitions. For purposes of this chapter, the following definitions shall be used.

(1) "Allocation" means the designating of specific amounts of the water resource for specific beneficial uses.

(2) "Base flow" means a level of stream flow established in accordance with provisions of chapter 90.54 RCW required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values.

(3) "Consumptive use" means use of water whereby there is discernible diminishment of the water source.

(4) "Department" means the Washington state department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, irrigation of not over one-half acre of lawn and garden per dwelling, and other incidental household uses.

(7) "In-house domestic use" means use of water for drinking, cleaning, sanitation, and other uses in a residence, excluding irrigation of lawn and garden.

(8) "Municipal water supply system" means a set of facilities including source, treatment, storage, transmission and distribution facilities whereby water is furnished for commercial and/or industrial uses, and public water supplies with 10 or more connections.

(9) "Nonconsumptive use" means a type of water use where either there is no diversion from a source body, or where there is no discernible diminishment of the source.

(10) "Perennial stream" means a stream with a natural flow which is normally continuous at any given location.

(11) "Public water supply" means any water supply intended or used for human consumption and community uses.

(12) "Water right" means a right to make beneficial use of public waters of the state.

(13) "Zone of direct hydraulic continuity" means that zone of inter action between the surface water stream and the adjacent ground water whereby a pumping well can effectively reduce the flow in the stream to the detriment of surface water users, as determined by the department.

[Order DE 77-30, § 173-532-020, filed 12/14/77.]

WAC 173-532-030 Base flows. The establishment of base flows for surface streams will be deferred until such time as storage project or projects become a reality. At present, all surface streams are totally appropriated during the irrigation season and water is not available for protection of instream values. With the advent of future storage projects, the department may establish base flows which can be included as project benefits and maintained by storage releases.

[Order DE 77-30, § 173-532-030, filed 12/14/77.]

WAC 173-532-040 Streams closed to further consumptive appropriations. The department has determined that no waters are available for consumptive appropriation through the establishment of water rights for the following streams for the periods indicated:

TABLE II-1
SURFACE WATER CLOSURES*

STREAM NAME	AFFECTED REACH	EFFECTIVE DATE OF CLOSURE	PERIOD OF CLOSURE
Blue Creek	Mouth to Headwaters	Date of Adoption	June 1 - Oct. 31
Mill Creek	Mouth to State Line	2-6-1957	May 1 - Oct. 1
Walla Walla River	Mouth to State Line	Date of Adoption	May 1 - Nov. 30
Dry Creek	Mouth to Headwaters	Date of Adoption	April 15 - Nov. 15 or whenever Walla Walla at USGS Gage 14.0185 drops below 91.0 cfs.
Touchet River	Mouth to Headwaters	Date of Adoption	June 1 - Oct. 31
Coppei Creek	Mouth to Headwaters	Date of Adoption	April 1 - Nov. 10
Doan Creek	Mouth to Headwaters	Date of Adoption	June 1 - Oct. 1
Mud Creek	Mouth to Headwaters	Date of Adoption	May 1 - Oct. 31 or whenever Walla Walla below confluence with Mud Creek falls below 50 cfs.
Pine Creek	Mouth to Headwaters	Date of Adoption	May 1 - Oct. 31 or whenever Walla Walla River at confluence with Pine Creek or below Touchet River drops below 50 cfs.
Stone Creek	Mouth to Headwaters	Date of Adoption	May 1 - Oct. 31

*Exception for single-domestic and stock water where no other practical source is available.

[Order DE 77-30, § 173-532-040, filed 12/14/77.]

WAC 173-532-050 Protection of surface water rights from new appropriators of ground water. New appropriators of ground water will be required to locate wells outside of the zone of direct hydraulic continuity between the surface water stream and the ground water aquifer. The actual limits of the zone of direct hydraulic continuity at a specific location will be determined by the department after an individual ground water application is received. The department will use accepted engineering methods for its determination.

[Order DE 77-30, § 173-532-050, filed 12/14/77.]

WAC 173-532-060 Designation of ground water areas for specific uses. A portion of the ground water resource in the Walla Walla-College Place vicinity is designated for the anticipated growth of the community. Within the following area, ground water in the basalt aquifer is limited to appropriation for municipal water supply

[Title 173 WAC—page 1082]

systems only, and ground water in the shallow gravel aquifer is limited to uses other than municipal water supply systems:

All the area contained within the following listed sections: Sections 35 and 36, T8N, R35E; sections 1, 2, 11, 12, 13, 14, 15, 23, 24, 25, 26, 27, 28, 34, 35, and 36, T7N, R35E; sections 1, 2, 3, 10, 11, 12, and all of 13, 14, and 15 lying within Washington state, T6N, R35E; sections 31, 32, 33, 34, 35, and 36, T8N, R36E; all the area within T7N, R36E; all the area within T6N, R36E lying within the state of Washington; section 31, T8N, R37E; sections 6, 7, 18, 19, 30, and 31, T7N, R37E; and sections 6, 7, and all of section 18 lying within Washington state, T6N, R37E.

The provisional designation of water in the basalt aquifer for municipal water supply systems shall be effective for a period from February 1, 1978 to October 1, 1984. After October 1, 1984, all designated waters not appropriated or reserved under chapter 173-590 WAC reservation of water for future public water supply, shall be open for appropriations by other users as determined by the department.

The designation of water in the gravel aquifer for users other than municipal water supply systems shall remain indefinitely until changed by the department.

[Statutory Authority: RCW 90.54.050, 83-02-039 (Order DE 82-46), § 173-532-060, filed 12/30/82; Order DE 77-30, § 173-532-060, filed 12/14/77.]

WAC 173-532-070 Closure of ground water aquifer to further appropriation. When the department determines that annual ground water withdrawals from the basalt aquifer have reached 125,000 acre-feet, which is approximately 95 percent of the average annual recharge to that aquifer, the aquifer will be closed to further appropriation.

[Order DE 77-30, § 173-532-070, filed 12/14/77.]

WAC 173-532-080 Evaluation of ground water applications. Each new application for ground water appropriation will be evaluated to minimize interference with existing wells and with adjacent surface water streams. The department will issue permits for ground water withdrawal in those cases where senior surface water and ground water rights will not be adversely affected as determined by the department.

[Order DE 77-30, § 173-532-080, filed 12/14/77.]

WAC 173-532-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW, 88-13-037 (Order 88-11), § 173-532-090, filed 6/9/88.]

WAC 173-532-100 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this

chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-532-100, filed 6/9/88.]

WAC 173-532-110 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-532-110, filed 6/9/88.]

Chapter 173-545 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—WENATCHEE RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 45

WAC

- 173-545-010 General provision.
- 173-545-020 Purpose.
- 173-545-030 Establishment of instream flows.
- 173-545-040 Stream closure.
- 173-545-050 Policy statement for future permitting actions.
- 173-545-060 Lakes.
- 173-545-070 Exemptions.
- 173-545-080 Future rights.
- 173-545-090 Enforcement.
- 173-545-095 Appeals.
- 173-545-100 Regulation review.

WAC 173-545-010 General provision. These rules apply to waters within the Wenatchee River basin, WRIA 45, as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), chapter 75.20 RCW (state fisheries code) and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-010, filed 6/3/83.]

WAC 173-545-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Wenatchee River basin with instream flows and levels necessary to provide protection for wildlife, fish, scenic, aesthetic, and environmental values, recreation, navigation, and water quality.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-020, filed 6/3/83.]

WAC 173-545-030 Establishment of instream flows. (1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township, and Range	Affected Stream Reach(es) including Tributaries
12-4570.00 Wenatchee River at Plain	46.2 Sec. 12, T. 26N., R. 17E. W.M	From Plain Road Bridge, R.M. 46.2, to headwaters
12-4585.00 Icicle Cr. near Leavenworth	1.5 Sec. 24, T. 24N., R. 17E. W.M	Headwaters of Icicle Creek to its mouth
12-4590.00 Wenatchee River at Peshastin	21.5 Sec. 8, T. 24N., R. 18E. W.M	From confluence of Derby Creek to Plain Road Bridge, R.M. 46.2 excluding Derby Creek and Icicle Creek
12-4625.00 Wenatchee River at Monitor	7.0 Sec. 11, T. 23N., R. 19E. W.M	From mouth to confluence of Derby Creek, including Derby Creek and excluding Mission Creek
12-4620.00 Mission Creek near Cashmere	1.5 Sec. 8, T. 23N., R. 19E. W.M	From mouth to headwaters

(2) Instream flows are established for the stream management units in WAC-173-545-030(1) as follows:

Instream Flows in the Wenatchee River basin
(instantaneous cubic feet per second)

Month Day	12-4570.00 Wenatchee R. at Plain	12-4580.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jan 1	550	120	700
Jan 15	550	120	700
Feb 1	550	120	700
Feb 15	550	120	700
Mar 1	550	150	750
Mar 15	700	170	940
Apr 1	910	200	1300
Apr 15	1150	300	1750
May 1	1500	450	2200
May 15	2000	660	2800
Jun 1	2500	1000	3500
Jun 15	2000	660	2600
Jul 1	1500	450	1900
Jul 15	1200	300	1400
Aug 1	880	200	1000
Aug 15	700	170	840
Sep 1	660	130	820
Sep 15	620	130	780
Oct 1	580	130	750
Oct 15	520	130	700
Nov 1	550	150	750
Nov 15	550	150	750
Dec 1	550	150	750
Dec 15	550	150	750

Instream Flows in the Wenatchee River basin (cont'd)
(instantaneous cubic feet per second)

Month Day	12-4620.00 Mission Cr. near Cashmere	12-4625.00 Wenatchee R. at Monitor
Jan 1	6	820
Jan 15	6	820
Feb 1	6	820
Feb 15	6	800
Mar 1	6	800
Mar 15	11	1040

Apr	1	22	1350
	15	40	1750
May	1	40	2200
	15	40	2800
Jun	1	28	3500
	15	20	2400
Jul	1	14	1700
	15	10	1200
Aug	1	7	800
	15	5	700
Sep	1	4	700
	15	4	700
Oct	1	4	700
	15	5	700
Nov	1	6	800
	15	6	800
Dec	1	6	800
	15	6	800

(3) Instream flow hydrographs, as represented in the document entitled "Wenatchee River basin instream resources protection program, figs. 7, 8, 9, pgs. 30 and 31," shall be used for identification of instream flows on those days not specifically identified in WAC 173-545-030(2).

(4) Future consumptive water right permits issued hereafter for diversion of surface water from the main stem Wenatchee River and perennial tributaries shall be expressly subject to instream flows established in WAC 173-545-030(1) through (3) as measured at the appropriate gage, preferably the nearest one downstream, except for those exemptions described in WAC 173-545-070 (1) through (3).

(5) Projects that would reduce the flow in a portion of a stream's length (e.g.: hydroelectric diversion projects) will be considered consumptive with respect to the bypassed portion of the stream and will be subject to specific instream flow requirements as specified by the department for the bypassed reach notwithstanding WAC 173-545-030(1) through (3). The department may require detailed, project-specific instream flow studies to determine a specific instream flow for the bypassed reach.

(6) If department investigations determine that withdrawal of ground water from the source aquifers would not interfere significantly with stream flow during the period of stream closure or with maintenance of minimum flows, then applications to appropriate public ground waters may be approved and permits or certificates issued.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-030, filed 6/3/83.]

WAC 173-545-040 Stream closure. The department has determined that additional diversions of water from Peshastin Creek during the period June 15 to October 15 would deplete instream flows required to protect instream values. Peshastin Creek is, therefore, closed to further consumptive appropriation from June 15 to October 15 each year. During the nonclosed period, minimum instream flows will be controlled and measured from the control station on the Wenatchee River at Monitor.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-040, filed 6/3/83.]

WAC 173-545-050 Policy statement for future permitting actions. Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate base flow in all streams and rivers

as well as the water levels in all lakes in the Wenatchee River basin by encouraging the use of alternate sources of water which include (1) ground water, (2) storage water, or (3) purchase of other valid water rights.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-050, filed 6/3/83.]

WAC 173-545-060 Lakes. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-060, filed 6/3/83.]

WAC 173-545-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, riparian, appropriate, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Future requests for group domestic uses, including municipal supply, may be exempted from the minimum instream flow provisions of this chapter when it is determined by the department, in consultation with the departments of fisheries and game, that overriding considerations of the public interest will be served.

(3) Single domestic and stockwatering use, except that related to feedlots, shall be exempt from the provisions established in this chapter. If the cumulative impacts of numerous single domestic diversions would significantly affect the quantity of water available for instream uses, then only single domestic in-house use shall be exempt if no alternative source is available.

(4) Nonconsumptive uses which are compatible with the intent of the chapter may be approved.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-070, filed 6/3/83.]

WAC 173-545-080 Future rights. No rights to divert or store public surface waters of the Wenatchee River basin, WRIA 45, shall hereafter be granted which shall conflict with the purpose of this chapter.

[Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-080, filed 6/3/83.]

WAC 173-545-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-545-090, filed 6/9/88. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-090, filed 6/3/83.]

WAC 173-545-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-545-095, filed 6/9/88.]

WAC 173-545-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-545-100, filed 6/9/88. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. 83-13-016 (Order DE 83-8), § 173-545-100, filed 6/3/83.]

Chapter 173-548 WAC

WATER RESOURCES PROGRAM IN THE METHOW RIVER BASIN, WRIA 48

WAC

- 173-548-010 General provision.
- 173-548-020 Establishment of base flows.
- 173-548-030 Future allocations—Reservation of surface water for beneficial uses.
- 173-548-040 Priority of future water rights during times of water shortage.
- 173-548-050 Streams and lakes closed to further consumptive appropriations.
- 173-548-060 Ground water.
- 173-548-070 Effect on prior rights.
- 173-548-080 Enforcement.
- 173-548-090 Appeals.
- 173-548-100 Regulation review.

WAC 173-548-010 General provision. These rules, including any subsequent additions and amendments, apply to waters within and contributing to the Methow River basin, WRIA 48 (see WAC 173-500-040). Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program, applies to this chapter 173-548 WAC.

[Order DE 76-37, § 173-548-010, filed 12/28/76.]

WAC 173-548-020 Establishment of base flows. (1) Base flows are established for stream management units with monitoring to take place at certain control points as follows:

STREAM MANAGEMENT UNIT INFORMATION

Stream Management Unit Name, Control Station Name and Number	Control Station Location by River Mile, Section, Township, Range	Affected Stream Reach (includes tributaries)
--	--	--

<u>Lower Methow</u>		
Methow R. nr. Pateros (12.4499.50)	6.7 20-30-23E	Methow River confluence with Wells Pool to confluence with Twisp River.

<u>Middle Methow</u> Methow R. nr. Twisp (12.4495.00)	40.0 17-33-22E	Methow River from confluence with Twisp River to confluence with Chewack River.
<u>Upper Methow</u> Methow R. nr. Winthrop (12.4473.89)	50.2 2-34-21E	Methow River from confluence with Chewack River to confluence with Little Boulder Creek and including Little Boulder Creek.
<u>Methow Headwaters</u> Methow R. at Little Boulder Cr. (12.4473.83)	65.3 25-36-19E	Methow River from confluence with Little Boulder Creek to headwaters.
<u>Early Winters Creek</u> Early Winters Cr. near Mazama	27-36-19E	Early Winters Creek from confluence with Methow River to headwaters.
<u>Chewack River</u> Chewack R. nr. Boulder Creek (12.4475.00)	8.7 35-36-21E	Chewack River confluence with Methow River to headwaters.
<u>Twisp River</u> Twisp R. nr. Twisp (12.4489.98)	0.3 7-33-22E	Twisp River from confluence with Methow River to headwaters.

(2) Base flows established for the stream management units in WAC 173-548-020(1) are as follows:

Base Flows in the Methow River
(All Figures in Cubic Feet Per Second)

[CODIFICATION NOTE: The graphic presentation of this table has been varied slightly in order that it would fall within the printing specification for the Washington Administrative Code. The following table was too wide to be accommodated in the width of the WAC column. The table as codified has been divided into two tables with Part 1 covering the Lower Methow, Middle Methow and Upper Methow and with Part 2 covering the Methow Headwaters, Early Winters Creek, Chewack River and Twisp River.]

PART 1

Month	Day	Lower Methow (12.4499.50)	Middle Methow (12.4495.00)	Upper Methow (12.4473.89)
Jan.	1	350	260	120
	15	350	260	120
Feb.	1	350	260	120
	15	350	260	120
Mar.	1	350	260	120
	15	350	260	120
Apr.	1	590	430	199
	15	860	650	300
May	1	1,300	1,000	480
	15	1,940	1,500	690
Jun.	1	2,220	1,500	790
	15	2,220	1,500	790
Jul.	1	2,150	1,500	694
	15	800	500	240

Aug.	1	480	325	153
	15	300	220	100
Sep.	1	300	220	100
	15	300	220	100
Oct.	1	360	260	122
	15	425	320	150
Nov.	1	425	320	150
	15	425	320	150
Dec.	1	390	290	135
	15	350	260	120

PART 2

Month	Day	Methow Headwaters (12.4473.83)	Early Winters Creek	Chewack River (12.4475.00)	Twisp River (12.4489.98)
Jan.	1	42	10	56	34
	15	42	10	56	34
Feb.	1	42	10	56	34
	15	42	10	56	34
Mar.	1	42	10	56	34
	15	42	10	56	34
Apr.	1	64	14	90	60
	15	90	23	140	100
May	1	130	32	215	170
	15	430	108	290	300
Jun.	1	1,160	290	320	440
	15	1,160	290	320	440
Jul.	1	500	125	292	390
	15	180	45	110	130
Aug.	1	75	20	70	58
	15	32	8	47	27
Sep.	1	32	8	47	27
	15	32	8	47	27
Oct.	1	45	11	56	35
	15	60	15	68	45
Nov.	1	60	15	68	45
	15	60	15	68	45
Dec.	1	51	12	62	39
	15	42	10	56	34

(3) Base flow hydrographs, as represented in Figure 1 in the document entitled "water resources management program, Methow River basin" dated 1976, shall be used for definition of base flows on those days not specifically identified in WAC 173-548-020(2) and 173-548-030.

(4) All rights hereafter established shall be subject to the base flows established in WAC 173-548-020(1) through (3), except as provided under WAC 173-548-030 herein.

(5) Future appropriations of water which would conflict with base flows shall be authorized, by the director, only in those situations when it is clear that overriding considerations of the public interest will be served.

[Order DE 76-37, § 173-548-020, filed 12/28/76.]

WAC 173-548-030 Future allocations—Reservation of surface water for beneficial uses. (1) The department determines that there are surface waters available for appropriation from the stream management units specified in the amount specified in cubic feet per second (cfs) during the time specified as follows:

(a) Maximum surface water available for future allocation from the indicated reach is as follows:

Month	Lower Methow	Middle Methow	Upper Methow	Methow Head- waters	Early Winters Creek	Chewack River	Twisp River
Oct.	95	50	44	15	29	09	14
Nov.	116	101	46	06	21	10	15
Dec.	112	99	44	17	26	10	15
Jan.	50	36	26	08	19	03	09
Feb.	51	37	29	09	19	04	10
Mar.	147	139	80	38	19	24	18
Apr.	565	590	273	336	35	118	148
May	2,922	2,927	784	412	403	809	703
Jun.	3,116	2,853	1,017	1,249	294	1,292	890
Jul.	965	877	583	608	189	308	298
Aug.	214	192	203	109	94	70	70
Sep.	62	55	76	33	47	23	26

All figures in cubic feet per second.

(b) The control station for each reach is defined in WAC 173-548-020.

(c) The appropriation limit is set forth to be an amount equal to the one in two year natural reach discharge on a monthly basis for all management reaches except Early Winters Creek. The appropriation limit for Early Winters Creek is set forth to be an amount equal to the estimated natural mean monthly streamflow for that stream.

(2) The amounts of water referred to in WAC 173-548-030(1) above are allocated for beneficial uses in the future as follows:

(a) Allocation of surface waters by use category (April through September):

Use Description	Apr.	May	Jun.	Jul.	Aug.	Sep.
<u>Lower Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	860	1,940	2,220	800	300	300
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Middle Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	650	1,500	1,500	500	220	220
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Upper Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	300	690	790	240	100	100
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Methow Headwaters</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	90	430	1,160	180	32	32
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

<u>Early Winters Creek</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	23	108	290	45	8.0	11.0
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Chewack River</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	140	290	320	110	47	47
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Twisp River</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	100	300	440	130	27	27
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

All figures in cubic feet per second

<u>Early Winters Creek</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	15	15	10	10	10	10
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Chewack River</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	68	68	56	56	56	56
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Twisp River</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	45	45	34	34	34	34
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

All figures in cubic feet per second.

(b) Allocation of surface waters by use category (October through March):

Use Description	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.
<u>Lower Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	425	425	350	350	350	350
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Middle Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	320	320	260	260	260	260
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Upper Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	150	150	120	120	120	120
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Methow Headwaters</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	60	60	42	42	42	42
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

(c) Allocations presented in this section do not limit the utilization of waters stored for later release, provided such storage does not infringe upon existing rights or base flow and is duly permitted under RCW 90.03.290 and 90.03.350.

(d) As the amount of water allocated for each category of use approaches the amount available for future allocation set forth in WAC 173-548-030(1), the department shall review the program to determine whether there is a need for program revision.

[Order DE 76-37, § 173-548-030, filed 12/28/76.]

WAC 173-548-040 Priority of future water rights during times of water shortage. (1) As between rights established in the future pertaining to waters allocated in WAC 173-548-030 (2)(a) and (b), all rights subject to this program shall be regulated in descending order of use category priority regardless of the date of the priority of right.

(2) As between rights established in the future within a single use category allocation of WAC 173-548-030, the date of priority shall control with an earlier dated right being superior to those rights with later dates.

[Order DE 76-37, § 173-548-040, filed 12/28/76.]

WAC 173-548-050 Streams and lakes closed to further consumptive appropriations. The department, having determined based on existing information that there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the streams and lakes listed in (a) and (b), and ground water hydraulically connected with these surface waters to further consumptive appropriation[.] This includes rights to use water consumptively established through permit procedures and ground water withdrawals otherwise exempted from permit under RCW 90.44.050. Specific situations in which well construction may be approved are identified.

No wells shall be constructed for any purposes, including those exempt from permitting under RCW 90.44.050, unless one or more of the following conditions have been met and construction of the well has been approved in writing by the department prior to the beginning of well construction:

(1) The proponent has a valid water right permit recognized by the department. For an existing community domestic use, a water right permit must be held by a purveyor of an approved system. (For the purposes of this chapter, an approved water system is one in compliance with the state drinking water regulations, chapter 246-290 WAC and the state surface and ground water codes, chapters 90.03 and 90.44 RCW); or

(2) The proponent has obtained a valid state surface or ground water right through a transfer approved by the department under the statutory authority of chapter 90.03 or 90.44 RCW; or

(3) The proponent is replacing or modifying an existing well developed under the exemption from permit clause of RCW 90.44.050 and this has been approved in writing by the department; or,

(4) If the ground water being sought for withdrawal has been determined by the department not to be hydraulically connected with surface waters listed as closed, the department may approve a withdrawal. When insufficient evidence is available to the department to make a determination that ground and surface waters are not hydraulically connected, the department shall not approve the withdrawal of ground water unless the person proposing to withdraw the ground water provides additional information sufficient for the department to determine that hydraulic continuity does not exist and that water is available.

(a) STREAM CLOSURES

The following streams are closed all year, including all ground waters hydraulically connected to these streams.

Stream Name (Includes Tributaries)
Wolf Creek
Bear Creek (Davis Lake)
Thompson Creek
Beaver Creek
Alder Creek
Benson Creek
Texas Creek
Libby Creek
Cow Creek
Gold Creek
McFarland Creek
Squaw Creek
Black Canyon Creek
French Creek

(b) LAKE CLOSURES

The following lakes are closed all year, including all ground waters hydraulically connected to these lakes:

Name	Location
Alta Lake	3 mi. SW of Pateros
Black Lake	25 mi. N of Winthrop
Black Pine Lake	9 mi. SW of Twisp
Crater Lake	10 mi. W of Carlton
Davis Lake	Bear Creek Drainage
Eagle Lake	11 mi. SW of Carlton
French Creek	Sec.28, T.31N., R.23E.
Libby Lake	10 mi. W of Carlton
Louis Lake	20 mi. W of Winthrop
Middle Oval Lake	16 mi. W of Carlton
North Lake	20 mi. W of Winthrop
Patterson Lake	Sec.8, T.34N., R.21E.
Pearrygin Lake	Sec.36, T.35N., R.21E.
Slate Lake	14 mi. W of Winthrop
Sunrise Lake	16 mi. W of Methow
Upper Eagle Lake	12 mi. W of Carlton
West Oval Lake	16 mi. W of Carlton

[Statutory Authority: Chapters 34.05, 90.54, 18.104, 90.03 and 90.44 RCW. 91-23-093 (Order 91-27), § 173-548-050, filed 11/19/91, effective 12/20/91; Order DE 76-37, § 173-548-050, filed 12/28/76.]

WAC 173-548-060 Ground water. If it is determined that a future development of ground water measurably affects surface waters subject to the provisions of chapter 173-548 WAC, then rights to said ground water shall be subject to the same conditions as affected surface waters.

[Order DE 76-37, § 173-548-060, filed 12/28/76.]

WAC 173-548-070 Effect on prior rights. Nothing in this chapter shall be construed to lessen, enlarge, or modify existing rights acquired by appropriation or otherwise, and legally vested prior to the effective date of this chapter.

[Order DE 76-37, § 173-548-070, filed 12/28/76.]

WAC 173-548-080 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-548-080, filed 6/9/88.]

WAC 173-548-090 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-548-090, filed 6/9/88.]

WAC 173-548-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-548-100, filed 6/9/88.]

Chapter 173-549 WAC
WATER RESOURCES PROGRAM IN THE
OKANOGAN RIVER BASIN, WRIA 49

WAC

- 173-549-010 General provision.
- 173-549-015 Purpose.
- 173-549-016 Definition.
- 173-549-020 Establishment of minimum instream flows.
- 173-549-025 Stream closures.
- 173-549-027 Policy statement for future permitting actions.
- 173-549-035 Lakes.
- 173-549-060 Ground water.
- 173-549-070 Effect on prior rights and exemptions.
- 173-549-080 Future rights.
- 173-549-090 Enforcement.
- 173-549-095 Appeals.
- 173-549-100 Regulation review.
- 173-549-900 Minimum instream flow hydrographs.

DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER

- 173-549-030 Future allocations—Reservation of surface water for beneficial uses. [Order DE 76-25, § 173-549-030, filed 7/14/76.] Repealed by 84-13-076 (Order DE 84-15), filed 6/20/84. Statutory Authority: Chapters 90.54 and 90.22 RCW.
- 173-549-040 Priority of future water rights during times of water shortage. [Order DE 76-25, § 173-549-040, filed 7/14/76.] Repealed by 84-13-076 (Order DE 84-15), filed 6/20/84. Statutory Authority: Chapters 90.54 and 90.22 RCW.
- 173-549-050 Streams and lakes closed to further consumptive appropriations. [Order DE 76-25, § 173-549-050, filed 7/14/76.] Repealed by 84-13-076 (Order DE 84-15), filed 6/20/84. Statutory Authority: Chapters 90.54 and 90.22 RCW.

WAC 173-549-010 General provision. These rules apply to waters within the Okanogan River Basin (WRIA 49) as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (the Water Resources Act of 1971) and chapter 90.22 RCW (Minimum water flows and levels) and in accordance with chapter 173-500 WAC (Water resources management program).

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-010, filed 6/20/84; Order DE 76-25, § 173-549-010, filed 7/14/76.]

WAC 173-549-015 Purpose. Chapter 90.54 RCW (the Water Resources Act of 1971) requires that utilization and management of the waters of the state shall be guided by a number of fundamentals, including the following:

"(1) Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial." (RCW 90.54.020(1).)

The act further specifies that "Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values." (RCW 90.54.020 (3)(a).)

The purpose of this chapter is to satisfy the requirements of RCW 90.54.020 (3)(a) while, at the same time, allowing the continued use of water for other beneficial uses such as agriculture, which is acknowledged as a vital activity greatly benefiting the citizens of the Okanogan Basin and the state of Washington.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-015, filed 6/20/84.]

WAC 173-549-016 Definition. For the purposes of this chapter, the term minimum instream flow shall be synonymous with the term base flow as defined in chapter 90.54 RCW and the term minimum flow as defined in chapter 90.22 RCW.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-016, filed 6/20/84.]

WAC 173-549-020 Establishment of minimum instream flows. (1) Minimum instream flows are established for stream management units with monitoring to take place at certain control points as follows:

Stream Management Unit Information

Stream Management Unit Name, Control Station Name and Number	Control Station Location by River Mile, Section, Township, Range	Affected Stream Reach
Lower Okanogan		
Okanogan R. at Malott (12447200)	17.0, 9-32-25E	Okanogan River confluence with Wells Pool to confluence of Chewiliken Cr.
Middle Okanogan		
Okanogan R. nr. Tonasket (12445000)	50.8, 8-36-27E	Okanogan River confluence of Chewiliken Creek to confluence Similkameen River
Upper Okanogan		
Okanogan R. at Oroville (12439500)	77.3, 27-40-27E	Okanogan River confluence of Similkameen River to Osoyoos Lake
Similkameen		
Similkameen R. at Nighthawk (12442500)	15.8, 7-40-26E	Similkameen River confluence with Okanogan River to Canadian Border

(2) Minimum instream flows established for the stream management units in WAC 173-549-020(1) are as follows:

Minimum Instream Flows in the Okanogan River
(All Figures in Cubic Feet Per Second)

Month	Day	Lower Okanogan 12447200	Middle Okanogan 1244500	Upper Okanogan 124426000	Similkameen 12439500
Jan.	1	860	800	320	400
	15	830	800	320	400
Feb.	1	820	800	320	400
	15	850	800	320	400
Mar.	1	880	800	320	425
	15	900	800	320	450
Apr.	1	925	910	330	510
	15	1,100	1,070	340	640
May	1	1,750	1,200	350	1,100
	15	3,800	3,800	500	3,400
Jun.	1	3,800	3,800	500	3,400
	15	3,800	3,800	500	3,400
Jul.	1	2,100	2,150	420	1,900
	15	1,200	1,200	350	1,070
Aug.	1	800	840	320	690
	15	600	600	300	440
Sept.	1	620	600	300	400
	15	700	600	300	400
Oct.	1	750	730	330	450
	15	960	900	370	500
Nov.	1	950	900	370	500
	15	950	900	320	500
Dec.	1	930	900	320	500
	15	900	850	320	450

(3) Minimum instream flow hydrographs, as represented in WAC 173-549-900, shall be used for definition of minimum instream flows on those days not specifically identified in WAC 173-549-020(2).

(4) Future consumptive water right permits hereafter issued for diversion of surface water from the mainstem Okanogan River and the Similkameen River shall be expressly subject to minimum instream flows established in WAC 173-549-020 (1) through (3) except those described in WAC 173-549-070.

(5) Projects that would reduce the flow in a portion of a stream's length (e.g. hydroelectric projects that bypass a portion of a stream) will be considered consumptive only with respect to the affected portion of the stream. Such projects will be subject to instream flows as specified by the department. These flows may be those established in WAC 173-549-020 or, when appropriate, may be flows specifically tailored to that particular project and stream reach. When studies are required to determine such reach- and project-specific flow requirements, the department may require the project proponent to conduct such studies.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-020, filed 6/20/84; Order DE 76-25, § 173-549-020, filed 7/14/76.]

WAC 173-549-025 Stream closures. (1) Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate minimum instream flow in all perennial streams and rivers of the Okanogan River Basin for protection of instream values.

(2) In keeping with this policy, a partial year closure from May 1 to October 1 will be established on all perennial streams in the basin except those with established minimum instream flows as described in WAC 173-549-020.

(3) The upper Okanogan stream management unit as established in WAC 173-549-020(1) is closed to further consumptive appropriation from June 15 through August 31 with the exception of single-domestic use and stockwatering use, provided that no alternative source of supply is available.

(4) When a project (as described in WAC 173-549-020(5)) is proposed on a stream that is closed to further appropriations, the department shall deny the water right application unless the project proponent can adequately demonstrate that the project does not conflict with the intent of the closure.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-025, filed 6/20/84.]

WAC 173-549-027 Policy statement for future permitting actions. (1) Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate minimum instream flow in all perennial streams and rivers as well as the water levels in all lakes in the Okanogan River Basin by encouraging the use of alternate sources of water which include (a) ground water, (b) storage water, or (c) acquisition of existing water rights.

(2) All future permits to appropriate water from the Okanogan River, the Similkameen River and perennial tributaries shall be subject to the required flows at all downstream control stations as established in WAC 173-549-020.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-027, filed 6/20/84.]

WAC 173-549-035 Lakes. (1) In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. In considering future water right applications, the department shall deny any application for surface or ground water which will result in a significant decrease in lake level or in the stream flow of any stream draining the lake, except that no decrease in stream flow shall be allowed during the May 1 - October 1 stream closure period.

(2) Notwithstanding the above, nothing in this chapter shall limit the utilization of waters stored for later release, provided such storage does not infringe upon existing rights or instream flow and is duly permitted under RCW 90.03.290 and 90.03.350.

(3) Any future water rights for waters from Osoyoos Lake or from ground waters determined to be in significant hydraulic continuity with Osoyoos Lake, issued after the effective date of this chapter and upon completion of the new Osoyoos Lake outlet control structure, shall be subject to the maintenance of a water surface level of 910.5 feet USCGS in Osoyoos Lake and said diversions shall be curtailed when the lake elevation drops below elevation 910.5 feet USCGS.

(4) Notwithstanding the provisions of this chapter, the construction and operation of the proposed new outlet control structure for Osoyoos Lake shall be consistent with the terms and conditions of the International Joint Commission Order of Approval signed on December 9, 1982, pursuant to the 1909 Boundary Waters Treaty.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-035, filed 6/20/84.]

WAC 173-549-060 Ground water. If department investigations determine that there is significant hydraulic continuity between surface water and the proposed ground water source, any water right permit or certificate issued shall be subject to the same conditions as affected surface waters. If department investigations determine that withdrawal of ground water from the source aquifers would not interfere with stream flow during the period of stream closure or with maintenance of minimum instream flows, then applications to appropriate public ground waters may be approved.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-060, filed 6/20/84; Order DE 76-25, § 173-549-060, filed 7/14/76.]

WAC 173-549-070 Effect on prior rights and exemptions. (1) Nothing in this chapter shall affect any existing water rights including, among others, riparian, appropriative, and federal Indian and non-Indian reserved rights, existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Single domestic use and stockwatering use shall be exempt from the provisions established in this chapter except that, when the cumulative impacts of numerous domestic diversions begins to significantly affect the quantity of water available for instream uses or the maintenance of lake levels, then any water rights issued after that time shall be issued only for in-house use if no alternative supply is available.

(3) Nonconsumptive uses which are compatible with the intent of the chapter may be approved.

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-070, filed 6/20/84; Order DE 76-25, § 173-549-070, filed 7/14/76.]

WAC 173-549-080 Future rights. No rights to divert or store public surface or ground waters of the Okanogan River Basin, WRIA 49, shall hereafter be granted which shall conflict with the purpose of this chapter except as provided in RCW 90.54.020 (3)(a).

[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-080, filed 6/20/84.]

WAC 173-549-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-549-090, filed 6/9/88. Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-090, filed 6/20/84.]

WAC 173-549-095 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this

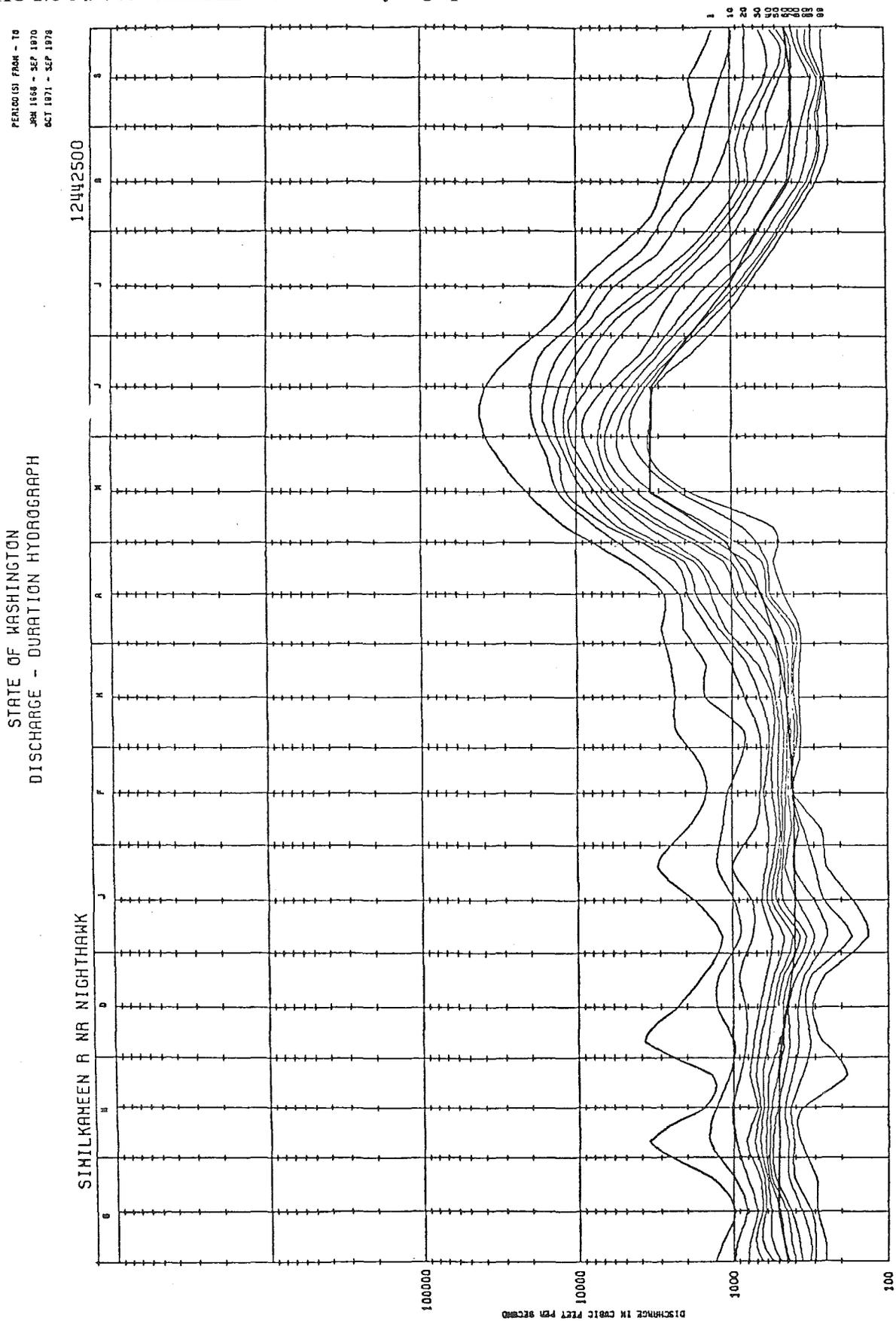
chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-549-095, filed 6/9/88.]

WAC 173-549-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

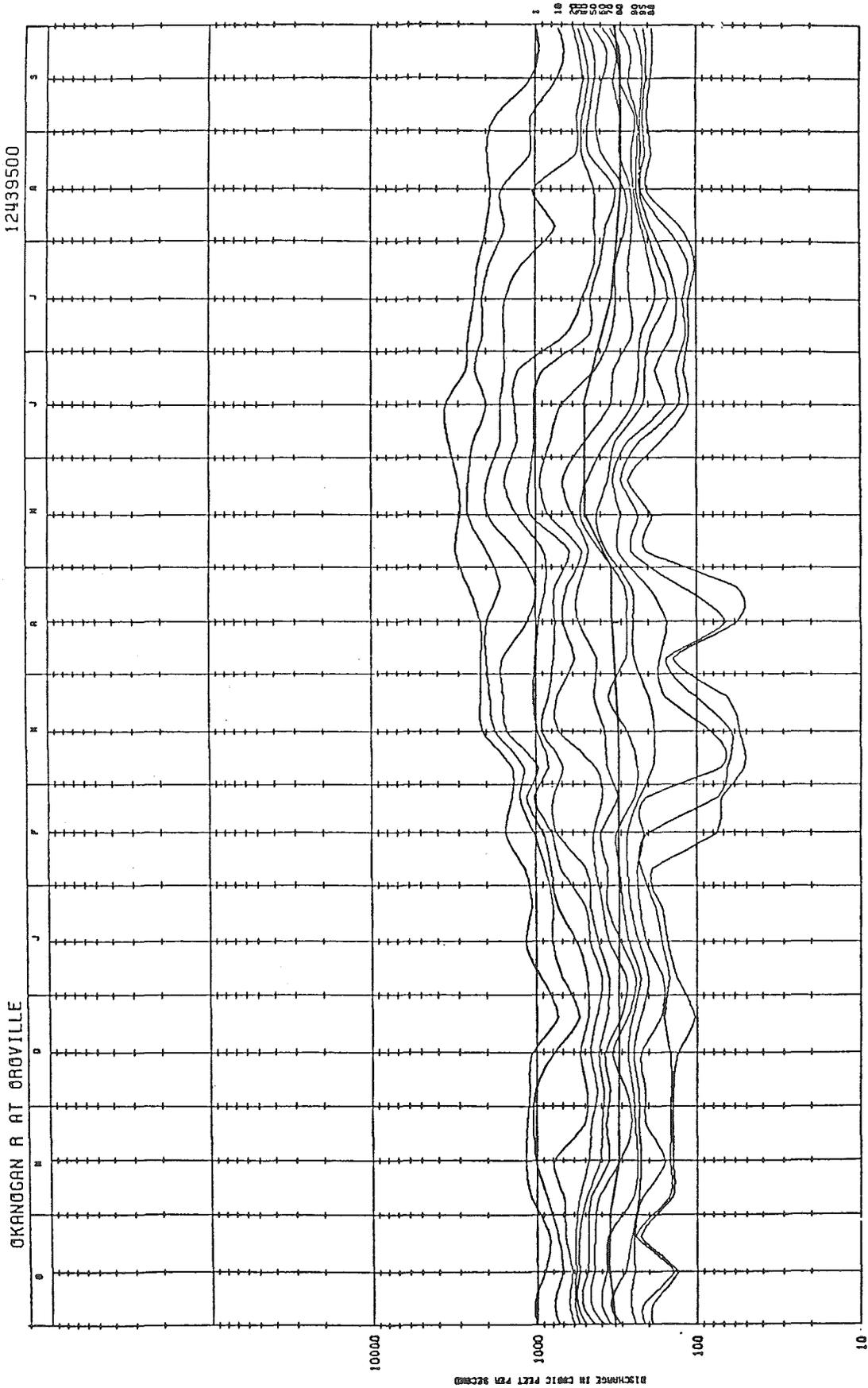
[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-549-100, filed 6/9/88. Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-100, filed 6/20/84.]

WAC 173-549-900 Minimum instream flow hydrographs.



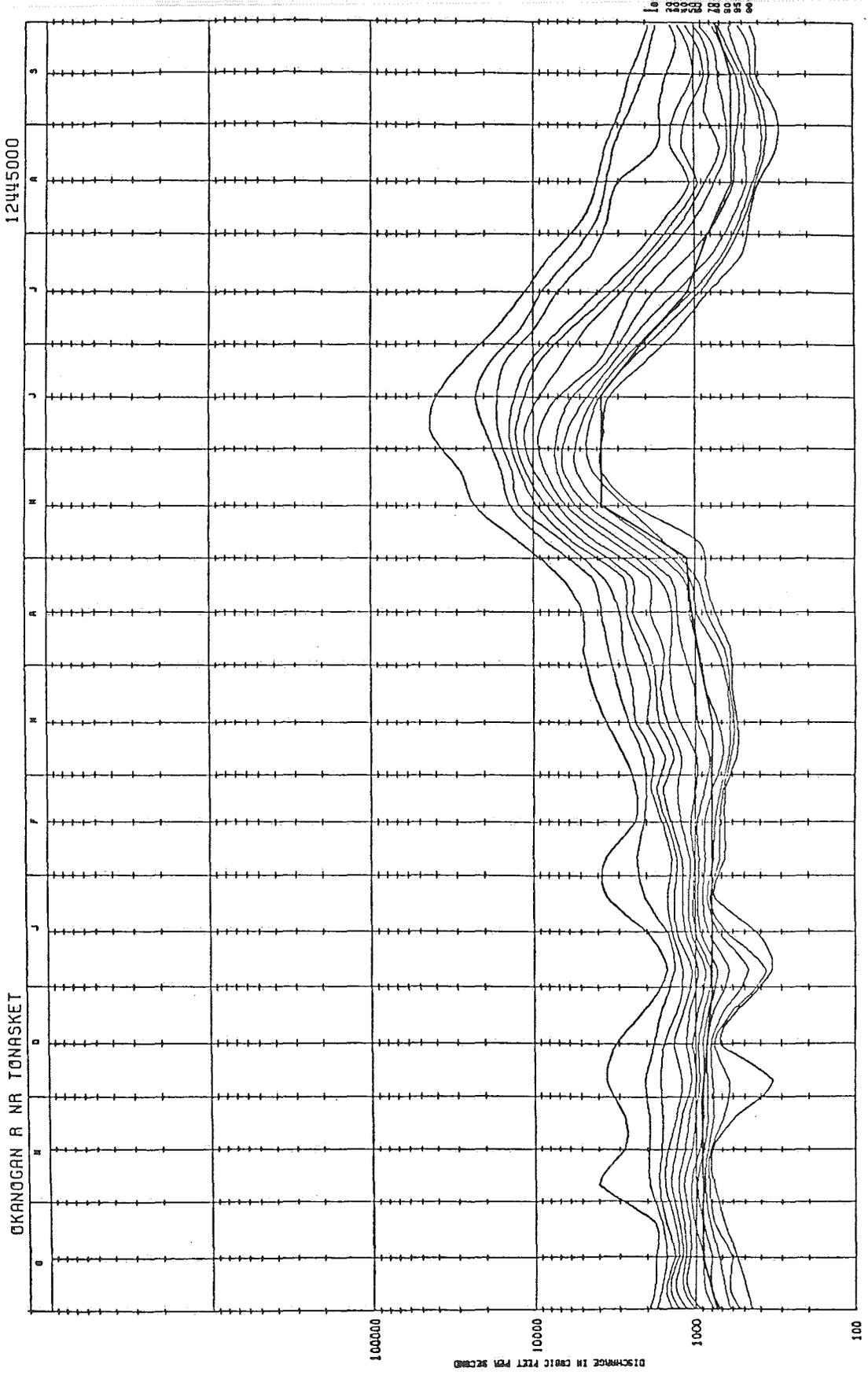
PERIOD(S) FROM - TO
JUN 1966 - SEP 1970
OCT 1971 - SEP 1978

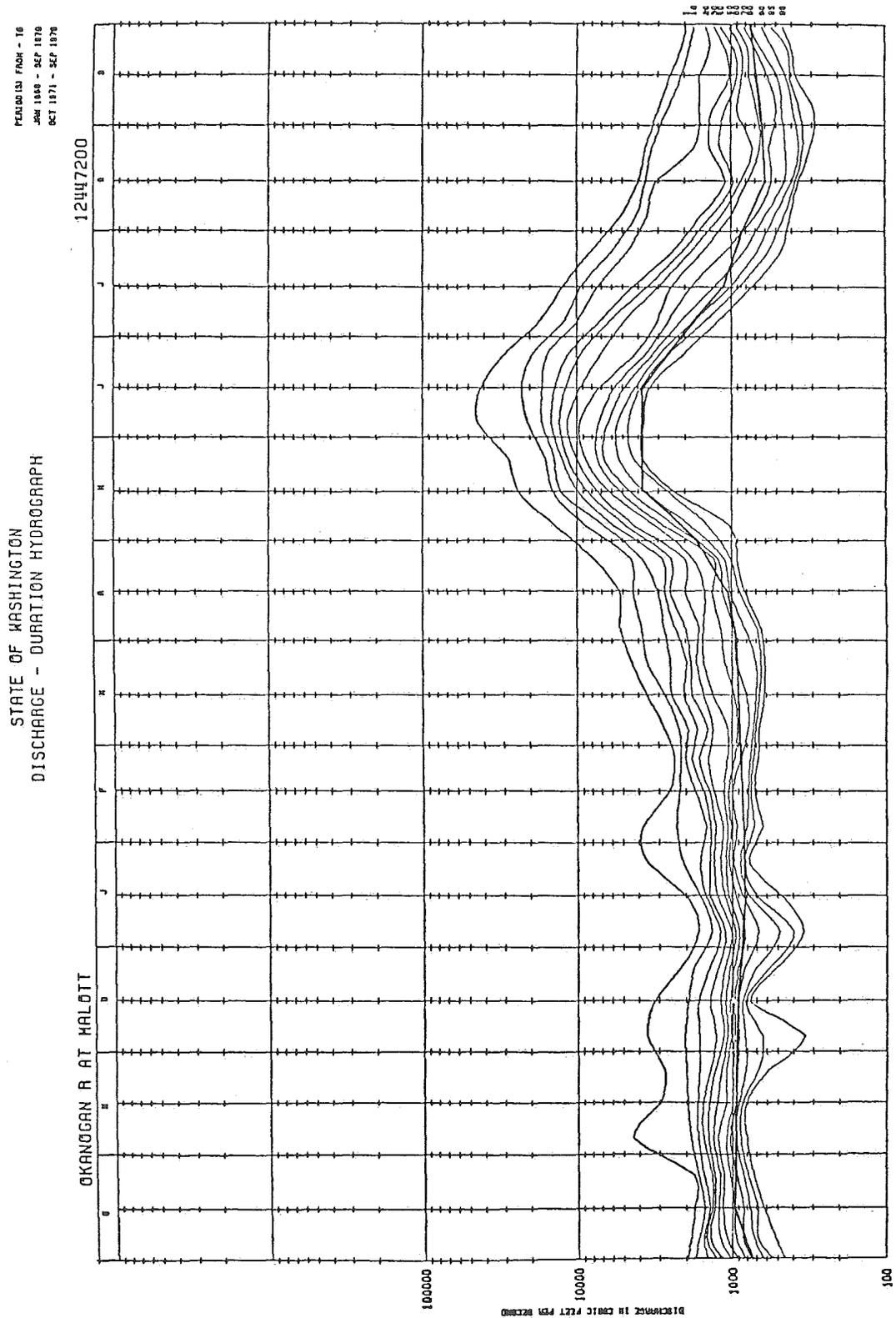
STATE OF WASHINGTON
DISCHARGE - DURATION HYDROGRAPH



PSA(30)31 FROM - 19
JUN 1949 - SEP 1979
OCT 1971 - SEP 1978

STATE OF WASHINGTON
DISCHARGE - DURATION HYDROGRAPH





[Statutory Authority: Chapters 90.54 and 90.22 RCW. 84-13-076 (Order DE 84-15), § 173-549-900, filed 6/20/84.]

Chapter 173-555 WAC

WATER RESOURCES PROGRAM IN THE LITTLE SPOKANE RIVER BASIN, WRIA 55

WAC

173-555-010	General provision.
173-555-020	Definition.
173-555-030	Establishment of base flows.
173-555-040	Future allocations—Reservation of surface water for beneficial uses.
173-555-050	Priority of future water rights during times of water shortage.
173-555-060	Streams and lakes closed to further consumptive appropriations.
173-555-070	Effect on prior rights.
173-555-080	Enforcement.
173-555-090	Appeals.
173-555-100	Regulation review.

WAC 173-555-010 General provision. These rules, including any subsequent additions and amendments, apply to waters within and contributing to the Little Spokane River basin, WRIA-55 (see WAC 173-500-040). Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program, applies to this chapter 173-555 WAC.

[Order DE 75-24, § 173-555-010, filed 1/6/76.]

WAC 173-555-020 Definition. "NONCOMMERCIAL AGRICULTURAL IRRIGATION" means beneficial use of water upon not more than three acres for the purpose of crops and livestock for domestic use.

[Order DE 75-24, § 173-555-020, filed 1/6/76.]

WAC 173-555-030 Establishment of base flows. (1) Base flows are established for stream management units with monitoring to take place at certain control points as follows:

Stream Management Unit Information

Control Station Number, Stream Management Unit Name	Control Station Location by River Mile and Section, Township Range	Affected Stream Reach
No. 12-4270.00 Little Spokane River Elk	34.6 Sec. 8, T.29N., R.43 E.W.M.	From confluence with Dry Creek to the headwaters including tributaries except Dry Creek.
No. 12-4295.00 Little Spokane River Chattaroy	23.05 Sec. 34, T.28N., R.43 E.W.M.	From confluence with Deer Creek to confluence with Dry Creek including tributaries except Deer Creek.
No. 12-4310.00 Little Spokane River Dartford	10.8 Sec. 6, T.26N., R.43 E.W.M.	From confluence with Little Creek to confluence with Deer Creek including tributaries except Little Creek.

No. 12-4315.00 Little Spokane River Confluence	3.9 Sec. 3, T.26N., R.42 E.W.M.	From mouth to confluence with Little Creek including tributaries.
--	---------------------------------------	---

(2) Base flows established for the stream management units in WAC 173-555-030(1) are as follows:

Base Flows in the Little Spokane River Basin
(in Cubic Feet Per Second)

Month	Day	12-4270.00 Elk	12-4295.00 Chattaroy	12-4310.00 Dartford	12-4315.00 Confluence
Jan.	1	40	86	150	400
	15	40	86	150	400
Feb.	1	40	86	150	400
	15	43	104	170	420
Mar.	1	46	122	190	435
	15	50	143	218	460
Apr.	1	54	165	250	490
	15	52	143	218	460
May	1	49	124	192	440
	15	47	104	170	420
Jun.	1	45	83	148	395
	15	43	69	130	385
Jul.	1	41.5	57	115	375
	15	39.5	57	115	375
Aug.	1	38	57	115	375
	15	38	57	115	375
Sept.	1	38	57	115	375
	15	38	63	123	380
Oct.	1	38	70	130	385
	15	39	77	140	390
Nov.	1	40	86	150	400
	15	40	86	150	400
Dec.	1	40	86	150	400
	15	40	86	150	400

(3) Base Flow hydrographs, Figure II-1 in the document entitled "water resources management program in the Little Spokane River Basin" dated August, 1975 shall be used for definition of base flows on those days not specifically identified in WAC 173-555-030(2).

(4) All rights hereafter established shall be expressly subject to the base flows established in sections WAC 173-555-030 (1) through (3).

[Order DE 75-24, § 173-555-030, filed 1/6/76.]

WAC 173-555-040 Future allocations—Reservation of surface water for beneficial uses. (1) The department determines that these are surface waters available for appropriation from the stream management units specified in the amount specified in cubic feet per second (cfs) during the time specified as follows:

(a) Surface water available from the east branch of the Little Spokane River, confluence with Dry Creek to headwaters, based on measurement at control station number 12-4270.00 at Elk are:

Month	May	June	July	Aug.	Sept.	Oct.
Date	1 15	1 15	1 15	1 15	1 15	1 15
Amount	26 22	17 14	11 9	5 5	5 5	7 7

(b) Surface water available from the Little Spokane River from confluence with Little Creek at Dartford to Eloika Lake outlet, and to confluence with Dry Creek based on measurement at control station number 12-4310 at Dartford are:

Month	May	June	July	Aug.	Sept.	Oct.
Date	1 15	1 15	1 15	1 15	1 15	1 15
Amount	340 236	152 103	62 34	11 11	11 11	20 20

(c) Available surface waters for those days not specified in (a) and (b) shall be defined from Figures II-3 and II-4 in the document entitled "water resources management program in the Little Spokane River basin" dated August, 1975.

(2) The amounts of waters referred to in WAC 173-555-040(1) above are allocated for beneficial uses in the future as follows:

(a) Three cubic feet per second from the amount available in the east branch of the Little Spokane River referred to in WAC 173-555-040 (1)(a) above and five cubic feet per second from the amount available in the Little Spokane River, besides east branch, referred to in WAC 173-555-040 (1)(b) are allocated to future domestic, stockwatering and noncommercial agricultural irrigation purposes within the stream reaches specified therein throughout the year.

(b) The remainder of the amount referred to in WAC 173-555-040 (1)(a) and (b) besides the amount specified in WAC 173-555-040 (2)(a) are allocated to consumptive and nonconsumptive uses not specified in WAC 173-555-040 (2)(a). These are further described in the figures appended hereto.

[Order DE 75-24, § 173-555-040, filed 1/6/76.]

WAC 173-555-050 Priority of future water rights during times of water shortage. (1) As between rights established in the future pertaining to waters allocated in WAC 173-555-040 (2)(a) and (b), all rights established in (a) shall be superior to those pertaining to (b) regardless of the date of the priority of right.

(2) As between rights established in the future within a single use category allocation of WAC 173-555-040, the date of priority shall control with an earlier dated right being superior to those rights with later dates.

[Order DE 75-24, § 173-555-050, filed 1/6/76.]

WAC 173-555-060 Streams and lakes closed to further consumptive appropriations. The department, having determined there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the following streams to further

consumptive appropriation except for domestic and normal stockwatering purposes excluding feedlot operation:

SURFACE WATER CLOSURES			
Stream* Name	Affected Reach	Date of Closure	Period of Closure
Dry Creek	Mouth to headwaters	5-26-1952	1 June-31 Oct.
Otter Creek	Mouth to headwaters	2-23-1971	"
Bear Creek	Mouth to headwaters	4-13-1953	"
Deer Creek	Mouth to headwaters	2-29-1968	"
Dragoon Creek	Mouth to headwaters	7-02-1951	"
Deep Creek	Mouth to headwaters	6-14-1961	"
Deadman Creek ^{1/}	Mouth to headwaters	11-28-1961	"
Little Creek	Mouth to headwaters	4-13-1953	"
W. Branch Little Spokane River	Outlet of Eloika Lake to headwaters	Date of adoption	"
All natural lakes in the basin		"	"

* Includes all tributaries in the contributing drainage area unless specifically excluded.
^{1/} An unnamed tributary flowing through Sec. 20, T26N., R.44E. is exempted from closure.

[Order DE 75-24, § 173-555-060, filed 1/6/76.]

WAC 173-555-070 Effect on prior rights. Nothing in this chapter shall be construed to lessen, enlarge or modify the existing rights acquired by appropriation or otherwise.

[Order DE 75-24, § 173-555-070, filed 1/6/76.]

WAC 173-555-080 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-555-080, filed 6/9/88.]

WAC 173-555-090 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-555-090, filed 6/9/88.]

WAC 173-555-100 Regulation review. The department of ecology shall initiate a review of the rules estab-

lished in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-555-100, filed 6/9/88.]

Chapter 173-559 WAC

WATER RESOURCES PROGRAM FOR THE COLVILLE RIVER BASIN, WRIA-59

WAC

- 173-559-010 Purpose.
- 173-559-020 Definitions.
- 173-559-030 Establishment of base flows.
- 173-559-040 Allocation for future surface water appropriations.
- 173-559-050 Certain streams and lakes are closed to further consumptive appropriations.
- 173-559-060 Ground water.
- 173-559-070 Effects on prior rights.
- 173-559-080 Enforcement.
- 173-559-090 Appeals.
- 173-559-100 Regulation review.

WAC 173-559-010 Purpose. This regulation is adopted in accordance with the water resources management regulation, chapter 173-500 WAC, which was promulgated under the authority of the Water Resources Act of 1971, chapter 90.54 RCW. This chapter, including any amendments, applies to all waters that lie within or contribute to the Colville River drainage basin. This chapter sets forth the department's policies to manage the basin's water resources.

[Order DE 77-6, § 173-559-010, filed 7/22/77.]

WAC 173-559-020 Definitions. For purposes of this chapter, the following definitions shall be used.

- (1) "Allocation" means the designating of specific amounts of the water resource for specific beneficial uses.
- (2) "Base flow" means a level of stream flow established in accordance with provisions of chapter 90.54 RCW required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values.
- (3) "Consumptive use" means use of water, whereby there is diminishment of the water resources.
- (4) "Department" means the Washington state department of ecology.
- (5) "Director" means the director of the department of ecology.
- (6) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, irrigation of not over one-half acre of lawn and garden per dwelling, and other incidental household uses.
- (7) "Hydrograph" is a graph showing the variation of streamflow (or stream discharge) with respect to time during a year as determined at a specific cross-sectional location on the stream.
- (8) "In-house domestic use" means use of water for drinking, cleaning, sanitation, and other uses in a residence, excluding irrigation of lawn and garden.

(9) "Nonconsumptive use" means a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source.

(10) "Perennial stream" means a stream with a natural flow which is normally continuous at any given location.

(11) "Reservoir permit" means a water right permit which authorizes construction of an impoundment structure, storage of water and generally the use of water in the amount of one filling annually.

(12) "Secondary permit" means a water right permit which allows diversion of water for beneficial use from a storage reservoir. A secondary permit is necessary only for use in excess of one filling annually, or for diversion and use by a party other than the reservoir owner.

(13) "Stream management unit" means a stream segment, reach, or tributary, containing a control station, that is identified on a stream reach map in an adopted water resource management program document as a unit for defining base flow levels.

(14) "Water right" means a right to make beneficial use of public waters of the state.

[Order DE 77-6, § 173-559-020, filed 7/22/77.]

WAC 173-559-030 Establishment of base flows. RCW 90.54.020 requires that perennial rivers and streams shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values and navigational values. Under this provision, base flows for stream management units of a basin are established which describe discharge rates at stream measurement stations in each unit. The following subsections, WAC 173-559-030(1) through (4), establish these requirements for WRIA 59:

(1) In the Colville River basin, monitoring of base flows will take place at the following control points:

Table 1

Stream Management Units

Stream Management Unit and Control Station Number	Control Station Location by River-Mile, and Section Township and Range	Stream Management Reach
Upper Colville River No. 12.4080.00	32.1 Sec. 31, T. 33 N., R. 40 E.W.M.	Colville River from confluence with Stensgar Creek to confluence of Sheep Creek and Deer Creek.
Lower Colville River No. 12.4090.00	5.0 Sec. 29, T. 36 N., R. 38 E.W.M.	Colville River from confluence with Lake Roosevelt to confluence with Stensgar Creek.

(2) In the Colville River basin, base flows for the stream management units in WAC 173-559-030(1) are set in Table 2 as follows:

Table 2
Base Flows in the Colville River basin
(in Cubic Feet Per Second)

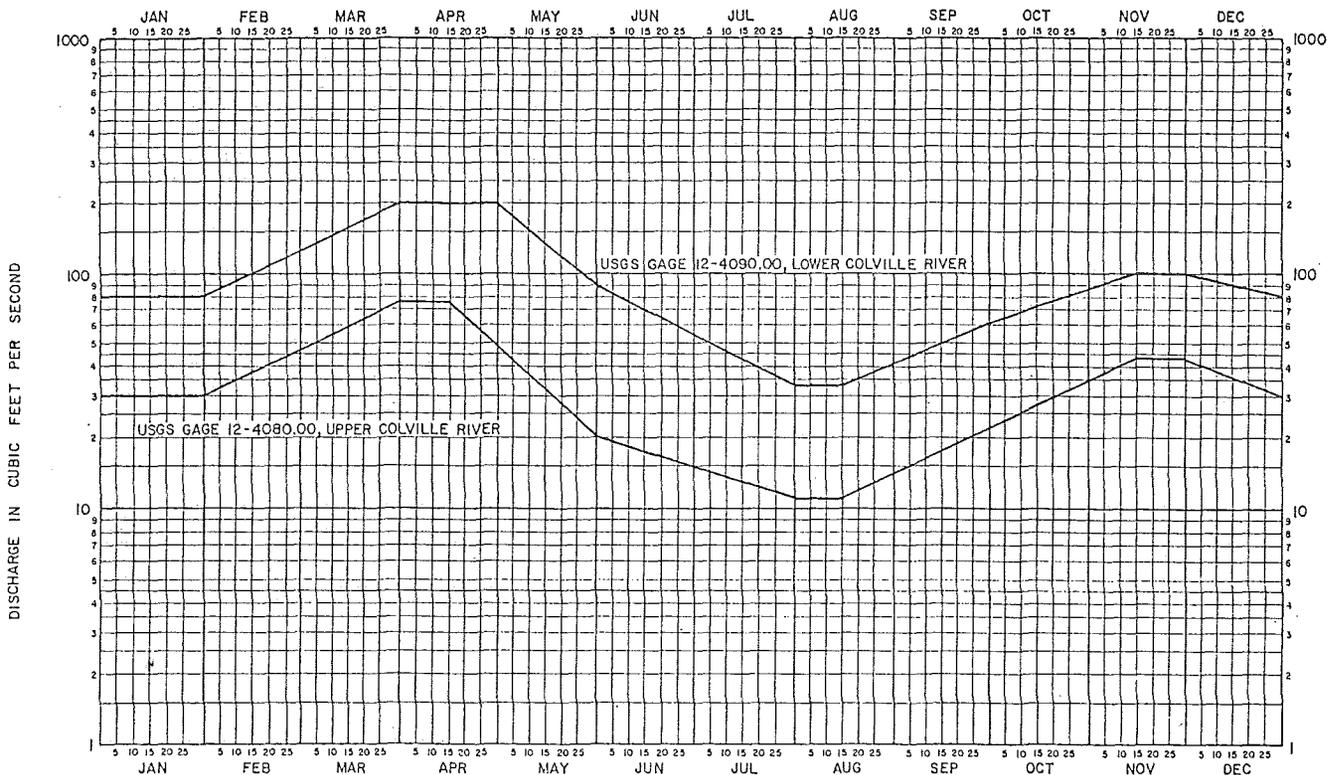
Month	Day	Upper Colville (12.4080.00)	Lower Colville (12.4090.00)
Jan.	1	30	80
	15	30	80
Feb.	1	30	80
	15	38	100
Mar.	1	47	124
	15	59	157
Apr.	1	76	200
	15	76	200
May	1	49	200
	15	32	135
Jun.	1	20	90
	15	17	70
Jul.	1	15	55
	15	13	43
Aug.	1	11	33
	15	11	33

Sep.	1	14	40
	15	18	49
Oct.	1	22	60
	15	27	70
Nov.	1	35	84
	15	43	100
Dec.	1	43	100
	15	36	90

(3) Figure 1, base flow hydrographs for selected stations, shall be used to define base flows on those days not identified in WAC 173-559-030(2).

(4) All surface water rights, established by appropriation in the Upper Colville and Lower Colville stream management units after adoption of this regulation, shall be subject to the base flows set in WAC 173-559-030 (1) through (3). However, these base flows will not apply to in-house domestic use and stock watering use, if an alternate source is not available to satisfy these uses. If the cumulative impact of numerous single in-house domestic use diversions is determined to substantially affect a stream's base flow or existing rights, then new permits for this use may be denied.

Figure 1
BASE FLOW HYDROGRAPH FOR SELECTED STATIONS



[Order DE 77-6, § 173-559-030, filed 7/22/77.]

WAC 173-559-040 Allocation for future surface water appropriations. (1) The department determines that surface water is available for appropriation from the Upper

Colville River stream management unit and the Lower Colville River stream management unit except as provided in WAC 173-559-050(2). Tables 3 and 4 show the available amounts in cubic feet per second during specified periods, as follows:

Table 3
Allocation of Public Surface Water from the
Upper Colville River Stream Management Unit
(Units in Cubic Feet Per Second)

Month	Base Flow	Future Consumptive Uses
Jan.	30	47
Feb.	41	68
Mar.	61	129
April	44	256
May	20	192
June	13	93
July		
1-15	12	18
16-31	12	0
Aug.	11	0
Sept.	17	0
Oct.	27	16
Nov.	43	21
Dec.	36	37

Table 4
Allocation of Public Surface Water from the
Lower Colville River Management Unit
(Units in Cubic Feet Per Second)

Month	Base Flow	Future Consumptive Uses
Jan.	80	47
Feb.	100	68
Mar.	157	129
April	200	256
May	135	256
June	70	94
July		
1-15	43	18
16-31	43	0
Aug.	33	0
Sept.	49	0
Oct.	70	17
Nov.	100	21
Dec.	90	37

(2) Total appropriations for nonconsumptive uses may exceed the allocation limits specified in Tables 3 and 4.

(3) Monthly allocations in Tables 3 and 4 do not apply to the use of stored water. Specific provision will be included in all reservoir permits regarding period of filling, use and release of water.

[Order DE 77-6, § 173-559-040, filed 7/22/77.]

WAC 173-559-050 Certain streams and lakes are closed to further consumptive appropriations. (1) The department has determined that no water is available for further consumptive appropriation in streams tributary to the Colville River. Therefore, these tributary streams are closed to further consumptive appropriation except for reservoir storage from November 1 through May 31. Applications for single in-house domestic use, or stockwatering may be approved if no alternate source of water supply is available and the proposed use will not impair existing water rights.

(2) The Upper Colville River and Lower Colville River will be closed to further consumptive appropriation from July 16 through September 30, except for in-house domestic use and normal stockwatering if no alternate source of water supply is available.

(3) If the cumulative impact of numerous single in-house domestic use diversions is determined to substantially affect a closed stream's base flow, then new permits for this use may be denied. Base flow levels for closed streams are specified in the department's publication, "water resources management program, Colville River basin."

(4) Appropriation of water from streams tributary to the Colville River for out of stream storage and on-stream storage shall be subject to the base flows recommended in the department's publication, "water resources management program, Colville River basin."

(5)(a) Lakes included in table 5 are closed to further consumptive appropriation for specified periods of the year, except for in-house domestic and stockwatering uses. The department may deny applications for domestic use if the cumulative effect of such diversions would be detrimental to retaining a lake substantially in its natural condition.

Table 5 Lake Closures

Lake	Tributary to	Location	Period of Closure
Deer Lake	Sheep Creek	T. 30 N., R. 41 E. Secs. 1, 11,12,14	June 1-Oct. 31
Loon Lake	Sheep Creek	T. 30 N., R. 41, E. Secs. 33, 34., T.29 N., R. 41 E. Secs. 2, 3,4,10,11	June 1-Oct. 31
Waitts Lake	Waitts Creek	T. 31 N., R. 40 E. Secs. 17-20	June 1-Oct. 31
Jumpoff Joe Lake	Colville River	T. 31 N., R. 40 E. Sec. 19	June 1-Oct. 31
White Mud Lake		T. 35 N., R. 40 E. Sec. 19.	June 1-Oct. 31
Heritage and Thomas Lakes	Little Pend Oreille River	T. 36 N., R. 42 E. Secs. 8,9, 17,18	June 1-Oct. 31

(b) Appropriation of water from lakes not specified in table 5 will be permitted if prior water rights will not be adversely affected and if the appropriation will not conflict with the intent of RCW 90.54.020 (3)(a) which stipulates, in part, that "lakes and ponds shall be retained substantially in their natural condition."

[Order DE 77-6, § 173-559-050, filed 7/22/77.]

WAC 173-559-060 Ground water. If it is determined that a future development of ground water affects surface waters subject to the provisions of WAC 173-559-030 through 173-559-050, then rights to said ground water shall be subject to the same conditions as affects the surface water.

[Order DE 77-6, § 173-559-060, filed 7/22/77.]

WAC 173-559-070 Effects on prior rights. Nothing in this chapter shall be construed to lessen, enlarge, or modify existing rights acquired by appropriation or by other means.

[Order DE 77-6, § 173-559-070, filed 7/22/77.]

WAC 173-559-080 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-559-080, filed 6/9/88.]

WAC 173-559-090 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-559-090, filed 6/9/88.]

WAC 173-559-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-559-100, filed 6/9/88.]

Chapter 173-563 WAC

INSTREAM RESOURCES PROTECTION PROGRAM FOR THE MAIN STEM COLUMBIA RIVER IN WASHINGTON STATE

WAC

173-563-010	Background and purpose.
173-563-015	Withdrawal of unappropriated waters.
173-563-020	Applicability.
173-563-030	Authority.
173-563-040	Establishment of instream flows for instream uses.
173-563-050	Critical flow adjustment to, and waivers of, minimum instantaneous and average weekly flows.
173-563-052	Establishment of instream flows for out-of-stream uses.
173-563-056	Application of minimum average weekly flows to out-of-stream uses.
173-563-060	Establishment of conservation and efficiency fundamentals.
173-563-070	Enforcement.
173-563-075	Regulation review.
173-563-080	Overriding considerations.
173-563-090	Regulation review.
173-563-100	Implementation.
173-563-900	Critical flow adjustment—Minimum instantaneous and weekly average flows—Columbia River.

WAC 173-563-010 Background and purpose. The Columbia River is an international as well as an interstate river with its waters subject to laws of seven western states, the Province of British Columbia, Canada and the federal

governments of the United States and Canada. The flows and levels of the river are in a state of continuous change through the operation of numerous federally owned or federally licensed dams located within the river. The waters of the Columbia River are operated to support extensive irrigation development, inland navigation, municipal and industrial uses, and hydroelectric power development. Among all these uses, the anadromous fisheries of the Columbia River, which are dependent on clean flowing water, require for their survival the establishment of minimum flows of water and special actions by all agencies sharing in the management of the Columbia River.

The provisions of this chapter apply, as a matter of state law, to water right permits issued pursuant to the state's water rights code. The provisions hereof shall provide the department of ecology the basic state policy relating to minimum flows and levels for the Columbia River, for submission to various federal, interstate and state agencies having jurisdiction over the river. Further, the department of ecology of the state of Washington recognizes that, under our federal constitutional system, regulatory powers over the river are shared powers between the United States and the state of Washington and that by various federal actions the state's powers may, and in some cases have been superseded through the mandates of the Supremacy Clause of the United States Constitution.

This chapter is adopted under state legislation, to promote the proper utilization of the water resources of the Columbia River and to protect and insure the viability of the instream resource values associated with the main stem of the Columbia River in the future through (1) the establishment of minimum flows on the main stem Columbia River in Washington state, and (2) the establishment of conservation and efficiency fundamentals relating to out-of-stream and instream uses and values.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-010, filed 6/24/80.]

WAC 173-563-015 Withdrawal of unappropriated waters. (1) New information and changing conditions place into question whether sufficient information and data is available for making sound decisions on water availability and the public interest for additional appropriations from the main stem of the Columbia River. These changing conditions include the listing on December 20, 1991, of Snake River sockeye salmon as endangered and the May 17, 1992, listing of Snake River spring/summer and fall chinook salmon as threatened under the Federal Endangered Species Act and related federal, regional, and state activities to assure the protection of Columbia basin salmon runs.

(2) Pursuant to subsection (1) of this section, the waters of the main stem of the Columbia River that are unappropriated by water rights for which applications were accepted for filing by the department prior to December 20, 1991, are withdrawn from further appropriation, except that the department may issue a permit to withdraw water for:

(a) Applications filed by the United States for uses of water withdrawn with a priority date of 1938 under chapter 90.40 RCW;

(b) Nonrecurring temporary projects for up to four months duration, with a possible extension of no more than

four additional months (applications for extensions must include adequate justification for the extension and must demonstrate that reasonable efforts are being made to use the water for the project as efficiently as possible); and

(c) Nonconsumptive uses which, for the purposes of this section, are defined as uses where:

(i) There is no diversion from the water source; or

(ii) The water is diverted and returned immediately to the source at the point of diversion following its use, in the same quantity as diverted and meeting water quality standards for the source.

(3) All water right applications which the department accepted for filing prior to December 20, 1991, for diversion or pumping of surface water from the main stem of the Columbia River, or for withdrawal of ground water which is part of or tributary to the main stem of the Columbia River, shall be processed in accordance with existing policies and procedures and are not subject to this withdrawal of waters.

(4) With the exceptions specified in subsection (2) of this section, all water right applications which the department accepted for filing on or after December 20, 1991, for diversion or pumping of surface water from the main stem of the Columbia River, or for withdrawal of ground water which is part of or tributary to the main stem of the Columbia River where such withdrawal requires a permit under RCW 90.44.050, are subject to this withdrawal of waters and will be acted upon, without loss of priority date, after the expiration of the withdrawal of waters.

(5) The department shall inform applicants of the status of their applications under this section.

(6) This section will expire on June 30, 1994, or upon further amendment of the chapter, whichever occurs first.

[Statutory Authority: RCW 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW and chapter 173-500 WAC and WAC 173-563-075. 93-01-009 (Order 92-20), § 173-563-015, filed 12/3/92, effective 1/3/93.]

WAC 173-563-020 Applicability. (1) This chapter applies to public surface waters of the main stem Columbia River in Washington state and to any ground water the withdrawal of which is determined by the department of ecology to have a significant and direct impact on the surface waters of the main stem Columbia River.

The extent of the "main stem" Columbia River shall be the Columbia River from the upstream extent of tidal influence (Bonneville Dam-River Mile 146.1) upstream to the United States-Canada border (River Mile 745) and including those areas inundated by impounded waters at full pool elevations.

(2) Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program mandated by RCW 90.54.040, applies to this chapter.

(3) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, including existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir, or related facilities. This exemption includes rights embodied in all water right permits and certificates existing on the effective date of this chapter.

(4) Water right permits and certificates for domestic/municipal water supplies issued subsequent to the effective

date of this rule shall not be subject to the provisions of this chapter.

(5) Waters withdrawn by the United States pursuant to RCW 90.40.030 prior to the effective date of this rule relating to the second half of the Columbia basin project, and water right permits and certificates hereafter issued by the department of ecology pertaining to such withdrawn waters, are not subject to the provisions of this chapter.

(6) For the purposes of this chapter, average weekly flows shall be the average of the daily average flows reported in the Columbia River operational hydromet and management system (CROHMS) for a seven-day period beginning at 12:01 a.m. Monday and ending at midnight on Sunday. When the beginning of the seven-day period defined in this section does not correspond to the dates on which flows are established in WAC 173-563-040, the flow requirements for that week shall be the arithmetic average of the required flows listed in WAC 173-563-040 for each of the seven days, rounded to the nearest 1,000 cfs.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-020, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-020, filed 6/24/80.]

WAC 173-563-030 Authority. These rules are adopted under the authority of chapters 90.54, 90.22, and 90.03 RCW, and in relation to chapter 173-500 WAC.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-030, filed 6/24/80.]

WAC 173-563-040 Establishment of instream flows for instream uses. (1) In order to protect the quality of the natural environment and provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values, minimum instantaneous flows and minimum average weekly flows are established for instream uses at the following project locations on the main stem Columbia River in Washington state:

CONTROL STATION	RIVER MILE	MANAGEMENT UNIT
The Dalles Dam	191.5	John Day Dam to Bonneville Dam (Lake Bonneville and Celilo Lake) (River Mile 146.1-215.6)
John Day Dam	215.6	John Day Dam to McNary Dam (Umatilla Lake) (River Mile 215.6-292.0)
McNary Dam	292.0	McNary Dam to Priest Rapids Dam (Lake Wallula and the Hanford Reach) (River Mile 292.0-397.1)
Priest Rapids Dam and upstream (Wanapum, Rock Island, Rocky Reach, Wells, Chief Joseph, and Grand Coulee Dam)	397.1+	Priest Rapids Dam upstream to Canadian Border (River Mile 397.1-745.0)

(2) Minimum instantaneous flows at the locations listed in WAC 173-563-040(1) are established for instream uses as follows:

MINIMUM INSTANTANEOUS FLOWS - COLUMBIA RIVER PROJECTS
(1,000 cubic feet/second)

	Chief* Joseph	Wells & Rocky Reach Rock Island & Wanapum*	Priest Rapids	McNary & John Day	The Dalles	
Jan	10	10	50	20	20	
Feb	10	10	50	20	20	
Mar	10	10	50	50	50	
Apr	1-15	20	20	50	50	70
	16-25	20	30	50	70	70
	26-30	20	50	50	70	70
May	20	50	50	70	70	
June	1-15	20	50	50	70	70
	16-30	10	20	50	50	50
Jul	1-15	10	20	50	50	50
	16-31	10	50	50	50	50
Aug	10	50	50	50	50	
Sep	10	20	36	50	50	
Oct	1-15	10	20	36	50	50
	16-31	10	20	50	50	50
Nov	10	10	50	50	50	
Dec	10	10	50	20	20	

* As provided in WAC 173-563-050(1), the minimum instantaneous flows set forth in this subsection are subject to a reduction of up to twenty-five percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs. For the reach from Grand Coulee through Wanapum, minimum instantaneous flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff adjustment) at Priest Rapids, whichever is higher.

(3) Minimum average weekly flows for instream uses are established at the locations listed in WAC 173-563-040(1) as follows:

MINIMUM AVERAGE WEEKLY FLOWS - COLUMBIA RIVER PROJECTS
(1,000 cubic feet/second)

	Chief* Joseph	Wells & Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	John McNary	Day	The Dalles	
Jan	30	30	30	70	60	60	60	
Feb	30	30	30	70	60	60	60	
Mar	30	30	30	70	60	60	60	
Apr	1-15	50	50	60	70	100	100	120
	16-25	60	60	60	70	150	150	160
	26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220	
Jun	1-15	80	110	110	110	200	200	200
	16-30	60	80	80	80	120	120	120
Jul	1-15	60	80	80	80	120	120	120
	16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120	
Sep	40	40	40	40	60	85	90	
Oct	1-15	30	35	40	40	60	85	90
	16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60	
Dec	30	30	30	70	60	60	60	

* For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are

subject to a reduction of up to twenty-five percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-040, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-040, filed 6/24/80.]

WAC 173-563-050 Critical flow adjustment to, and waivers of, minimum instantaneous and average weekly flows. (1) The director of the department of ecology, when he deems it to be an overriding public interest requirement, may reduce the minimum instantaneous and/or average weekly flows for the Columbia River established in this chapter up to twenty-five percent during low flow years, except that in no case shall the outflow from Priest Rapids be less than 36,000 cfs. The amount of the reduction (from zero to twenty-five percent) shall be: (a) Based on the March 1 forecast for April through September runoff at The Dalles, Oregon, as published by the National Weather Service in Water Supply Outlook for the Western United States, and (b) determined from Figure 1 in WAC 173-563-900.

(2) Prior to implementing the critical flow adjustment to minimum flows in a low water year, the department of ecology shall conduct a public hearing to announce its intentions and to solicit public and agency comment on the proposed action.

(3) The department has determined that some damage to instream values may be incurred at flow values equivalent to eighty-eight million acre-feet or less. Therefore, the reduced flows shall be referred to as critical flows and shall be authorized by the director of the department of ecology under the critical flow adjustment only when the March 1 forecast of April through September flow at The Dalles is below eighty-eight million acre-feet (MAF). The critical flows shall, in no case, provide less than 39.4 MAF (seventy-five percent of 52.5 MAF for the April through September period).

(4) The director of the department of ecology may waive the state's minimum flow requirements delineated in this chapter for a defined period of time for the purpose of studying the impacts of various flow levels on the river system and its operation when such studies are to be conducted in consultation with the Washington departments of fisheries and/or wildlife and when said exemption is requested by the departments of fisheries and/or wildlife. Such a request shall be made by letter to the director of the department of ecology. This waiver may include the Federal Energy Regulatory Commission studies to be conducted under Docket No. E-9569 and any operational change which does not allow the flows under this chapter to be met, but which, in the opinion of the director, still provides a commensurate level of protection for instream resources.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-050, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-050, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-050, filed 6/24/80.]

WAC 173-563-052 Establishment of instream flows for out-of-stream uses. In order to protect the quality of

the natural environment and provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values, the minimum average weekly flows listed in WAC 173-563-040(3) are established for out-of-stream uses.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-052, filed 10/7/82 and 10/8/82.]

WAC 173-563-056 Application of minimum average weekly flows to out-of-stream uses. (1) For the first 4,500 cfs of water rights issued subject to this program, the following conditions shall apply:

(a) When the March 1 forecast of April-September runoff at The Dalles, Oregon (as published by the National Weather Service in Water Supply Outlook for the Western United States) is equal to or greater than 88 million acre-feet (MAF), no regulation of out-of-stream diverters shall occur, regardless of the gaged flow of the Columbia River.

(b) When the flow forecast is less than 88 MAF but greater than 60 MAF, the department shall encourage voluntary water conservation through appropriate notification of water users in an attempt to foster efficient resource use.

(c) When the flow forecast is 60 MAF or less, the department shall regulate out-of-stream diverters on the basis of first-in-time is first-in-right whenever it is predicted that gaged flows will fall below the minimum average weekly flows as established by this chapter.

(2) For any water allocations issued in excess of the first 4,500 cfs defined in WAC 173-563-056(1), the following conditions shall apply:

(a) When the March 1 forecast of April-September runoff at The Dalles, Oregon (as published by the National Weather Service in Water Supply Outlook for the Western United States) is equal to or greater than 88 million acre-feet (MAF), no regulation of out-of-stream diverters shall occur, regardless of the gaged flow of the Columbia River.

(b) When the flow forecast is less than 88 MAF, the department shall regulate out-of-stream diverters on the basis of first-in-time is first-in-right whenever it is predicted that gaged flows will fall below the CRIRPP minimum average weekly flows as established by this chapter.

(3) The department shall utilize the Bonneville Power Administration (BPA) 30-day power operation plan in predicting specific periods of anticipated flow conditions.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-056, filed 10/7/82 and 10/8/82.]

WAC 173-563-060 Establishment of conservation and efficiency fundamentals. (1) The department, having determined that public water is available from the main stem of the Columbia River in Washington and that continued issuance of water right permits and certificates therefrom is in the public interest, does acknowledge and is concerned that, cumulatively, the projected future diversions from the main stem Columbia River in Washington state may, under certain flow conditions, have a detrimental effect on instream values.

(2) Also, it is in the public interest that the state's water resources be conserved and that the burden of water shortag-

es in low water years should be shared by the various users to the greatest extent practicable.

(3) Notwithstanding the constraints on prorata water-sharing under existing state water laws, the department shall, in projected low water years, utilize all reasonable measures of influence to achieve the goal of this section.

(4) During proof of appropriation of water under RCW 90.03.330 and before issuing a certificate of water right, the department shall assure that the quantities of water shown on the certificate accurately reflect the perfected usage consistent with up-to-date water conservation practices and water delivery system efficiencies.

(5) The department shall continue to seek effective methods to better achieve the goal of this section.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-060, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-060, filed 6/24/80.]

WAC 173-563-070 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under the authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-070, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-070, filed 6/24/80.]

WAC 173-563-075 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-075, filed 6/9/88.]

WAC 173-563-080 Overriding considerations. Future authorizations for the use of water which would conflict with the provisions of this chapter shall be authorized by the director only in those situations when it is clear that overriding considerations of the public interest will be served. Such decisions shall be made in consultation with the directors of the Washington state department of fisheries, the Washington state department of wildlife, the Washington state department of agriculture, and the Washington state commissioner of public lands.

Consideration of the public interest by the director of the department of ecology shall include an evaluation of all uses of the river and its impact on the state of Washington. The uses to be considered include, but are not limited to, uses of water for domestic, stockwatering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, thermal power production, and preservation of environmental and aesthetic values and all other uses compatible with the enjoyment of the public waters of the state.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-080, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and

82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-080, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-080, filed 6/24/80.]

WAC 173-563-090 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-090, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-090, filed 6/24/80.]

WAC 173-563-100 Implementation. (1) All water right permits and certificates subject to this chapter or issued subject to chapter 173-531A WAC shall be issued subject to the department's minimum flow requirements. (The minimum average weekly flows established in WAC 173-563-040 and 173-563-052 are equivalent to a flow of 52.5 MAF at The Dalles for the April through September period.)

(2) All water rights for instream uses subject to the minimum flows established in this chapter shall contain the following provision:

This permit/certificate is subject to the minimum flow provisions contained in chapter 173-563 WAC and is subject to regulation by the department of ecology to insure protection of instream resources.

(3) All water rights for out-of-stream uses subject to the flows established in this chapter shall contain the following provisions:

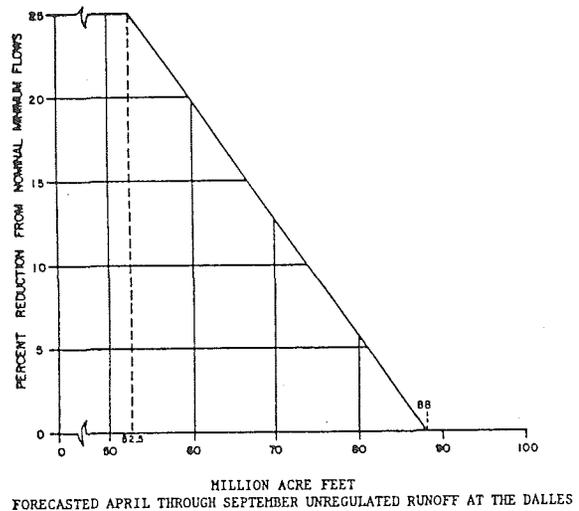
(a) This permit/certificate is subject to the minimum flow provisions contained in chapter 173-563 WAC and is subject to regulation by the department of ecology to insure protection of instream resources.

(b) Use of water under this authorization shall be contingent upon the water right holder's utilization of up to date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-100, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-100, filed 6/24/80.]

WAC 173-563-900 Critical flow adjustment— Minimum instantaneous and weekly average flows— Columbia River.

FIGURE 1
CRITICAL FLOW ADJUSTMENT MINIMUM INSTANTANEOUS
AND WEEKLY AVERAGE FLOWS COLUMBIA RIVER



[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-900, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-900, filed 6/24/80.]

Chapter 173-564 WAC WATER RESOURCES MANAGEMENT PROGRAM FOR THE MAIN STEM OF THE SNAKE RIVER IN WASHINGTON STATE

WAC

173-564-010	Background and purpose.
173-564-020	Authority.
173-564-030	Applicability.
173-564-040	Withdrawal of unappropriated waters.

WAC 173-564-010 Background and purpose. The Snake River is an interstate river with waters subject to laws of five states and the federal government. The flows and levels of the river in Washington state are heavily influenced by the operation of federally owned and federally licensed dams located upstream from Washington and within Washington, as well as by water diversions in the various states. The waters of the river support extensive irrigation, navigation, municipal, industrial, and power generation uses as well as nationally significant anadromous fish runs. These fish runs require for their survival clean, flowing water assured by minimum flows and special actions by all agencies sharing in the management of the river.

The department of ecology of the state of Washington recognizes that, under our federal constitutional system, regulatory power over the Snake River is shared between the United States and the states and that by various federal actions the state's powers may in some cases be superseded through the mandates of the Supremacy Clause of the United States Constitution.

This chapter is adopted to promote the proper utilization of the water resources of the Snake River and to protect and insure the viability of the instream resource values associated with the main stem of the river in the future.

[Statutory Authority: Chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW and Chapter 173-500 WAC. 93-01-010 (Order 92-21), § 173-564-010, filed 12/3/92, effective 1/3/93.]

WAC 173-564-020 Authority. These rules are adopted under the authority of chapters 34.05, 43.21A, 43.27A, 90.03, 90.44, and 90.54 RCW, and in relation to chapter 173-500 WAC.

[Statutory Authority: Chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW and Chapter 173-500 WAC. 93-01-010 (Order 92-21), § 173-564-020, filed 12/3/92, effective 1/3/93.]

WAC 173-564-030 Applicability. (1) This chapter applies to public surface waters of the main stem of the Snake River in Washington and to any ground water where the ground water is determined by the department of ecology to be part of or tributary to the surface waters of the main stem of the Snake River. For purposes of this chapter, the main stem of the Snake River extends from the Idaho, Oregon and Washington border, in the extreme southeastern corner of the state of Washington, at river mile 175, to the confluence with the Columbia River near Pasco, Washington at river mile 0.

(2) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, including existing water right permits and certificates.

[Statutory Authority: Chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW and Chapter 173-500 WAC. 93-01-010 (Order 92-21), § 173-564-030, filed 12/3/92, effective 1/3/93.]

WAC 173-564-040 Withdrawal of unappropriated waters. (1) New information and changing conditions place into question whether sufficient information and data is available for making sound decisions on water availability and the public interest for additional appropriations from the main stem of the Snake River. These changing conditions include the listing on December 20, 1991 of Snake River sockeye salmon as endangered and the May 17, 1992, listing of Snake River spring/summer and fall chinook salmon as threatened under the Federal Endangered Species Act and related federal, regional, and state activities to assure the protection of Columbia basin salmon runs.

(2) Pursuant to subsection (1) of this section, the waters of the main stem of the Snake River that are unappropriated by water rights for which applications were accepted for filing by the department prior to December 20, 1991, are withdrawn from further appropriation, except that the department may issue a permit to withdraw water for:

(a) Nonrecurring temporary projects for up to four months duration, with a possible extension of no more than four additional months (applications for extensions must include adequate justification for the extension and must demonstrate that reasonable efforts are being made to use the water for the project as efficiently as possible); and

(b) Nonconsumptive uses which, for the purposes of this section, are defined as uses where:

(i) There is no diversion from the water source; or
(ii) The water is diverted and returned immediately to the source at the point of diversion following its use, in the same quantity as diverted and meeting water quality standards for the source.

(3) All water right applications which the department accepted for filing prior to December 20, 1991, for diversion or pumping of surface water from the main stem of the Snake River, or for withdrawal of ground water which is part of or tributary to the main stem of the Snake River, shall be processed in accordance with existing policies and procedures and are not subject to this withdrawal of waters.

(4) With the exceptions specified in subsection (2) of this section, all water right applications which the department accepted for filing on or after December 20, 1991, for diversion or pumping of surface water from the main stem of the Snake River, or for withdrawal of ground water which is part of or tributary to the main stem of the Snake River where such withdrawal requires a permit under RCW 90.44.050, are subject to this withdrawal of waters and will be acted upon, without loss of priority date, after the expiration of the withdrawal of waters.

(5) The department shall inform applicants of the status of their applications under this section.

(6) This section will expire on June 30, 1994, or upon further amendment of the chapter, whichever occurs first.

[Statutory Authority: Chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW and Chapter 173-500 WAC. 93-01-010 (Order 92-21), § 173-564-040, filed 12/3/92, effective 1/3/93.]

Chapter 173-590 WAC

PROCEDURES RELATING TO THE RESERVATION OF WATER FOR FUTURE PUBLIC WATER SUPPLY

WAC

173-590-010	Background.
173-590-020	Purpose.
173-590-030	Authority.
173-590-040	General.
173-590-050	Definitions.
173-590-060	Reservation procedure—Petition for reservation.
173-590-070	Contents of petition.
173-590-080	Record of petition.
173-590-090	Notice.
173-590-100	Investigation.
173-590-110	Reservation.
173-590-120	Compatibility with existing water resources program.
173-590-130	Separate reservation by use.
173-590-140	Reservation subject to review and change.
173-590-150	Effective date of reservation.
173-590-160	Application for water rights.
173-590-170	Reservation without petition—Hearings.
173-590-180	Appeal.
173-590-190	Regulation review.

WAC 173-590-010 Background. (1) The Water Resources Act of 1971 (chapter 90.54 RCW) sets forth fundamentals of water resource policy to insure that the waters of the state will be protected and fully utilized for the greatest benefit to the people of the state of Washington, and in relation thereto, the act provides direction to the department of ecology and other state agencies and officials in carrying out water and related resource programs.

(2) The act directs the department to develop and implement a water resources program which will provide a process for making decisions on future water resource allocation and use.

(3) The program may be developed in regional segments so that immediate attention may be given to waters of a given physioeconomic region of the state or to specific critical problems of water allocation and use.

(4) Preservation and protection of water in a potable condition for adequate and safe supplies to satisfy human domestic needs is one of the fundamentals of state water resource policy set forth in said act.

(5) The act further directs the department of ecology to modify existing regulations and adopt new regulations to insure that existing regulatory programs are in accord with the water resource policies of the act.

(6) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less cost including opportunity lost.

[Order DE 75-32, § 173-590-010, filed 3/11/76 and 3/10/76.]

WAC 173-590-020 Purpose. The purpose of this chapter is to establish and set forth a procedure whereby any person within the state of Washington may petition the department to reserve water for future public water supply.

[Order DE 75-32, § 173-590-020, filed 3/10/76.]

WAC 173-590-030 Authority. This regulation is adopted pursuant to the Water Resources Act of 1971, chapter 90.54 RCW.

[Order DE 75-32, § 173-590-030, filed 3/10/76.]

WAC 173-590-040 General. (1) These rules shall apply to both surface and ground waters of the state.

(2) Because of changing future conditions, including institutional arrangements, reservations under this chapter will be for specific geographic areas rather than for particular water suppliers.

(3) Appropriation of reserved water shall be in accordance with the intent and procedures set forth in chapters 90.03 and 90.44 RCW and adopted water resources programs under chapters 173-500 through 173-562 WAC applicable to the geographic area specified in a water right application.

(4) Regulations reserving waters for public water supply shall, where appropriate, provide guidelines for an interim use of the reserved waters for other beneficial uses.

[Order DE 75-32, § 173-590-040, filed 3/10/76.]

WAC 173-590-050 Definitions. For the purpose of this chapter and subsequent regulations, the following definitions shall be used:

(1) "Community water use" means use of water associated with needs of a community including street cleaning, parks, public buildings, public swimming pools, fire fighting, and attendant commercial, industrial and irrigational uses.

(2) "Director" means the director of the state of Washington department of ecology or his authorized representative.

(1995 Ed.)

(3) "Department" means the department of ecology unless specified otherwise.

(4) "Domestic water use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, irrigation of not over one-half acre of lawn or garden per dwelling, and other incidental household uses.

(5) "Commercial and/or industrial use" means use of water associated with commercial and/or industrial requirements such as service, processing, cooling and conveying.

(6) "Public water supply" means any water supply intended or used for human consumption and community uses for more than one single-family residence.

(7) "Public water supply system" means a set of facilities including source, treatment, storage, transmission and distribution facilities whereby water is furnished to any municipality, community, collection, or number of individuals for human consumption and community uses.

(8) "Coordinated water system plan" means a plan adopted by utilities covering one or more public water supply system(s), which identifies present and future needs of participating water systems and sets forth means for meeting those needs in the most efficient manner possible. In areas where more than one water system lie in close proximity, a coordinated water system plan may consist of either of the following:

(a) A compilation of current and compatible water system plans developed by each utility containing the elements of comprehensive plan as set forth in WAC 248-54-280, with the addition of future service area designations, assessment of the feasibility of shared source, transmission, and storage facilities, and other mutual or regional concerns.

(b) An area wide water system plan developed jointly or by a lead agency which adequately addresses all the items mentioned in (a) above.

(9) "Reservation" means an allocation of water for a future beneficial use with the priority established as of the date when the reservation becomes effective.

(10) "Appropriation" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses pursuant to RCW 90.03.250 through 90.03.340 and 90.44.060.

(11) "Person" means any individual, municipal, public, or private corporation, or other entity however dominated, including a state agency or county who operates a public water supply system or who contemplates such an operation.

[Order DE 75-32, § 173-590-050, filed 3/10/76.]

WAC 173-590-060 Reservation procedure—Petition for reservation. Any person, hereafter desiring the department to reserve water for future public water supply may file a petition with the director requesting future establishment of a reservation, provided that the applicant shall have a coordinated water system plan approved by the secretary, department of social and health services unless exempted from this requirement by both the secretary and the director.

[Order DE 75-32, § 173-590-060, filed 3/10/76.]

WAC 173-590-070 Contents of petition. Each petition to the director for the reservation of water shall include, but not be limited to, the following:

- (1) Name and post office address of the applicant.
- (2) Source of water supply.
- (3) Map showing the proposed general service area, source of supply, pipelines, distribution systems, wells and other appurtenant works.
- (4) Present and projected population in 10, 25, and 50 years.
- (5) The amount of the present and proposed use in the following categories, and the time during which water will be required each year if the requirements differ seasonally:
 - (a) Domestic water use;
 - (b) Community water uses including specific amounts for attendant commercial, industrial and irrigational uses;
 - (c) Other(s) as specified.
- (6) Copy of a coordinated water system plan, or comprehensive plan under WAC 248-54-280 if water systems are sufficiently separated so that no advantages will be realized by coordination. All review comments from the local A-95 clearinghouse on said plan shall be provided.
- (7) Information to justify the requested reservation quantity in the form of official state population estimates, regional plan or engineering reports.
- (8) A summary of ongoing and planned conservation programs. When applicable, this must summarize water usage for the previous five years including total water diverted or withdrawn, total water sold, and the quantities used by residential, wholesale and large industrial users. Status of metering of all services must be described. Rate structures should not encourage waste of the water resources and should be described.
- (9) Other data as may be required by the director.

[Order DE 75-32, § 173-590-070, filed 3/10/76.]

WAC 173-590-080 Record of petition. The department shall maintain a file of all petitions for reservation of water under the provisions of this chapter. If a petition is returned to the petitioner for completion or correction, the date and the reasons for the return thereof shall be endorsed and shall be recorded in the reservation file.

[Order DE 75-32, § 173-590-080, filed 3/10/76.]

WAC 173-590-090 Notice. Upon receipt of a proper petition, the director shall publish notice thereof in a newspaper or newspapers of general circulation in the county or counties in which the storage, diversion, and use is to be made, once a week for two consecutive weeks.

The director shall send notice thereof to the secretary, department of social and health services, and to the directors of the departments of fisheries and wildlife for the purpose of soliciting their comments.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-590-090, filed 6/9/88; Order DE 75-32, § 173-590-090, filed 3/10/76.]

WAC 173-590-100 Investigation. When a petition is received, the director shall conduct an investigation of the surrounding impacts of the proposed reservation.

[Order DE 75-32, § 173-590-100, filed 3/10/76.]

WAC 173-590-110 Reservation. Upon review of a petition for reservation, related data and the results from the departmental investigation, the director shall notify the petitioner of action pertaining to the petition, to withdraw affected waters under RCW 90.54.050(2), or to reserve water(s). If reservation is deemed appropriate, the director shall take action to adopt a regulation or amend an existing regulation established pursuant to chapter 173-500 WAC to reserve water for a future public water supply for the general geographic area described in the petition or for a general area the director determines appropriate. (RCW 90.54.050 mandates the department to conduct a public hearing, prior to adoption of a rule to withdraw or to reserve in each county in which waters relating to the rule are located.)

The amount of the reservation shall be determined by the director and may be more or less than the amount requested in the petition. The total reservation amount may be prorated to specific subareas of service in the proposed development area. Appropriate map may be appended to regulation.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-590-110, filed 6/9/88; Order DE 75-32, § 173-590-110, filed 3/10/76.]

WAC 173-590-120 Compatibility with existing water resources program. Reservation of waters pursuant to this chapter and other elements of a comprehensive water resources program developed pursuant to chapters 173-500 through 173-562 WAC and amendments thereof shall be compatible.

[Order DE 75-32, § 173-590-120, filed 3/10/76.]

WAC 173-590-130 Separate reservation by use. In situations where a given area will require significant quantities of water for other than community and domestic water uses, the reservation may identify separate quantities for each use.

[Order DE 75-32, § 173-590-130, filed 3/10/76.]

WAC 173-590-140 Reservation subject to review and change. From time to time, any reservation established under this chapter shall be reviewed and, when it appears appropriate to the department in implementing RCW 90.54.050, modified. No change shall be made without consultation of interested parties. The water resource program and the coordinated water system plan shall be reviewed whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-590-140, filed 6/9/88; Order DE 75-32, § 173-590-140, filed 3/10/76.]

WAC 173-590-150 Effective date of reservation. The effective date of a reservation established under the provisions of this chapter shall be the date when a regulation pertaining to a specific reservation has been adopted: *Provided*, That the effective date for any additional amount of reservation pursuant to the provisions of WAC 173-590-

140 shall be the date when such subsequent amendments become effective.

[Order DE 75-32, § 173-590-150, filed 3/10/76.]

WAC 173-590-160 Application for water rights.

With regard to any permit issued pursuant to RCW 90.03.290 and 90.44.060 which authorizes withdrawal and use of waters subject of a regulation provided for in WAC 173-590-110 hereof, the priority date of said permit shall be the effective date of said regulation.

[Order DE 75-32, § 173-590-160, filed 3/10/76.]

WAC 173-590-170 Reservation without petition—Hearings. Whenever it appears necessary, the director may reserve and set aside waters for beneficial utilization in the future on his own motion as provided under RCW 90.54.050(1). In so doing, prior to the adoption of such rule, the director shall conduct a public hearing in each county in which waters relating to such rule are located.

[Order DE 75-32, § 173-590-170, filed 3/10/76.]

WAC 173-590-180 Appeal. The procedures hereof relate solely to rule-making activity of the department and are designed to obtain information to assist the department in determining when waters should be reserved as provided in RCW 90.54.050. Actions conducted under this chapter do not relate to contested cases within the meaning of the Administrative Procedure Act, chapter 34.04 RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-590-180, filed 6/9/88; Order DE 75-32, § 173-590-180, filed 3/10/76.]

WAC 173-590-190 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-590-190, filed 6/9/88.]

Chapter 173-591 WAC

RESERVATION OF FUTURE PUBLIC WATER SUPPLY FOR THURSTON COUNTY

WAC

173-591-010	Purpose.
173-591-020	Authority.
173-591-030	General.
173-591-040	Reservation area defined.
173-591-050	Definitions.
173-591-060	Petition received—Notice.
173-591-070	Reservation.
173-591-080	Future nonpublic water supply—Policy uses.
173-591-090	Monitoring program.
173-591-100	Water quality.
173-591-110	Exemptions.
173-591-115	Appeals.
173-591-120	Regulation review.
173-591-130	Reservation boundary maps.

WAC 173-591-010 Purpose. The purpose of this chapter is to reserve ground waters within Thurston County for future public water supply.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-010, filed 7/14/86.]

WAC 173-591-020 Authority. This regulation is adopted pursuant to the Water Resources Act of 1971, chapter 90.54 RCW and chapter 173-590 WAC.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-020, filed 7/14/86.]

WAC 173-591-030 General. (1) These rules shall apply to ground waters in Thurston County, as defined in WAC 173-591-040 and 173-591-070(4), as specified in Figure II-2 of the coordinated water system plan for Thurston County, dated May 1982, as approved by the department of social and health services for the purposes of reserving ground waters for future public supply, and as shown as the reservation source of supply subareas on the Thurston County reservation source of supply subarea boundary map in WAC 173-591-130, Illus. 2.

(2) The reservation adopted under this chapter will be for the specific geographical area so named the "reservation boundaries" as shown in Figure II-1 of the coordinated water supply plan for Thurston County, dated May 1982, as approved by the department of social and health services for the purposes of reserving ground waters for future public water supply, and shown on the Thurston County reservation area boundary map in WAC 173-591-130, Illus. 1.

(3) Appropriation of reserved waters under this chapter shall be in accordance with the intent and procedures set forth in chapters 90.03 and 90.44 RCW and chapter 173-513 WAC Instream resources protection program—Deschutes River Basin, Water Resource Inventory Area (WRIA) 13 (adopted 6/24/80) and chapter 173-511 WAC Instream resources protection program—Nisqually River Basin, Water Resource Inventory Area (WRIA) 11 (adopted 2/2/81) and chapter 173-514 WAC Instream resources protection program—Kennedy-Goldsborough Water Resource Inventory Area (WRIA 14) (adopted 1/23/84).

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-030, filed 7/14/86.]

WAC 173-591-040 Reservation area defined. "Thurston County reservation area" and "Thurston County reservation source of supply area" shall mean those lands lying within Thurston County described as follows:

Location	Township	Range	Sections
Reservation Area	16N	3W	1-3, 10-12
	16N	2W	1-12
	16N	1W	4-9
	17N	3W	1, 2, 3 (portion), 10-15, 22-27, 34-36
	17N	2W	1-36
	17N	1W	1-21, 27 (portion), 28-33
	17N	1E	6, 7, portions of 3, 8, 18
	18N	3W	1-4, 9-16, 21 (portion), 22 (portion), 23-25, 36
	18N	1W	1-36
	18N	1E	6, 7, 17-20, 29-32, portions of 5, 8, 16, 28

	19N	3W	12, 13, 23-28, 33-36, (portions in Thurston County)
	19N	2W	portion in Thurston County
	19N	1W	portion in Thurston County
	19N	1E	portion in Thurston County
Reservation Source of Supply Area			
Airport	17N	2W	3, 10-15, 22-24 & portions of 9, 16, 21 east of Interstate 5
	18N	2W	34
Allison Springs	18N	2W	18
Black Lake	17N	2W	4-8, 17-20, 29-31 & portions of 9, 16, 21, 18 & 33 west of Interstate 5
	18N	2W	31-33
Deschutes Valley	17N	2W	12
	18N	2W	25, 26, 35, 36
Hawks Prairie	18N	1W	1-8 & portions of 9-12 north of Interstate 5
	19N	1W	25-36
	18N	1E	portion of 6 west of Nisqually River
	19N	1E	portions of 30 & 31 west of Nisqually River
McAllister Springs	18N	1E	19
Mottman Industrial Park	18N	2W	27-29
Southeast	17N	1W	2-11, 14-23
	18N	1W	19-21, 28-34

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-040, filed 7/14/86.]

WAC 173-591-050 Definitions. For the purpose of this chapter the following definitions shall be used:

(1) "Community water use" means use of water associated with needs of a community including street cleaning, parks, public buildings, public swimming pools, fire fighting, and attendant commercial, industrial and irrigation uses.

(2) "Director" means the director of the state of Washington department of ecology or the director's authorized representative.

(3) "Department" means the department of ecology unless otherwise specified.

(4) "Domestic water use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, irrigation of not over one-half acre of lawn or garden per dwelling, and other incidental household uses.

(5) "Commercial and/or industrial use" means use of water associated with commercial and/or industrial requirements such as service, processing, cooling and conveying.

(6) "Public water supply" means any water supply intended or used for human consumption and community uses for more than one single-family residence.

(7) "Public water supply system" means a set of facilities including source, treatment, storage, transmission and distribution facilities whereby water is furnished to any municipality, community, collection, or number of individuals for human consumption and community uses.

(8) "Coordinated water system plan" means a plan adopted by utilities covering one or more public water

supply system(s), which identifies present and future needs of participating water systems and sets forth means for meeting those needs in the most efficient manner possible.

(9) "Reservation" means an allocation of water for a future beneficial use with the priority established as of the date when the reservation becomes effective.

(10) "Appropriation" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses pursuant to RCW 90.03.250 through 90.03.340 and 90.44.060.

(11) "Person" means any individual, municipal, public, or private corporation, or other entity, including a federal or state agency or county which operates a public water supply system or who contemplates such an operation.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-050, filed 7/14/86.]

WAC 173-591-060 Petition received—Notice. A petition requesting the reservation of ground waters in Thurston County pursuant to chapter 173-590 WAC, and a coordinated water system plan approved by the secretary of the department of social and health services were received and accepted by the department. Notice of the receipt of proper petition was published in a newspaper of general circulation in Thurston County for two consecutive weeks, and the director sent notice thereof to the directors of the departments of fisheries, wildlife, and social and health services for the purpose of soliciting their comments.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-591-060, filed 6/9/88. Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-060, filed 7/14/86.]

WAC 173-591-070 Reservation. (1) The department, having received a final environmental impact statement dated January 16, 1985, and having conducted an investigation of the surrounding impacts of the proposed reservation and having heard comments solicited through the notice of receipt of petition and having found ground waters to be generally available for the purposes of the reservation and that the proposed use of the ground waters will result in the maximum net benefit for the people of the state, does hereby reserve portions of those ground waters for future public water supplies in Thurston County.

(2) The department finds that to provide peaking capacity on a daily basis the appropriate amount of the reservation shall be 40,589 gallons per minute, limited to a maximum annual withdrawal of 22,931 acre-feet/year, provided that the total annual withdrawal and diversion from all sources shall not exceed 48,225 acre-feet/year. This is intended to serve the estimated population of 288,092 in fifty years. The amount of this reservation shall be reviewed by the department whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

(3) A map showing the reservation area boundary is shown in Figure II-1 of the coordinated water system plan for Thurston County, dated May 1982, as approved by the department of social and health services for the purposes of reserving water for future public water supply purposes, and

shown as the reservation area boundary map in WAC 173-591-130, Illus. 1.

(4) Due to the nature of the geographic distribution of the ground waters to be reserved and the development patterns that are anticipated in Thurston County, the reserved ground waters are intended to be beneficially utilized from the unconsolidated materials overlying bedrock, and are prorated to the subareas designated in Figure V-1 of the coordinated water system plan for Thurston County, dated May 1982, as approved by the department of social and health services for the purpose of reserving water for future public water supply purposes, and shown as the reservation source of supply subareas map in WAC 173-591-130, Illus. 2. The reserved ground waters are generally prorated to the reservation source of supply subareas as follows, with the totaled reserved quantity to be obtained from within the boundary area.

Source Location	Reservation Quantities	
	Instantaneous (GPM)	Annual (Af/Yr)
Airport	2,500	1,486
Allison Springs	2,000	1,888
Black Lake	2,000	1,888
Deschutes Valley	1,969	1,170
Hawks Prairie	7,000	4,160
McAllister Springs	2,000	—
Mottman Indust. Park	2,000	1,888
Southeast	14,426	8,573
Total	40,589	22,931

(5) The priority date of any permit issued pursuant to RCW 90.03.290 and 90.44.070 which authorizes withdrawal and use of public water for public water supply pursuant to the reservation provided in subsection (2) of this section shall be the effective date of this regulation.

(6) A record of all ground water permits issued pursuant to the reservation provided in subsection (2) of this section shall be maintained by the department in a manner that will readily show the quantities that have been allocated from the reserved ground waters for each subarea identified in subsection (4) of this section and the quantities of unappropriated ground waters that may remain in the reserved status available for appropriation.

(7) No permit issued as described in subsection (5) of this section shall authorize a withdrawal that causes a lowering of the water levels below a reasonable or feasible pumping lift in any withdrawal facilities of a senior ground water right holder.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-591-070, filed 6/9/88. Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-070, filed 7/14/86.]

WAC 173-591-080 Future nonpublic water supply—Policy uses. If applications are made for the use of the ground water reserved in WAC 173-591-070(2) for purposes other than public water supplies, as defined in WAC 173-591-050 (6) and (7), the director may issue a permit allowing such uses but these uses shall be junior in priority to all rights issued pursuant to WAC 173-591-070. Interim uses authorized in this section may be reduced or curtailed in right when necessary to allow to full utilization of higher priority rights established in WAC 173-591-070. The department may limit or otherwise condition junior

water rights permits as necessary to ensure availability of the reserved ground waters for public water supply purposes consistent with this chapter.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-080, filed 7/14/86.]

WAC 173-591-090 Monitoring program. (1) The department, in cooperation with local government agencies, shall implement a comprehensive monitoring program, the purpose of which is to maintain accurate information on the quality and quantity of ground water reserved in WAC 173-591-070(2).

(2) Under this monitoring program surface and ground water levels will be periodically recorded as well as the levels of any lakes that are maintained by ground waters.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-090, filed 7/14/86.]

WAC 173-591-100 Water quality. As a general rule, an element of a ground water right is the right to use waters of quality appropriate to the beneficial use. In addition to the protection of the availability of ground water to the water withdrawal facilities of ground water right holders, it shall be the policy of the department to protect the quality of the ground waters of the state and in relation thereto to discourage any withdrawal facilities, construction methods, water use, or disposal practices which would contaminate or otherwise reduce the quality of the ground waters or impair the beneficial uses of ground waters of the state. Local governments with land use authority are urged to exercise their authorities in such a manner as to protect the quality of the public ground waters reserved for future public water supply by this chapter.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-100, filed 7/14/86.]

WAC 173-591-110 Exemptions. Wells for single family domestic, stock watering, or other purposes for which the withdrawal is less than 5,000 gallons per day, with priority dates subsequent to the effective date of this regulation, shall be junior to rights issued pursuant to WAC 173-591-070. The quantities of water withdrawn by such wells will not be subtracted from the waters reserved by this regulation.

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-110, filed 7/14/86.]

WAC 173-591-115 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-591-115, filed 6/9/88.]

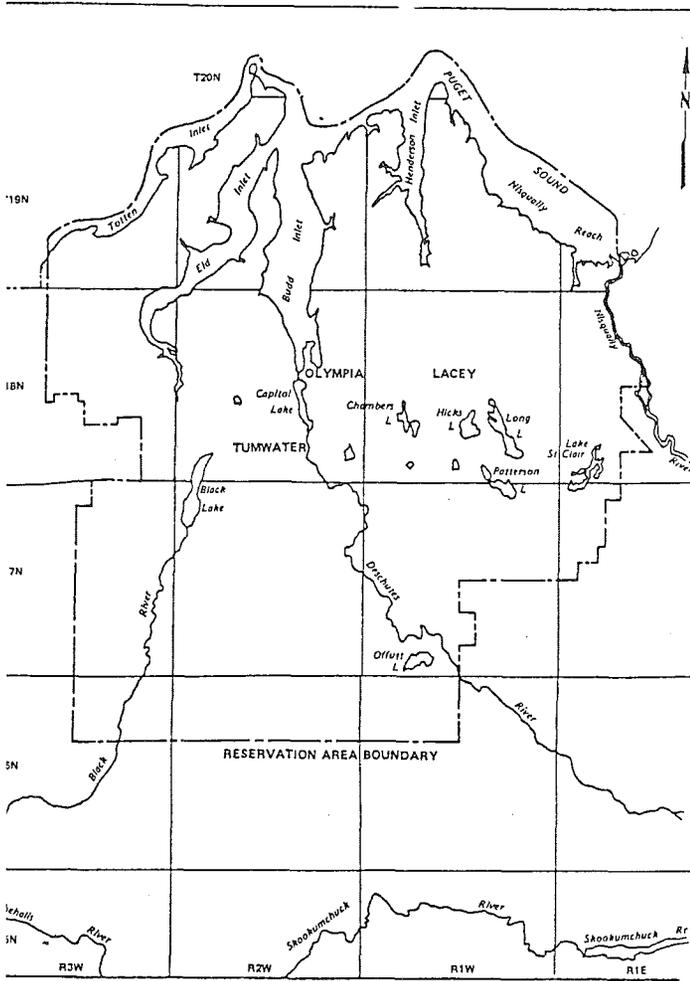
WAC 173-591-120 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-591-120, filed 6/9/88. Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-120, filed 7/14/86.]

WAC 173-591-130 Reservation boundary maps.

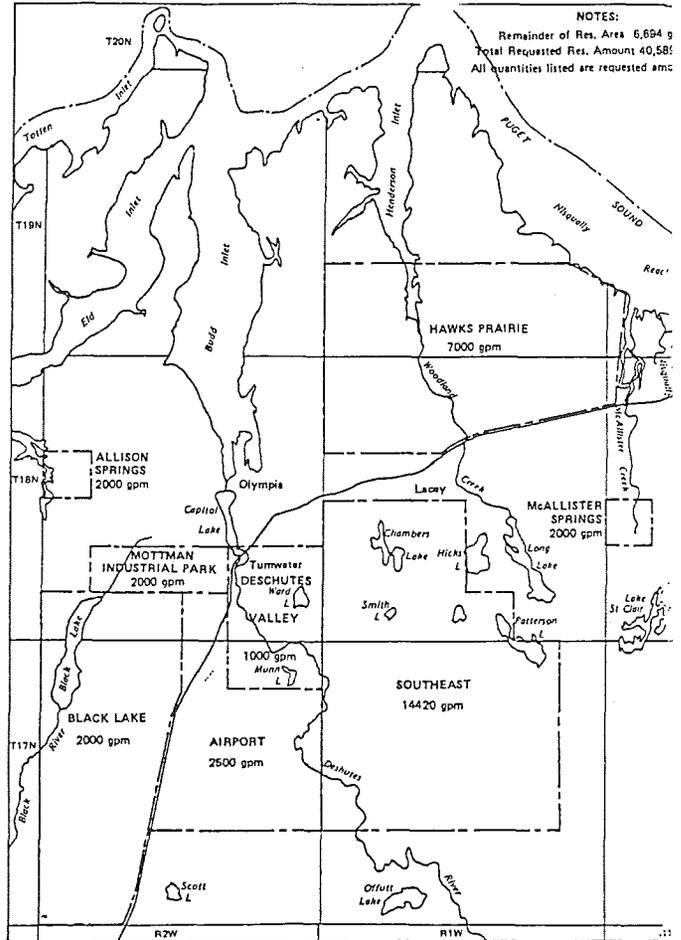
Thurston County reservation area and reservation source of supply subareas shall include those lands that lie within the heavy outline on the following maps:

THURSTON COUNTY RESERVATION AREA BOUNDARY MAP



THURSTON COUNTY RESERVATION AREA BOUNDARY MAP
WAC 173-591-130
ILLUSTRATION 1

THURSTON COUNTY RESERVATION SOURCE OF SUPPLY SUBAREAS BOUNDARY MAP



THURSTON COUNTY RESERVATION SOURCE OF SUPPLY SUBAREAS BOUNDARY MAP
WAC 173-591-130
ILLUSTRATION 2

[Statutory Authority: RCW 90.54.050(1). 86-15-029 (Order DE-86-16), § 173-591-130, filed 7/14/86.]

**Chapter 173-592 WAC
RESERVATION OF FUTURE PUBLIC WATER
SUPPLY FOR CLARK COUNTY**

- | | |
|-------------|--|
| WAC | |
| 173-592-010 | Purpose. |
| 173-592-020 | Authority. |
| 173-592-030 | General. |
| 173-592-040 | Reservation source of supply area defined. |
| 173-592-050 | Definitions. |
| 173-592-060 | Petition received—Notice. |
| 173-592-070 | Reservation. |
| 173-592-080 | Monitoring program. |
| 173-592-090 | Water quality. |
| 173-592-100 | Exemptions. |
| 173-592-110 | Regulation review. |
| 173-592-115 | Appeals. |
| 173-592-120 | Reservation source of supply area map. |

WAC 173-592-010 Purpose. The purpose of this chapter is to reserve ground waters within Clark County for future public water supply.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-010, filed 7/14/86.]

WAC 173-592-020 Authority. This regulation is adopted pursuant to the Water Resources Act of 1971, chapter 90.54 RCW and chapter 173-590 WAC.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-020, filed 7/14/86.]

WAC 173-592-030 General. (1) These rules shall apply to ground waters in Clark County, as defined in WAC 173-592-040 and 173-592-070(5) as specified in the coordinated water system plan for Clark County, dated March, 1983, and approved by the department of social and health services for the purposes of reserving ground waters for future public supply. The location of the reserved waters is further defined in Attachment 1A of the revised petition requesting reservation of ground waters for future public water supply purposes, dated August 12, 1985, and shown on the reservation source of supply area boundary map in WAC 173-592-120, Illus. 1.

(2) Appropriation of reserved waters under this chapter shall be in accordance with the intent and procedures set forth in chapters 90.03 and 90.44 RCW.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-030, filed 7/14/86.]

WAC 173-592-040 Reservation source of supply area defined. "Clark County reservation source of supply area" shall mean those lands lying within Clark County described as follows:

Township	Range	Sections
2N	1W	1, 2, 11, 12, 13, 24
3N	1W	1, 2, 12, 13, 24, 25, 36
4N	1W	1, 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 35, 36
5N	1W	36
2N	1E	1-29, 34-36
3N	1E	1-36
4N	1E	1-36
5N	1E	31-36
1N	2E	1-5, 11, 12
2N	2E	1-36
3N	2E	1-36
4N	2E	1-36
5N	2E	31-36
1N	3E	1-17
2N	3E	1-36
3N	3E	1-36
4N	3E	1-36
5N	3E	31-36
1N	4E	1-18, 20-24
2N	4E	6, 7, 18, 19, 25-36
3N	4E	6, 7, 18, 19, 30, 31
4N	4E	6, 7, 18, 19, 30, 31
5N	4E	31

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-040, filed 7/14/86.]

WAC 173-592-050 Definitions. For the purpose of this chapter the following definitions shall be used:

(1) "Community water use" means use of water associated with needs of a community including street cleaning, parks, public buildings, public swimming pools, fire fighting, and attendant commercial, industrial, and irrigation uses.

(2) "Director" means the director of the state of Washington department of ecology or the director's authorized representative.

(3) "Department" means the department of ecology unless otherwise specified.

(4) "Domestic water use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, irrigation of not over one-half acre of lawn or garden per dwelling, and other incidental household uses.

(5) "Commercial and/or industrial use" means use of water associated with commercial and/or industrial requirements such as service, processing, cooling, and conveying.

(6) "Public water supply" means any water supply intended or used for human consumption and community uses for more than one single-family residence.

(7) "Public water supply system" means a set of facilities including source, treatment, storage, transmission, and distribution facilities whereby water is furnished to any municipality, community, collection, or number of individuals for human consumption and community uses.

(8) "Coordinated water system plan" means a plan developed by utilities and adopted by Clark County and approved by the department of social and health services covering one or more public water supply system(s), which identifies present and future needs of participating water systems and sets forth means for meeting those needs in the most efficient manner possible.

(9) "Reservation" means an allocation of water for a future beneficial use with the priority established as of the date when the reservation becomes effective.

(10) "Appropriation" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses pursuant to RCW 90.03.250 through 90.03.340 and 90.44.060.

(11) "Person" means any individual, municipal, public, or private corporation, or other entity, including a federal or state agency or county which operates a public water supply system or who contemplates such an operation.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-050, filed 7/14/86.]

WAC 173-592-060 Petition received—Notice. A revised petition, dated August 12, 1985, requesting the reservation of ground waters in Clark County pursuant to chapter 173-590 WAC, and a coordinated water system plan approved by the secretary of the department of social and health services, dated March, 1983, were received and accepted by the department. Notice of the receipt of proper petition was published in a newspaper of general circulation in Clark County for two consecutive weeks, and the director sent notice thereof to the directors of the departments of fisheries, wildlife, and social and health services for the purpose of soliciting their comments.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-592-060, filed 6/9/88. Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-060, filed 7/14/86.]

WAC 173-592-070 Reservation. (1) The department, having heard comments solicited through the notice of receipt of petition and having reviewed a final declaration of nonsignificance under the authority of WAC 197-11-340 (State Environmental Policy Act) and having found ground waters to be generally available for the purposes of the reservation and that the proposed use of the ground waters will result in the maximum net benefit for the people of the state, does hereby reserve portions of those ground waters for future public water supplies in Clark County.

(2) The department finds that the appropriate amount of the reservation shall be 97,000 gallons per minute and 65,300 acre-feet/year. This is intended to serve the estimated population of 629,200 in fifty years. The amount of this reservation shall be reviewed by the department in consultation with local government whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

(3) A map showing the reservation source of supply boundaries is shown in Attachment 1A of the revised petition, dated August 12, 1985, requesting reservation of ground water in Clark County for future public water supplies. The map showing the reservation source of supply area boundary is incorporated in this regulation in WAC 173-592-120, Illus. 1.

(4) Waters reserved herein may be utilized within the geographical boundaries of Clark County consistent with the department of social and health services approved coordinated water system plan, dated March 1983.

(5) Due to the nature of the geographic distribution of the ground waters to be reserved in Clark County, the reserved ground waters are intended to be beneficially utilized from the following aquifers, as identified in Attachment 1A of the revised petition, dated August 12, 1985:

1A Columbia River Alluvium

1B-2B Upper Troutdale

1C Sandy River Mudstone

(6) The priority date of any permit issued pursuant to RCW 90.03.290 and 90.44.060 which authorizes withdrawal and use of public water for public water supply pursuant to the reservation provided in subsection (2) of this section shall be the effective date of this regulation.

(7) A record of all ground water permits issued pursuant to the reservation provided in subsection (2) of this section shall be maintained by the department in a manner that will readily show the quantities that have been allocated from the reserved ground waters, and the quantities of unappropriated ground waters that may remain in the reserved status available for appropriation.

(8) No permit issued as described in subsection (6) of this section shall authorize a withdrawal that causes a lowering of the water levels below a reasonable or feasible pumping lift in any withdrawal facilities of a senior ground water right holder.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-592-070, filed 6/9/88. Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-070, filed 7/14/86.]

WAC 173-592-080 Monitoring program. (1) The department, in cooperation with local government agencies,

[Title 173 WAC—page 1114]

shall implement a comprehensive monitoring program, the purpose of which is to maintain accurate information on the quality and quantity of ground water reserved in WAC 173-592-070(2).

(2) Under this monitoring program surface and ground water levels will be periodically recorded as well as the levels of any lakes that are maintained by ground waters.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-080, filed 7/14/86.]

WAC 173-592-090 Water quality. As a general rule, an element of a ground water right is the right to use waters of quality appropriate to the beneficial use. In addition to the protection of the availability of ground water to the water withdrawal facilities of ground water right holders, it shall be the policy of the department to protect the quality of the ground waters of the state and in relation thereto to discourage any withdrawal facilities, construction methods, water use, or disposal practices which would contaminate or otherwise reduce the quality of the ground waters or impair the beneficial uses of ground waters of the state. Local governments with land use authority shall be urged to exercise their authorities in such a manner as to protect the quality of the public ground waters reserved for future public water supply by this chapter.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-090, filed 7/14/86.]

WAC 173-592-100 Exemptions. Wells for single family domestic, stock watering, or other purposes, for which the withdrawal is less than 5,000 gallons per day, with priority dates subsequent to the effective date of this regulation, shall be junior to it, and the quantities of water withdrawn by exempted wells will not be subtracted from the waters reserved by this regulation.

[Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-100, filed 7/14/86.]

WAC 173-592-110 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

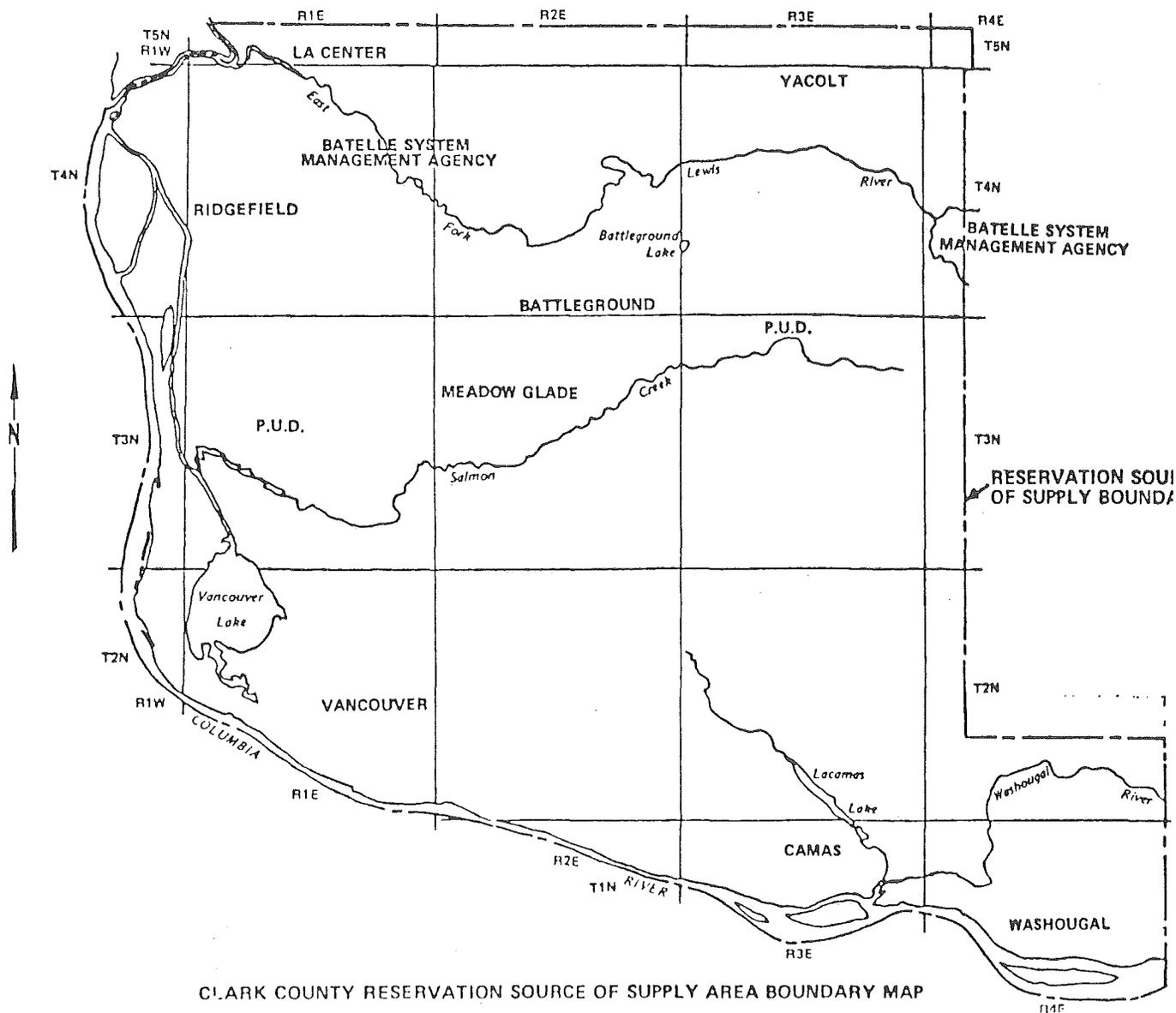
[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-592-110, filed 6/9/88. Statutory Authority: RCW 90.54.050(1). 86-15-030 (Order DE-86-17), § 173-592-110, filed 7/14/86.]

WAC 173-592-115 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-592-115, filed 6/9/88.]

WAC 173-592-120 Reservation source of supply area map. Clark County reservation source of supply area shall include those lands that lie with the heavy outline on the following map:

CLARK COUNTY RESERVATION SOURCE OF SUPPLY AREA BOUNDARY MAP



CLARK COUNTY RESERVATION SOURCE OF SUPPLY AREA BOUNDARY MAP

[Statutory Authority: RCW 90.54.050(1), 86-15-030 (Order DE-86-17), § 173-592-120, filed 7/14/86.]

**Chapter 173-802 WAC
SEPA PROCEDURES**

WAC

- 173-802-010 Authority.
- 173-802-020 Adoption by reference.
- 173-802-030 Purpose.
- 173-802-040 Additional definitions.
- 173-802-050 Designation of responsible official.
- 173-802-060 Additional timing considerations.
- 173-802-070 Threshold determination process—Additional considerations.

- 173-802-080 Mitigated DNS.
- 173-802-090 EIS preparation.
- 173-802-100 Public notice requirements.
- 173-802-110 Policies and procedures for conditioning or denying permits or other approvals.
- 173-802-120 Environmentally sensitive areas.
- 173-802-130 Threshold levels adopted by cities/counties.
- 173-802-140 Responsibilities of individuals and work units within the department.
- 173-802-150 Coordination on combined department—Federal action.
- 173-802-190 Severability.

WAC 173-802-010 Authority. These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-010, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-020 Adoption by reference. The department of ecology adopts the following sections or subsections of chapter 197-11 WAC by reference.

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping. (Optional)
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.
- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement—Procedures.
- 197-11-625 Addenda—Procedures.
- 197-11-630 Adoption—Procedures.
- 197-11-635 Incorporation by reference—Procedures.
- 197-11-640 Combining documents.
- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.
- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decisionmaker.
- 197-11-732 Department.
- 197-11-734 Determination of nonsignificance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.
- 197-11-740 Environment.
- 197-11-742 Environmental checklist.
- 197-11-744 Environmental document.
- 197-11-746 Environmental review.
- 197-11-748 Environmentally sensitive area.
- 197-11-750 Expanded scoping.
- 197-11-752 Impacts.
- 197-11-754 Incorporation by reference.
- 197-11-756 Lands covered by water.
- 197-11-758 Lead agency.
- 197-11-760 License.
- 197-11-762 Local agency.
- 197-11-764 Major action.
- 197-11-766 Mitigated DNS.
- 197-11-768 Mitigation.
- 197-11-770 Natural environment.
- 197-11-772 NEPA.
- 197-11-774 Nonproject.
- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.
- 197-11-782 Probable.
- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 SEPA.
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.

- 197-11-800 Categorical exemptions.
- 197-11-810 Exemptions and nonexemptions applicable to specific state agencies.
- 197-11-855 Department of ecology.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.
- 197-11-900 Purpose of this part.
- 197-11-908 Environmentally sensitive areas.
- 197-11-912 Procedures on consulted agencies.
- 197-11-916 Application to ongoing actions.
- 197-11-917 Relationship to chapter 197-10 WAC.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.
- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-020, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-030 Purpose. This chapter implements the state-wide rules in chapter 197-11 WAC as they apply to the department of ecology.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-030, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Office" means one of the five offices in the department of ecology supervised by an assistant director.

(2) "Region" means any one of the four regional offices of the department.

(3) "Program" means any one of the department's headquarters sections or divisions that administers a program, such as water quality, water resources, shorelands, and hazardous waste.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-040, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-050 Designation of responsible official. Within the department of ecology, the ultimate responsible official is the director. The responsible official for a specific proposal shall be the person who has been delegated signature authority per WAC 173-06-030, unless more than one person has such authority in a proposal; if so, the responsible official shall be either the next higher supervisor common to all involved persons, or any senior professional staff designated by the deputy director.

[Statutory Authority: Chapter 43.21A RCW. 89-11-021 and 90-07-014 (Order 89-6 and 89-6A), § 173-802-050, filed 5/11/89 and 3/13/90, effective 4/13/90. Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-050, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-060 Additional timing considerations.
 (1) Department staff receiving a permit application will determine whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the staff person should ask the applicant to complete an environmental checklist. A checklist is not needed if the department and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the staff person is unsure whether the proposal is exempt.

(2) Department staff receiving a completed permit application and environmental checklist should determine whether WDOE or another agency is SEPA lead agency (see WAC 197-11-050 and 197-11-922 through 197-11-940) within five working days. If WDOE is not the lead agency, the staff person shall send the completed environmental checklist, a copy of the permit application, to the lead agency, and an explanation of the determination to the identified lead agency.

(3) When the department has prepared a draft regulation, the draft EIS or determination of nonsignificance (DNS) shall accompany the draft regulation to the ecological commission for its review.

(4) If the only nonexempt action is department approval of detailed project plans and specifications, an applicant may request that the department complete SEPA compliance before the applicant submits the detailed plans and specifications. If the applicant asks for early environmental review, the department shall complete such review at the final engineering report stage, but not earlier.

(5) Whenever possible, the department shall coordinate the comment periods for environmental documents and the planning documents and/or regulations for which they were written, circulating both documents together.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-060, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-070 Threshold determination process—Additional considerations. When reviewing a completed environmental checklist to make the threshold determination, the responsible official or his designee will:

(1) Independently evaluate the responses of the applicant and note comments, concerns, corrections, or new information in the right margin of the checklist.

(2) Conduct the initial review of the checklist and any supporting documents without requiring additional information from the applicant.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-070, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-080 Mitigated DNS. (1) An applicant may ask the department whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(c) Precede the department's actual threshold determination for the proposal.

(2) The responsible official or his designee shall respond to the request within ten working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the department is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the department to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The department shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the department will make its threshold determination based on the changed or clarified proposal.

(a) If the department's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the department shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350(2).

(b) If the department indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the department shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The department may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the department shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written

attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the department may require the applicant to submit a new checklist.

(7) The department may change or clarify features of its own proposals before making the threshold determination.

(8) The department's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the department to consider the clarifications or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-080, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-090 EIS preparation. (1) Preparation of draft and final EISs and SEISs is the responsibility of the environmental review section. Before the department issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The department normally will prepare its own draft and final EISs. It may require an applicant to provide information that the department does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

(3) If the department would be unable to prepare a draft and/or final EIS due to its commitments or other constraints or when a local agency transfers lead agency status to the department under WAC 197-11-940, the department may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:

(a) The department retains a mutually agreed upon and independent outside party to prepare the document.

(b) The applicant and the department agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the consultant will work directly for the department.

(c) The outside party will prepare the document under the supervision of the environmental review section and the responsible official.

(d) Normally, the department will print and distribute the documents.

(4) Whenever someone other than the department prepares a draft or final EIS, the department shall:

(a) Direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Initiate and coordinate scoping, ensuring that the individual preparing the EIS receives all substantive information submitted by any agency or person.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the EIS.

(d) Allow the person preparing the EIS access to department records relating to the EIS (under chapter 42.17 RCW—Public disclosure and public records law).

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-090, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-100 Public notice requirements. (1)

The department shall give public notice when issuing a DNS under WAC 197-11-350(2), a scoping notice under WAC 173-802-090, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the department shall integrate the public notice required under this section with existing notice procedures for the department's permit or approval required for the proposal.

(a) When more than one permit or approval required from the department has public notice requirements, the notice procedures that would reach the widest audience should be used, if possible.

(b) If the public notice requirements for the permit or approval must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SEPA public notice, the department must use one or more public notice methods in subsection (4) of this section.

(c) If there are no public notice requirements for any of the permits/approvals required for a proposal, the department must use one or more public notice methods in subsection (4) of this section.

(3) The department may require an applicant to perform the public notice requirement at his or her expense.

(4) The department shall use one or more of the following methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the department, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Mailing to persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be implemented if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be implemented; and/or

(c) Posting the property, for site-specific proposals.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-100, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-110 Policies and procedures for conditioning or denying permits or other approvals.

(1)(a) The overriding policy of the department of ecology is to avoid or mitigate adverse environmental impacts which may result from the department's decisions.

(b) The department of ecology shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The department recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The department shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the responsible official shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The responsible official may:

(i) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning or denying permits or other approvals.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-110, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-120 Environmentally sensitive areas.

(1) In determining whether a proposal is exempt from SEPA, the department shall respect "environmentally sensitive area" designations made by local governments under WAC 197-11-908.

(2) The department shall maintain files of the maps and SEPA procedures that cities/counties must send to the

department under WAC 197-11-908. The department shall allow the public, groups, and agencies to review these SEPA procedures and maps during normal business hours.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-120, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-130 Threshold levels adopted by cities/counties. (1) In determining whether a proposal is exempt from SEPA, the department shall respect the threshold levels adopted by cities/counties under WAC 197-11-800(1).

(2) The department shall maintain files of the SEPA procedures that cities/counties must send to the department under WAC 197-11-800 (1)(c). The department shall allow the public, groups, and agencies access to these SEPA procedures during normal business hours.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-130, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-140 Responsibilities of individuals and work units within the department. (1) The environmental review section of the department shall be responsible for the following:

(a) Coordinating agency activities to comply with SEPA, encouraging consistency in SEPA compliance among all regions and programs.

(b) Providing information and guidance on SEPA and the SEPA rules to department staff, agencies, groups, and citizens.

(c) Receiving all SEPA documents sent to the department for review and comment, distributing documents and coordinating review with appropriate regions and programs, preparing the department's response, ensuring a timely response, and requesting extensions to the comment period of an EIS, when needed.

(d) Preparing and publishing the SEPA register weekly as required under WAC 197-11-508.

(e) Maintaining the department's files for EISs, DNSs, scoping notices, and notices of action sent to the department under SEPA and the SEPA rules.

(f) Maintaining files for the city/county SEPA procedures designating environmentally sensitive areas and flexible thresholds and making the information available to department staff and the public.

(g) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with appropriate regions and programs.

(h) Preparing for, coordinating, and presenting annual SEPA workshops and publishing an annual SEPA handbook.

(i) Publishing and distributing the SEPA rules and amending the SEPA rules, as necessary.

(j) Responding to petitions for changes in exemptions from SEPA.

(k) Responding to petitions to resolve lead agency disputes.

(l) Fulfilling the department's other general responsibilities under SEPA and the SEPA rules.

(2) Regional offices and programs of the department shall be responsible for the following:

(a) Determining whether their decision on a permit or other approval, program, policy, plan, or regulation is an

"action" under SEPA and, if so, whether it is exempt from SEPA's requirements (the first department official contacted may make these determinations).

(b) Determining whether WDOE or another agency is SEPA lead agency, contacting the environmental review section if there is a question about which agency is the lead agency.

(c) Making the threshold determination (made by the responsible official, see WAC 173-802-050).

(i) Issuing a determination of nonsignificance, if appropriate (issued by responsible official) and ensuring compliance with the public notice requirements of WAC 173-802-100; or

(ii) Contacting the environmental review section if a determination of significance is appropriate.

(d) Reviewing SEPA documents and submitting comments to the environmental review section in a timely fashion, recognizing that SEPA and the SEPA rules impose strict time limits on commenting.

(e) Working with the environmental review section on preparation of EISs.

(f) Ensuring that permit decisions are consistent with the final EIS and DNS.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-140, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-150 Coordination on combined department—Federal action. When the department is considering an action which also involves federal actions, it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-150, filed 6/15/84. Formerly chapter 173-801 WAC.]

WAC 173-802-190 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. 84-13-037 (Order DE 84-21), § 173-802-190, filed 6/15/84. Formerly chapter 173-801 WAC.]

**Chapter 173-806 WAC
MODEL ORDINANCE**

WAC

**PART ONE
AUTHORITY**

173-806-010 Authority.

**PART TWO
GENERAL REQUIREMENTS**

173-806-020 Purpose of this part and adoption by reference.

173-806-030 Additional definitions.

173-806-040 Designation of responsible official.

173-806-050 Lead agency determination and responsibilities.

173-806-053 Transfer of lead agency status to a state agency.

173-806-055 Additional considerations in time limits applicable to the SEPA process.

173-806-058 Additional timing considerations.

PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

- 173-806-065 Purpose of this part and adoption by reference.
- 173-806-070 Flexible thresholds for categorical exemptions.
- 173-806-080 Use of exemptions.
- 173-806-090 Environmental checklist.
- 173-806-100 Mitigated DNS.

PART FOUR
ENVIRONMENTAL IMPACT STATEMENT (EIS)

- 173-806-110 Purpose of this part and adoption by reference.
- 173-806-120 Preparation of EIS—Additional considerations.
- 173-806-125 Additional elements to be covered in an EIS.

PART FIVE
COMMENTING

- 173-806-128 Adoption by reference.
- 173-806-130 Public notice.
- 173-806-140 Designation of official to perform consulted agency responsibilities for the city/county.

PART SIX
USING EXISTING ENVIRONMENTAL DOCUMENTS

- 173-806-150 Purpose of this part and adoption by reference.

PART SEVEN
SEPA AND AGENCY DECISIONS

- 173-806-155 Purpose of this part and adoption by reference.
- 173-806-160 Substantive authority.
- 173-806-170 Appeals.
- 173-806-173 Notice/statute of limitations.

PART EIGHT
DEFINITIONS

- 173-806-175 Purpose of this part and adoption by reference.

PART NINE
CATEGORICAL EXEMPTIONS

- 173-806-180 Adoption by reference.

PART TEN
AGENCY COMPLIANCE

- 173-806-185 Purpose of this part and adoption by reference.
- 173-806-190 Environmentally sensitive areas.
- 173-806-200 Fees.
- 173-806-205 Effective date.
- 173-806-220 Severability.

PART ELEVEN
FORMS

- 173-806-230 Adoption by reference.

PART ONE
AUTHORITY

WAC 173-806-010 Authority. The city/county of adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

This ordinance contains this city's/county's SEPA procedures and policies.

The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this ordinance.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-010, filed 6/15/84. Formerly WAC 173-805-010.]

PART TWO
GENERAL REQUIREMENTS

WAC 173-806-020 Purpose of this part and adoption by reference. This part contains the basic requirements that apply to the SEPA process. The city/county adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-020, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-030 Additional definitions. In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this ordinance, the following terms shall have the following meanings, unless the context indicates otherwise:

- (1) "Department" means any division, subdivision or organizational unit of the city/county established by ordinance, rule, or order.
- (2) "SEPA rules" means chapter 197-11 WAC adopted by the department of ecology.
- (3) "Ordinance" means the ordinance, resolution, or other procedure used by the city/county to adopt regulatory requirements.
- (4) "Early notice" means the city's/county's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures).

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-030, filed 6/15/84. Formerly WAC 173-805-030.]

WAC 173-806-040 Designation of responsible official. (1) (Note: Use Option 1 or 2, but not both.) (Option 1) For those proposals for which the city/county is the lead agency, the responsible official shall be (Note: Indicate position title, level within city's/county's organization, elected official title or legislative body)

(Option 2) For public proposals, the head (administrative official) of the department making the proposal shall be the responsible official. For private proposals, the head (administrative official) of the department with primary responsibility for approving the permits and licenses for the proposal shall be the responsible official. When multiple officials have permitting authority, the assignment of responsibility shall be reached by agreement.

(2) For all proposals for which the city/county is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "respon-

sible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.

(3) The city/county shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-040, filed 6/15/84. Formerly WAC 173-805-115.]

WAC 173-806-050 Lead agency determination and responsibilities. (1) The department within the city/county receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

(2) When the city/county is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(3) When the city/county is not the lead agency for a proposal, all departments of the city/county shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city/county department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city/county may conduct supplemental environmental review under WAC 197-11-600.

(4) If the city/county or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city/county must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city/county may be initiated by

(5) Departments of the city/county are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944: *Provided*, That the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

(6) Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (That is: Which agencies require nonexempt licenses?).

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-050, filed 6/15/84. Formerly WAC 173-805-070.]

WAC 173-806-053 Transfer of lead agency status to a state agency. (*Optional for cities or towns under 5,000 population and counties of fifth through ninth class.*) For any proposal for a private project where the city/county

would be the lead agency and for which one or more state agencies have jurisdiction, the city's/county's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city/county shall be an agency with jurisdiction. To transfer lead agency duties, the city's/county's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city/county shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-053, filed 6/15/84. Formerly WAC 173-805-053.]

WAC 173-806-055 Additional considerations in time limits applicable to the SEPA process. The following time limits (expressed in calendar days) shall apply when the city/county processes licenses for all private projects and those governmental proposals submitted to the city/county by other agencies:

(1) (*Optional. Not required under act or rules.*) Categorical exemptions. The city/county shall identify whether an action is categorically exempt within seven days of receiving a completed application.

(2) Threshold determinations.

(a) (*Optional. Further clarification of fifteen-day period for threshold determination.*) The city/county should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's adequate application and completed checklist are submitted.

(b) (*Optional. Not required.*) When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction:

(i) The city/county should request such further information within fifteen days of receiving an adequate application and completed environmental checklist;

(ii) The city/county shall wait no longer than thirty days for a consulted agency to respond;

(iii) The responsible official should complete the threshold determination within fifteen days of receiving the requested information from the applicant or the consulted agency.

(c) (*Optional. Not required.*) When the city/county must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city/county should complete the studies within thirty days of receiving an adequate application and a completed checklist.

(d) (*Optional.*) The city/county shall complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within fifteen days of receiving an adequate application and completed checklist.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-055, filed 6/15/84. Formerly WAC 173-805-040.]

WAC 173-806-058 Additional timing considerations.

(1) For nonexempt proposals, the DNS or (Note: *Select either draft or final EIS.*) EIS for the proposal shall accompany the city's/county's staff recommendation to any appropriate advisory body, such as the planning commission.

(2) If the city's/county's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city/county conduct environmental review prior to submission of the detailed plans and specifications. (Note: *The following may be added.*) The point at which environmental review may be initiated for specific permits or other licenses requiring detailed project plans and specifications is

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-058, filed 6/15/84. Formerly chapter 173-805 WAC.]

**PART THREE
CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS**

WAC 173-806-065 Purpose of this part and adoption by reference. This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city/county adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-065, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-070 Flexible thresholds for categorical exemptions. (Note: *This section is optional. The lowest exempt level in the ranges below apply unless the city/county raises the level based on local conditions, such as previous DNSs on the activities or city/county development codes. The city/county may raise the level for an exemption to any point up to the maximum specified in WAC 197-11-800 (1)(c); once levels are established in this ordinance, the city/county must apply a level to all projects within the geographic area to which the level applies.*)

(1) city/county establishes the following exempt levels for minor new construction under WAC 197-11-800 (1)(b) based on local conditions:

(a) For residential dwelling units in WAC 197-11-800 (1)(b)(i) (Note: *Range 4 - 20 units*): Up to dwelling units.

(b) For agricultural structures in WAC 197-11-800 (1)(b)(ii) (Note: *Range 10,000 - 30,000 square feet*): Up to square feet.

(c) For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iii) (Note: *Range 4,000 - 12,000 square feet and 20 - 40 parking spaces*): Up to square feet and up to parking spaces.

(d) For parking lots in WAC 197-11-800 (1)(b)(iv) (Note: *Range 20 - 40 parking spaces*): Up to parking spaces.

(e) For landfills and excavations in WAC 197-11-800 (1)(b)(v) (Note: *Range 100 - 500 cubic yards*): Up to cubic yards.

(2) Whenever the city/county establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800 (1)(c).

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-070, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-080 Use of exemptions. (1) Each department within the city/county that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The city/county shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the city/county may authorize exempt actions prior to compliance with the procedural requirements of this ordinance, except that:

- (a) The city/county shall not give authorization for:
 - (i) Any nonexempt action;
 - (ii) Any action that would have an adverse environmental impact; or
 - (iii) Any action that would limit the choice of alternatives.

(b) A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(c) A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-080, filed 6/15/84. Formerly WAC 173-805-060.]

WAC 173-806-090 Environmental checklist. (1) *(Use Option 1 or 2, but not both) (Option 1, using checklist from the rules without changes.)* A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the city/county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city/county shall use the environmental checklist to determine the lead agency and, if the city/county is the lead agency, for determining the responsible official and for making the threshold determination.

(Option 2, adding questions to the checklist.) A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate, or other approval not exempted in this ordinance; except, a checklist is not needed if the city/county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The checklist shall be in the form of WAC 197-11-960 with the following additions: *(Indicate city's/county's additions.)*

(2) For private proposals, the city/county will require the applicant to complete the environmental checklist, providing assistance as necessary. For city/county proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

(3) *(Optional.)* The city/county may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs: *(Either one or both of the following may be included.)*

(a) The city/county has technical information on a question or questions that is unavailable to the private applicant; or

(b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-090, filed 6/15/84. Formerly WAC 173-805-090.]

WAC 173-806-100 Mitigated DNS. (1) As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(2) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

(a) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(b) Precede the city's/county's actual threshold determination for the proposal.

(3) The responsible official should respond to the request for early notice within working days. The response shall:

(a) Be written;

(b) State whether the city/county currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city/county to consider a DS; and

(c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(4) As much as possible, the city/county should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(5) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city/county shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:

(a) If the city/county indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city/county shall issue and circulate a DNS under WAC 197-11-340(2).

(b) If the city/county indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city/county shall make the threshold determination, issuing a DNS or DS as appropriate.

(c) The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.

(d) Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

(6) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen-day comment period and public notice.

(7) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city/county.

(8) If the city's/county's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city/county should evaluate the threshold determination to assure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

(9) The city's/county's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city/county to consider the clarifications or changes in its threshold determination.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-100, filed 6/15/84. Formerly chapter 173-805 WAC.]

**PART FOUR
ENVIRONMENTAL IMPACT STATEMENT (EIS)**

WAC 173-806-110 Purpose of this part and adoption by reference. This part contains the rules for preparing environmental impact statements. The city/county adopts the following sections by reference, as supplemented by this part:

WAC

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping. (Optional)
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-110, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-120 Preparation of EIS—Additional considerations. (1) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of (*department*) under the direction of the responsible official. Before the city/county issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC.

(2) The DEIS and FEIS or draft and final SEIS shall be prepared by city/county staff, the applicant, or by a consultant selected by the city/county or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city/county will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's/county's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) The city/county may require an applicant to provide information the city/county does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this ordinance or that is being requested from another agency. (This does not apply to information the city/county may request under another ordinance or statute.)

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-120, filed 6/15/84. Formerly WAC 173-805-100.]

WAC 173-806-125 Additional elements to be covered in an EIS. (*This entire section is optional. If used,*

you may select any of the listed elements or add your own.) The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this ordinance:

- (1) Economy.
- (2) Social policy analysis.
- (3) Cost-benefit analysis.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-125, filed 6/15/84. Formerly WAC 173-805-105.]

**PART FIVE
COMMENTING**

WAC 173-806-128 Adoption by reference. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city/county adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist leadagency.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-128, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-130 Public notice. (*This section is required. Subsections (1) and (2) of this section may be combined.*) (1) Whenever city/county issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city/county shall give public notice as follows:

(a) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

(b) If no public notice is required for the permit or approval, the city/county shall give notice of the DNS or DS by: (*Note: Select at least one of the following*)

- (i) Posting the property, for site-specific proposals;
- (ii) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(iii) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(vi) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas);

(vii) (*or, specify other method*)

(c) Whenever the city/county issues a DS under WAC 197-11-360(3), the city/county shall state the scoping

procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(2) Whenever the city/county issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(a) Indicating the availability of the DEIS in any public notice required for a nonexempt license; and (Note: In addition select at least one of the following or insert all of the list and require that at least one method be used.)

(b) Posting the property, for site-specific proposals;

(c) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(d) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(e) Notifying the news media;

(f) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(g) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas); (and/or

(h) specify other)

(3) Whenever possible, the city/county shall integrate the public notice required under this section with existing notice procedures for the city's/county's nonexempt permit(s) or approval(s) required for the proposal.

(4) The city/county may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-130, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-140 Designation of official to perform consulted agency responsibilities for the city/county.

(1) The (position title, department, or office) shall be responsible for preparation of written comments for the city/county in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(2) This (person, department or office) shall be responsible for the city's/county's compliance with WAC 197-11-550 whenever the city/county is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city/county.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-140, filed 6/15/84. Formerly WAC 173-805-110.]

**PART SIX
USING EXISTING ENVIRONMENTAL
DOCUMENTS**

WAC 173-806-150 Purpose of this part and adoption by reference. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's/county's own environmental compliance. The city/county adopts the following sections by reference:

WAC

197-11-600 When to use existing environmental documents.

197-11-610 Use of NEPA documents.

197-11-620 Supplemental environmental impact statement—Procedures.

197-11-625 Addenda—Procedures.

197-11-630 Adoption—Procedures.

197-11-635 Incorporation by reference—Procedures.

197-11-640 Combining documents.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-150, filed 6/15/84. Formerly WAC 173-805-020.]

**PART SEVEN
SEPA AND AGENCY DECISIONS**

WAC 173-806-155 Purpose of this part and adoption by reference. This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city/county adopts the following sections by reference:

WAC

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-155, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-160 Substantive authority. (1) The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the city of / county.

(2) The (city/county) may attach conditions to a permit or approval for a proposal so long as:

(a) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

(b) Such conditions are in writing; and

(c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(d) The city/county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(e) Such conditions are based on one or more policies in subsection (4) of this section and cited in the license or other decision document.

(3) The (city/county) may deny a permit or approval for a proposal on the basis of SEPA so long as:

(a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this ordinance; and

(b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in subsection (4) of this section and identified in writing in the decision document.

(4) The city/county designates and adopts by reference the following policies as the basis for the city's/county's exercise of authority pursuant to this section:

(a) The city/county shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The city/county recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(c) (Optional.) The city/county adopts by reference the policies in the following city/county (codes, ordinances, resolutions, plans). (List the codes, ordinances, resolutions, or plans you have selected, such as zoning ordinance, building codes or comprehensive plans.).

(d) (Optional.) The city/county establishes the following additional policies:

(5) (Note: Required by RCW 43.21C.060, unless the city/county council/commission elects to eliminate such appeals and states so in this ordinance.) Except for permits and variances issued pursuant to chapter of the city/county code (chapter relating to shoreline management), when any proposal or action not requiring a decision of the city/county council/commission is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the city/county council/commission. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten days of the decision being appealed. Review by the city/county council/commission shall be on a de novo basis.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-160, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-170 Appeals. (1) (Agency administrative appeal is optional. If allowed, the statute requires that all of this subsection be included, except (c) of this subsection which is optional.) city/county establishes the

following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

(a) Any agency or person may appeal the city's/county's procedural compliance with chapter 197-11 WAC for issuance of the following: (Note: Select one or more.)

(i) A final DNS: (Note: Choose one of the following options.)

(Option 1) Appeal of the DNS must be made to within days of the date the DNS is final (see WAC 197-11-390 (2)(a)).

(Option 2) Appeal of the DNS must be made to within days of the date the DNS is final. Appeal of the substantive determination on the action must be made to within days of the issuance of the permit or other license.

(Option 3) Appeal of the (city/county must specify DNS, substantive determination on action, or both. If both are allowed, they must be consolidated.) must be made to within days of the date the permit or other approval is issued.

(ii) A DS: The appeal must be made to within days of the date the DS is issued.

(iii) An EIS: Appeal of the (city/county must specify FEIS, substantive determination on the action, or both. If both are allowed, they must be consolidated) must be made to within days of the date the permit or other approval is issued.

(b) For any appeal under this subsection, the city/county shall provide for a record that shall consist of the following:

- (i) Findings and conclusions;
- (ii) Testimony under oath; and
- (iii) A taped or written transcript.

(c) (Optional.) The city/county may require the appellant to provide an electronic transcript.

(d) The procedural determination by the city's/county's responsible official shall carry substantial weight in any appeal proceeding.

(2) The city/county shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. (The following is optional.) The following permits or approvals require official notice:

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-170, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-173 Notice/statute of limitations. (Optional.) (1) The city/county, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk or county auditor, applicant or proponent pursuant to RCW 43.21C.080.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-173, filed 6/15/84. Formerly WAC 173-805-135.]

**PART EIGHT
DEFINITIONS**

WAC 173-806-175 Purpose of this part and adoption by reference. This part contains uniform usage and definitions of terms under SEPA. The city/county adopts the following sections by reference, as supplemented by WAC 173-806-040:

WAC

197-11-700 Definitions.
 197-11-702 Act.
 197-11-704 Action.
 197-11-706 Addendum.
 197-11-708 Adoption.
 197-11-710 Affected tribe.
 197-11-712 Affecting.
 197-11-714 Agency.
 197-11-716 Applicant.
 197-11-718 Built environment.
 197-11-720 Categorical exemption.
 197-11-722 Consolidated appeal.
 197-11-724 Consulted agency.
 197-11-726 Cost-benefit analysis.
 197-11-728 County/city.
 197-11-730 Decision maker.
 197-11-732 Department.
 197-11-734 Determination of nonsignificance (DNS).
 197-11-736 Determination of significance (DS).
 197-11-738 EIS.
 197-11-740 Environment.
 197-11-742 Environmental checklist.
 197-11-744 Environmental document.
 197-11-746 Environmental review.
 197-11-748 Environmentally sensitive area.
 197-11-750 Expanded scoping.
 197-11-752 Impacts.
 197-11-754 Incorporation by reference.
 197-11-756 Lands covered by water.
 197-11-758 Lead agency.
 197-11-760 License.
 197-11-762 Local agency.
 197-11-764 Major action.
 197-11-766 Mitigated DNS.
 197-11-768 Mitigation.
 197-11-770 Natural environment.
 197-11-772 NEPA.
 197-11-774 Nonproject.
 197-11-776 Phased review.
 197-11-778 Preparation.
 197-11-780 Private project.
 197-11-782 Probable.
 197-11-784 Proposal.
 197-11-786 Reasonable alternative.
 197-11-788 Responsible official.
 197-11-790 SEPA.
 197-11-792 Scope.
 197-11-793 Scoping.
 197-11-794 Significant.
 197-11-796 State agency.

197-11-797 Threshold determination.
 197-11-799 Underlying governmental action.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-175, filed 6/15/84. Formerly WAC 173-805-020.]

**PART NINE
CATEGORICAL EXEMPTIONS**

WAC 173-806-180 Adoption by reference. The city/county adopts by reference the following rules for categorical exemptions, as supplemented in this ordinance, including WAC 173-806-070 (Flexible thresholds), WAC 173-806-080 (Use of exemptions), and WAC 173-806-190 (Environmentally sensitive areas):

WAC

197-11-800 Categorical exemptions.
 197-11-880 Emergencies.
 197-11-890 Petitioning DOE to change exemptions.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-180, filed 6/15/84. Formerly WAC 173-805-020.]

**PART TEN
AGENCY COMPLIANCE**

WAC 173-806-185 Purpose of this part and adoption by reference. This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city/county adopts the following sections by reference, as supplemented by WAC 173-806-045 through 173-806-043 and this part:

WAC

197-11-900 Purpose of this part.
 197-11-902 Agency SEPA policies.
 197-11-916 Application to ongoing actions.
 197-11-920 Agencies with environmental expertise.
 197-11-922 Lead agency rules.
 197-11-924 Determining the lead agency.
 197-11-926 Lead agency for governmental proposals.
 197-11-928 Lead agency for public and private proposals.
 197-11-930 Lead agency for private projects with one agency with jurisdiction.
 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
 197-11-938 Lead agencies for specific proposals.
 197-11-940 Transfer of lead agency status to a state agency.
 197-11-942 Agreements on lead agency status.
 197-11-944 Agreements on division of lead agency duties.

- 197-11-946 DOE resolution of lead agency disputes.
 197-11-948 Assumption of lead agency status.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-185, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-190 Environmentally sensitive areas. (Optional. If used, all subsections must be included.) (1) (Use Option 1 or 2, but not both.)

(Option 1: If maps have been prepared.) The map(s) filed under designate the location of environmentally sensitive areas within the city/county and are adopted by reference. For each environmentally sensitive area, the exemptions within WAC 197-11-800 that are inapplicable for that area are: Unidentified exemptions shall continue to apply within environmentally sensitive areas of the city/county.

(Option 2: If environmentally sensitive areas have not been designated.) shall designate environmentally sensitive areas under the standards of WAC 197-11-908 and shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

(2) The city/county shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this ordinance, making a threshold determination for all such proposals. The city/county shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

(3) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-190, filed 6/15/84. Formerly WAC 173-805-050.]

WAC 173-806-200 Fees. (This entire section is optional. You may use any or none of subsections (1), (2) or (4) of this section but you must use subsection (3) of this section if other subsections are used.) The city/county shall require the following fees for its activities in accordance with the provisions of this ordinance:

(1) Threshold determination. For every environmental checklist the city/county will review when it is lead agency, the city/county shall collect a fee of (\$50.00 or enter a different amount) from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee. (Note: The following option may be added: When the city/county completes the environmental checklist at the applicant's request or under WAC 173-806-090(3) of this ordinance, an additional shall be collected.)

(2) Environmental impact statement.

(a) When the city/county is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city/county, the city/county may charge and collect a reasonable fee from any applicant to cover costs incurred by

the city/county in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(b) The responsible official may determine that the city/county will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city/county and may bill such costs and expenses directly to the applicant. The city/county may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city/county and applicant after a call for proposals.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

(3) The city/county may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this ordinance relating to the applicant's proposal.

(4) The city/county shall not collect a fee for performing its duties as a consulted agency.

(5) The city/county may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-200, filed 6/15/84. Formerly WAC 173-805-130.]

WAC 173-806-205 Effective date. (Optional.) The effective date of this ordinance is

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-205, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-220 Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-220, filed 6/15/84. Formerly WAC 173-805-140.]

PART ELEVEN FORMS

WAC 173-806-230 Adoption by reference. The city/county adopts the following forms and sections by reference:

WAC

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-230, filed 6/15/84. Formerly WAC 173-805-020.]