

**WSR 15-10-106**  
**EXPEDITED RULES**  
**ENERGY FACILITY SITE**  
**EVALUATION COUNCIL**

[Filed May 6, 2015, 10:59 a.m.]

Title of Rule and Other Identifying Information: Chapter 463-78 WAC, General and operating permit regulations for air pollution sources. In WAC 463-78-005(1) the effective date of adoption by reference of chapter 173-400 WAC will be changed from November 1, 2008, to December 29, 2012. In WAC 463-78-005(2) the effective date of adoption by reference of chapter 173-401 WAC will be changed from March 1, 2005, to September 10, 2011.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Stephen Posner, Energy Facility Site Evaluation Council (EFSEC) Manager, EFSEC, P.O. Box 43172, Olympia, WA 98504-3172, AND RECEIVED BY July 7, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: From 2010 through 2012 department of ecology conducted three rule-making processes to revise air quality rules contained in chapters 173-400 and 173-401 WAC. The purpose of these rule revisions was to assure consistency and compliance with recent United States Environmental Protection Agency (EPA) rule revisions.

In this rule making, EFSEC proposes to adopt by reference recent ecology rule revisions that apply to facilities under EFSEC jurisdiction. State statute requires that EFSEC rules be consistent with the Washington Clean Air Act and ecology rules, so those ecology rule revisions that do not apply to EFSEC facilities have been deleted.

A summary of ecology and federal rule revisions encompassed by this rule making that EFSEC proposes to adopt by reference is presented below and organized by the effective date of ecology rule adoption.

General regulations for air pollution sources, chapter 173-400 WAC, effective April 1, 2011.

- Bring the rule into compliance with EPA's regulations including standards for excess emissions and major stationary sources located in a nonattainment area, and update the date of federal regulations adopted by reference.
- Set a new exemption level for greenhouse gas emissions and particulate matter, PM<sub>2.5</sub>, below which permitting is not required.
- Keep the rule consistent with recent updates to related WAC.

- Update definitions to match current state and federal regulations.
- Establish a permitting procedure for emergency engines.
- Update the rule to resolve state implementation plan (SIP) deficiencies.
- Additional housekeeping corrections and changes.

General regulations for air pollution sources, chapter 173-400 WAC, and operating permit regulation, chapter 173-401 WAC, effective September 10, 2011.

- This rule making does not change the greenhouse gas reporting requirements in chapter 173-441 WAC.

General regulations for air pollution sources, chapter 173-400 WAC, effective December 29, 2012.

- Make the rule consistent with requirements in the Federal Clean Air Act.
- Support EFSEC's request for EPA's approval of SIP revisions.
- Amend the rule sections related to permits for industrial sources of air pollution including minor new source review and major new source review (prevention of significant deterioration).
- Help emitters comply with the rule through better access to references, improved readability, and better understanding of regulations and permitting requirements.

Operating permit regulation, chapter 173-401 WAC, effective January 1, 2011.

- Make the rule consistent with EPA and ecology requirements for reporting emissions of greenhouse gases.
- Beginning January 1, 2011, sources with an air operating permit must report their greenhouse gas emissions when revising or renewing this permit.
- Beginning July 1, 2011, sources that have the potential to emit one hundred thousand tons per year or more of greenhouse gases become subject to the air operating permit program, regardless of their emissions of other pollutants. These newly subject sources must apply for an air operating permit on or before July 12, 2012.

Operating permit regulation, chapter 173-401 WAC, effective September 10, 2011.

- This rule making does not change the greenhouse gas reporting requirements in chapter 173-441 WAC.

Standards of Performance for New Stationary Sources, Title 40, Code of Federal Regulations, Part 60, as it exists on July 1, 2014.

- List of new source performance standards in WAC 463-78-115 revised to incorporate additional categories of industries to be consistent with EFSEC's jurisdictional authority in chapter 80.50 RCW.

Reasons Supporting Proposal: EFSEC proposes to adopt by reference ecology's recent rule revisions into chapter 463-78 WAC to assure consistency with ecology's rules, as directed in RCW 70.94.422, and to assure consistency and compliance with federal rules. Many of these revisions will

also support EFSEC's future update of its SIP to the United States EPA.

Statutory Authority for Adoption: RCW 80.50.040.

Statute Being Implemented: Chapter 80.50 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: EFSEC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jim La Spina, EFSEC, Olympia, Washington, (360) 664-1362.

May 6, 2015  
 Stephen Posner  
 EFSEC Manager

AMENDATORY SECTION (Amending WSR 11-13-048, filed 6/9/11, effective 7/10/11)

**WAC 463-78-005 Adoption by reference.** (1) The energy facility site evaluation council adopts by reference the following provisions of chapter 173-400 WAC, ~~((in effect on November 1, 2008, by reference. WAC 173-400-110(8) and 173-400-730(4) are not adopted by reference))~~ as it existed on December 29, 2012, with the exceptions that (a) WAC 173-400-111 (5)(a) (last six words), (6), (9), and WAC 173-400-720 is adopted by reference except the date in WAC 173-400-720 (4)(a)(vi) is May 1, 2015, and WAC 173-400-730(4) and 173-400-750(2) second sentence are not adopted by reference, and (b) the terms "ecology," "authority," "director," and "permitting authority" in WAC 173-400-030 shall mean "the energy facility site evaluation council" unless a different meaning is plainly required by the context.

- WAC 173-400-030: Definitions.
- ~~((WAC 173-400-035: Portable and temporary sources.))~~
- WAC 173-400-036: Relocation of portable sources.
- WAC 173-400-040: General standards for maximum emissions.
- WAC 173-400-050: Emission standards for combustion and incineration units.
- WAC 173-400-060: Emission standards for general process units.
- WAC 173-400-070 (5) and (7) only: Emission standards for certain source categories.
- WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.
- WAC 173-400-081: Startup and shutdown.
- WAC 173-400-091: Voluntary limits on emissions.
- WAC 173-400-105: Records, monitoring, and reporting.
- WAC 173-400-107: Excess emissions.

- WAC 173-400-110: New source review (NSR) for sources and portable sources.
- WAC 173-400-111: Processing notice of construction applications for sources, stationary sources and portable sources.
- WAC 173-400-112: Requirements for new sources in nonattainment areas.
- WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.
- WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
- WAC 173-400-116: Increment protection.
- WAC 173-400-117: Special protection requirements for federal Class I areas.
- WAC 173-400-120: Bubble rules.
- WAC 173-400-131: Issuance of emission reduction credits.
- WAC 173-400-136: Use of emission reduction credits.
- ~~((WAC 173-400-151: Retrofit requirements for visibility protection.))~~
- WAC 173-400-161: Compliance schedules.
- WAC 173-400-171: Public involvement.
- WAC 173-400-175: Public information.
- WAC 173-400-180: Variance.
- WAC 173-400-190: Requirements for nonattainment areas.
- WAC 173-400-200: Creditable stack height and dispersion techniques.
- WAC 173-400-205: Adjustment for atmospheric conditions.
- WAC 173-400-700: Review of major stationary sources of air pollution.
- WAC 173-400-710: Definitions.
- WAC 173-400-720: Prevention of significant deterioration (PSD).
- WAC 173-400-730: Prevention of significant deterioration application processing procedures.
- WAC 173-400-740: PSD permitting public involvement requirements.
- WAC 173-400-750: Revisions to PSD permits.
- WAC 173-400-800: Major stationary source and major modification in a nonattainment area.
- WAC 173-400-810: Major stationary source and major modification definitions.

<u>WAC 173-400-820:</u>	<u>Determining if a new stationary source or modification to a stationary source is subject to these requirements.</u>
<u>WAC 173-400-830:</u>	<u>Permitting requirements.</u>
<u>WAC 173-400-840:</u>	<u>Emission offset requirements.</u>
<u>WAC 173-400-850:</u>	<u>Actual emissions plantwide applicability limitation (PAL).</u>
<u>WAC 173-400-860:</u>	<u>Public involvement procedures.</u>

(2) The energy facility site evaluation council adopts by reference the following provisions of chapter 173-401 WAC, ((in effect on March 1, 2005, by reference)) as it existed on September 10, 2011, with the exception that (a) WAC 173-401-620 (2)(a)(i) is not adopted by reference, and (b) the terms "ecology," "authority," "director," and "permitting authority" shall mean "the energy facility site evaluation council" unless a different meaning is plainly required by the context.

WAC 173-401-100:	Program overview.
WAC 173-401-200:	Definitions.
WAC 173-401-300:	Applicability.
WAC 173-401-500:	Permit applications.
WAC 173-401-510:	Permit application form.
WAC 173-401-520:	Certification.
WAC 173-401-530:	Insignificant emission units.
WAC 173-401-531:	Thresholds for hazardous air pollutants.
WAC 173-401-532:	Categorically exempt insignificant emission units.
WAC 173-401-533:	Units and activities defined as insignificant on the basis of size or production rate.
WAC 173-401-600:	Permit content.
WAC 173-401-605:	Emission standards and limitations.
WAC 173-401-610:	Permit duration.
WAC 173-401-615:	Monitoring and related record-keeping and reporting requirements.
WAC 173-401-620:	Standard terms and conditions. <u>((Except (2)(i).))</u>
WAC 173-401-625:	Federally enforceable requirements.
WAC 173-401-630:	Compliance requirements.
WAC 173-401-635:	Temporary sources.
WAC 173-401-640:	Permit shield.
WAC 173-401-645:	Emergency provision.
WAC 173-401-650:	Operational flexibility.

WAC 173-401-700:	Action on application.
WAC 173-401-705:	Requirement for a permit.
WAC 173-401-710:	Permit renewal, revocation and expiration.
WAC 173-401-720:	Administrative permit amendments.
WAC 173-401-722:	Changes not requiring permit revisions.
WAC 173-401-725:	Permit modifications.
WAC 173-401-730:	Reopening for cause.
WAC 173-401-750:	General permits.
WAC 173-401-800:	Public involvement.
WAC 173-401-810:	EPA Review.
WAC 173-401-820:	Review by affected states.

(3) The energy facility site evaluation council adopts by reference the following provisions of chapter 173-406 WAC, ((in effect)) as it existed on March 1, 2005((, by reference)).

#### Part I - GENERAL PROVISIONS

WAC 173-406-100:	Acid rain program general provisions.
WAC 173-406-101:	Definitions.
WAC 173-406-102:	Measurements, abbreviations, and acronyms.
WAC 173-406-103:	Applicability.
WAC 173-406-104:	New units exemption.
WAC 173-406-105:	Retired units exemption.
WAC 173-406-106:	Standard requirements.

#### Part II - DESIGNATED REPRESENTATIVE

WAC 173-406-200:	Designated representative.
WAC 173-406-201:	Submissions.
WAC 173-406-202:	Objections.

#### Part III - APPLICATIONS

WAC 173-406-300:	Acid rain permit applications.
WAC 173-406-301:	Requirement to apply.
WAC 173-406-302:	Information requirements for acid rain permit applications.
WAC 173-406-303:	Permit application shield and binding effect of permit application.

#### Part IV - COMPLIANCE PLAN

WAC 173-406-400:	Acid rain compliance plan and compliance options.
WAC 173-406-401:	General.
WAC 173-406-402:	Repowering extensions.

## Part V - PERMIT CONTENTS

WAC 173-406-500: Acid rain permit.  
 WAC 173-406-501: Contents.  
 WAC 173-406-502: Permit shield.

## Part VI - PERMIT ISSUANCE

WAC 173-406-600: Acid rain permit issuance procedures.  
 WAC 173-406-601: General.  
 WAC 173-406-602: Completeness.  
 WAC 173-406-603: Statement of basis.  
 WAC 173-406-604: Issuance of acid rain permits.

## Part VII - PERMIT REVISIONS

WAC 173-406-700: Permit revisions.  
 WAC 173-406-701: General.  
 WAC 173-406-702: Permit modifications.  
 WAC 173-406-703: Fast-track modifications.  
 WAC 173-406-704: Administrative permit amendment.  
 WAC 173-406-705: Automatic permit amendment.  
 WAC 173-406-706: Permit reopenings.

## Part VIII - COMPLIANCE CERTIFICATION

WAC 173-406-800: Compliance certification.  
 WAC 173-406-801: Annual compliance certification report.  
 WAC 173-406-802: Units with repowering extension plans.

## Part IX - NITROGEN OXIDES

WAC 173-406-900: Nitrogen oxides emission reduction program.

## Part X - SULFUR DIOXIDE OPT-IN

WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts by reference the following provisions of chapter 173-460 WAC, ~~((in effect))~~ as it existed on March 1, 2005~~((, by reference))~~.

WAC 173-460-010: Purpose.  
 WAC 173-460-020: Definitions.  
 WAC 173-460-030: Requirements, applicability and exemptions.  
 WAC 173-460-040: New source review.  
 WAC 173-460-050: Requirement to quantify emissions.  
 WAC 173-460-060: Control technology requirements.  
 WAC 173-460-070: Ambient impact requirement.

WAC 173-460-080: Demonstrating ambient impact compliance.  
 WAC 173-460-090: Second tier analysis.  
 WAC 173-460-100: Request for risk management decision.  
 WAC 173-460-110: Acceptable source impact levels.  
 WAC 173-460-120: Scientific review and amendment of acceptable source impact levels and lists.  
 WAC 173-460-130: Fees.  
 WAC 173-460-140: Remedies.  
 WAC 173-460-150: Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.  
 WAC 173-460-160: Class B toxic air pollutants and acceptable source impact levels.

(5) The energy facility site evaluation council adopts by reference the following provisions of chapter 173-441 WAC, ~~((in effect))~~ as it existed on January 1, 2011~~((, by reference))~~.

WAC 173-441-010: Scope.  
 WAC 173-441-020: Definitions.  
 WAC 173-441-030: Applicability.  
 WAC 173-441-040: Greenhouse gases.  
 WAC 173-441-050: General monitoring, reporting, recordkeeping and verification requirements.  
 WAC 173-441-060: Authorization and responsibilities of the designated representative.  
 WAC 173-441-070: Report submittal.  
 WAC 173-441-080: Standardized methods and conversion factors incorporated by reference.  
 WAC 173-441-090: Compliance and enforcement.  
 WAC 173-441-100: Addresses.  
 WAC 173-441-110: Fees.  
 WAC 173-441-120: Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities.  
 WAC 173-441-140: Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions.  
 WAC 173-441-150: Confidentiality.  
 WAC 173-441-160: Ecology to share information with local air authorities and with the energy facility site evaluation council.  
 WAC 173-441-170: Severability.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-78-010 Purpose.** The energy facility site evaluation council, under the authority vested in it by chapters 80.50 and 70.94 RCW ((and 40 C.F.R. Part 52)), is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution.

AMENDATORY SECTION (Amending WSR 06-06-037, filed 2/23/06, effective 3/26/06)

**WAC 463-78-030 Additional definitions.** (1) "Council" means the energy facility site evaluation council.

(2) In addition to the definitions contained in WAC 173-400-030, 173-400-710, 173-400-810, 173-401-200, 173-406-101, "ecology," "authority," "director," and "permitting authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-78-095 Permit issuance.** (1) Permit(s) issued for air emissions in accordance with chapter((s 173-400, 173-401, 173-406, and 173-460)) 463-78 WAC shall become an attachment(s) to a site certification agreement.

(2) For new energy facilities the permit(s) shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective upon the governor's approval and execution of the site certification agreement.

(3) Except as provided in subsection (4) of this section, for certified energy facilities, any change in terms or conditions, extension, revision or reissuance of permit(s) issued for air emissions in accordance with chapter 463-78 WAC, shall be governed by applicable law and regulation and shall not require modification of the site certification agreement, or governor approval.

(4) Permit(s) for air emissions revised or issued in conjunction with a request for amendment of a site certification agreement that requires governor approval under WAC 463-66-080, shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective upon the signed approval of the governor of Washington state.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-78-105 Fees and costs.** ~~((1) Holders of air operating permits issued to major energy facilities in accordance with RCW 70.04.422 shall be assessed annual fees, by the council, to recover the costs associated with program development, monitoring, compliance, and administration of the air operating permit program.~~

~~(2) All fees recovered under the air operating permit program shall be deposited in the state air operating permit account.~~

~~(3) The council shall determine and assess fees for air operating permits based on the following:~~

~~(a) Sources which are located in counties having a local air authority shall be assessed fees based upon the fee structure set by that local air authority.~~

~~(b) Sources which are located in counties not having a local air authority, or are cogeneration facilities which provide steam and/or electricity to primary industries such as aluminum or pulp and paper mills, shall be assessed fees based upon the fee structure set by the department of ecology.~~

~~(c) Radioactive emissions sources shall be assessed fees consistent with the department of health fee structure.~~

~~(d) Department of ecology air operating permit program administration costs shall be charged to all sources under council jurisdiction.~~

~~(e) The council shall recover its actual costs for program administration as provided in WAC 463-58-050.)~~ Each holder of an air operating permit shall pay costs as are actually and necessarily incurred by the council, in accordance with RCW 80.50.071, for program development, monitoring, compliance, and administration of the air operating permit program.

AMENDATORY SECTION (Amending WSR 06-06-037, filed 2/23/06, effective 3/26/06)

**WAC 463-78-115 Standards of performance for new stationary sources.** (1) Title 40, Code of Federal Regulations, Part 60 (standards of performance for new stationary sources), in effect on July 1, ((2004)) 2014, as applicable to new stationary sources subject to chapter 80.50 RCW is by this reference adopted and incorporated herein with the exception listed in subsection (2) of this section. For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council. The following list is provided for informational purposes only:

Subpart A	General Provisions, except C.F.R. 60.5 and 60.6
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 350 megawatts

Subpart Da	Electric utility steam generating units for which construction commenced after September 18, 1978, which have greater than 73 megawatts but not greater than 350 megawatts	<u>Subpart RRR</u>	<u>Standards of performance for volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes</u>
Subpart J	Petroleum refineries which produce less than 25,000 barrels per day of refined products	<u>Subpart IIII</u>	<u>Standards of performance for stationary compression ignition internal combustion engines</u>
<u>Subpart Ja</u>	<u>Standards of performance for petroleum refineries for which construction, reconstruction, or modification commenced after May 14, 2007</u>	<u>Subpart JJJJ</u>	<u>Standards of performance for stationary spark ignition internal combustion engines</u>
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	<u>Subpart KKKK</u>	<u>Standards of performance for stationary combustion turbines</u>
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons	Appendix A	Test Methods
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984	Appendix B	Performance Specifications
Subpart Y	Standards for Performance for Coal Preparation Plants	Appendix C	Determination of Emission Rate Change
Subpart GG	Stationary gas turbines	Appendix D	Required Emission Inventory Information
<u>Subpart VV</u>	<u>Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after January 5, 1981, and on or before November 7, 2006</u>	Appendix F	Quality Assurance Procedures
<u>Subpart VVa</u>	<u>Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006</u>		(2) The following sections of 40 C.F.R. Part 60 are not adopted by reference: (a) Sections 60.5 (Determination of Construction or Modification) and 60.6 (Review of Plans); (b) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, and DDDD (emission guidelines); and (c) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative method of Demonstrating Compliance with 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.
Subpart XX	Bulk gasoline terminals		
Subpart GGG	Petroleum refineries - compressors and fugitive emission sources		
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants		
Subpart LLL	Onshore natural gas processing; SO <sub>2</sub> emissions		
Subpart NNN	VOC emissions from SOCMI distillation operations		
Subpart QQQ	VOC emissions from petroleum refinery wastewater emissions		