

WSR 24-19-098

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 23-08—Filed September 18, 2024, 7:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-093.

Title of Rule and Other Identifying Information: The department of ecology (ecology) is proposing amendments to chapter 173-400 WAC, General regulations for air pollution sources, and chapter 173-401 WAC, Operating permit regulation.

For more information on this rule making visit <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-400-401-air-pollution-sources>.

Hearing Location(s): On October 22, 2024, at 10:00 a.m., via webinar. Register and see instructions https://waecy-wa-gov.zoom.us/joining/register/tZ0lc02oqjktEtDDyFJ9M-rTR8Q9rgk3_8PW; join by phone 253-205-0468, Meeting ID: 898 7404 2784. Presentation and public hearing.

Date of Intended Adoption: February 12, 2025.

Submit Written Comments to: Linda Kildahl, Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, email linda.kildahl@ecy.wa.gov, beginning September 18, 2024, at 12:00 a.m., by October 31, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, ecyADAcordinator@ecology.wa.gov, by October 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 173-400 WAC: The rule making will update references in WAC 173-400-040, 173-400-050, 173-400-060, and 173-400-105 to incorporate an updated publication date for Ecology's *Source Test Manual—Procedures for Compliance Testing*, a technical manual used in source testing and certification. This rule making will also update WAC 173-400-025 to establish a new rule adoption date for adopting federal rules by reference.

Chapter 173-401 WAC: This rule making will repeal WAC 173-401-645, which establishes emergency affirmative defense provisions in Washington. The purpose is to align the rule with federal rules as required under the federal Clean Air Act (CAA). In July 2023, the Environmental Protection Agency (EPA) adopted a rule update that removed the emergency affirmative defense provisions from federal operating permit program regulations under Title V of the federal CAA. This rule making will also correct a minor typo.

The rule making will also make minor administrative updates, including updating references in both chapters to two chapters of RCW that were recodified in 2020.

Reasons Supporting Proposal: Chapter 173-400 WAC: Amendments to this chapter are needed to incorporate and enforce the updated version of ecology's *Source Test Manual (STM)—Procedures for Compliance Testing*. The manual establishes requirements and procedures for industrial emitters, Washington clean air agencies, and other entities conducting testing and certification of air pollution sources. Updating the rule adoption date in WAC 173-400-025 is needed to establish an updated date for adopting applicable federal rules by reference.

Chapter 173-401 WAC: Amendments to this chapter are needed to comply with EPA's direction to state permitting authorities to make

necessary changes to their operating permit programs to align with the July 2023 update to the federal operating permit program regulations.

Statutory Authority for Adoption: Chapter 70A.15 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70A.15 RCW, Washington Clean Air Act.

Rule is necessary because of federal law, 88 F.R. 47029; 42 U.S.C. Chapter 85.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Interested parties can stay informed about the rule making and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with Tribal governments during each phase of rule development.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Kildahl, Lacey, 360-706-3038; Implementation: Gary Huitsing, chapter 173-400 WAC, or MengChiu Lim, chapter 173-401 WAC, Lacey, 360-522-0925, 360-995-3448; and Enforcement: Philip Gent, Lacey, 360-918-6922.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Linda Kildahl, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-706-3038, email linda.kildahl@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: C.F.R. 40 Chapter I, Subchapter C, the federal CAA, and 40 C.F.R. Part 52, Subpart WW, Washington state's implementation plan. Federal air quality standards have been updated and this rule adopts those by reference. This maintains Washington's good standing to implement the federal CAA via its rules. Not maintaining this standing would require the federal government to create a plan to implement the federal Clean Air Act.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Incorporation by reference: WAC 173-400-025 incorporates the latest federal air quality standards by reference.

Correct or clarify language: WAC 173-401-925 incorrectly references WAC 173-491-920. It was intended to reference WAC 173-401-920. This rule makes that correction.

Dictated by statute: Washington state's CAA, chapter 70A.15 RCW, directs ecology: "To take all action necessary to secure to the state the benefits of the federal Clean Air Act." (RCW 70A.15.1090(2)).

Scope of exemption for rule proposal:

Is fully exempt.

Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA; chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The rule may also be fully exempt from the RFA if it does not affect small businesses (i.e., it does not impose compliance costs on small businesses, or on any businesses).

We analyzed the impacts of the proposed rule amendments relative to the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline and reflects the most likely regulatory circumstances that entities would face if ecology does not adopt the proposed rule.

Baseline for this rule making: The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The federal CAA, C.F.R., Title 40, chapter I, Subchapter C.
- Washington state's CAA, chapter 70A.15 RCW.
- Chapter 173-400 WAC, General regulations for air pollution sources.
- WAC 173-401-645, the section of the WAC containing the emergency defense provision.
- The EPA-approved state implementation plans (SIP) for Washington state, 40 C.F.R. Part 52, subpart WW.

Summary of proposed rule amendments: The proposed rule amendments would:

- Change the adoption by reference date of federal air quality rules to the adoption date of this proposed rule (WAC 173-400-025).
- Update a reference to ecology's *Source Test Manual—Procedures for Compliance Testing* (STM) (WAC 173-400-040, 105).
- Remove old STM methods as testing options and a limit on carbonyl for incinerators (WAC 173-400-050, 173-400-060).
- Repeal the emergency defense for air emission exceedances, per federal mandate (WAC 173-401-645).

Change the adoption by reference date of federal air quality rules to the adoption date of this rule (WAC 173-400-025).

Baseline: In WAC 173-400-025, the federal rules mentioned in Chapter 173-400 WAC are adopted by reference as they existed on August 24, 2022.

Proposed: The proposed rule changes the date of adoption of federal rules as they exist to February 12, 2025, which is the expected adoption date of this proposed rule.

Expected impact: There is no expected cost from this aspect of the proposed rule, as compared to the baseline. Washington benefits by maintaining good standing to implement the federal CAA as required by RCW 70A.15.1090.

The latest federal standards were issued February 7, 2024.

Update a reference to ecology's STM (WAC 173-400-040, 173-400-105).

Baseline: In WAC 173-400-040 and 173-400-105, the STM as of September 20, 2004 is referenced. The manual contains 14 methods of testing for determining amounts of air pollution from sources of emissions.

Proposed: An updated STM, with a publication date of February 12, 2025, would instead be referenced to replace the 2004 manual. The updated manual contains two methods for evaluating air pollution sources. Twelve previously approved testing methods would be removed.

Expected impact: No significant cost is expected due to the changes in the STM which would be referenced. The 2004 version of the STM contains outdated information and testing methods. The 12 removed procedures have been replaced in practice by other testing methods available elsewhere and therefore no longer needed in ecology's manual. While regulated parties could use the outdated methods, outreach indicated they were in disuse and there was no opposition to their removal. The STM was meant to contain only testing methods not available elsewhere. Some of the newer alternative methods are both improved and safer and contained in federal regulations.

The changes in the two retained procedures add additional options for testing, lessening the compliance burden without reducing the effectiveness of the testing method.

The regulated community benefits by having an up-to-date and more concise guidance manual.

Remove old STM methods as testing options and limits on carbonyl (WAC 173-400-050, 173-400-060).

Baseline: WAC 173-400-050 is titled "Emission standards for combustion and incineration units." STM methods are allowed in testing for particulate matter and carbonyl emissions. WAC 173-400-050 also specifies, for incinerators, a limit for carbonyls of 100 parts per million (ppm).

The 100-ppm carbonyl limit has been removed from the Washington SIP with the EPA's approval. However, the carbonyl limit currently in this section is excepted from that approval. This proposed amendment would make the WAC and SIP consistent in this regard, allowing the EPA to remove the exception. SIPs are incorporated into federal regulations and published in the C.F.R.

In WAC 173-400-060, test methods in the current STM are allowed in determining compliance for particulate emissions of general process units.

Proposed: The proposed rule removes methods in the 2004 STM as an option for testing for particulate matter for combustion, incinerator, and general process units.

For incinerators, it removes the 100-ppm carbonyl limit.

Expected impact: Minimal if any cost is expected from this change while the state will benefit by having an updated STM and a WAC more consistent with its SIP. The 2004 version of the STM contains outdated information and testing methods.

The 12 test methods proposed for removal have been replaced in practice with other more complete, appropriate, and in some cases, safer, methods specified in 40 C.F.R. Parts 50, 60, 61, 63.

We don't expect parties to want to use the old methods and received no opposition to their removal during outreach.

The changes in the two retained procedures add additional options for testing, lessening the compliance burden without reducing the effectiveness of the testing.

The removal of the carbonyl limit makes the WAC consistent with other parts of Washington State's federally approved SIP, which is part of the baseline

Repeal of WAC 173-401-645.

Baseline: WAC 173-401-645 allows an emergency situation as a defense for exceeding air emissions standards. An emergency consists of "... any situation arising from sudden and reasonably unforeseeable events beyond the control of the source [of the pollution] ..."

This provision allows air pollution sources to avoid liability in enforcement proceedings by arguing the violations of emissions limitations were caused by an "emergency."

Proposed: The proposed amendment would repeal WAC 173-401-645, where this defense is established. This would align the state's rules with EPA's July 2023 decision to remove the emergency affirmative defense provisions from federal operating permit regulations under Title V of the federal CAA.

Expected impact: There is no expected cost from this aspect of the proposed rule. It is outside of ecology's discretion.

The EPA directed state air quality permitting authorities to make necessary changes to their operating permit programs.

Washington state will benefit by being in compliance with federal regulations. The federal rule became effective August 21, 2023. Generally, if federal authorities determine states are not in compliance with the federal CAA, they may need to intervene with a federal implementation plan to ensure the requirements of the federal law are met. This would entail developing a federal plan to stand in lieu of the state's either inadequate or missing plan.

September 18, 2024
Heather R. Bartlett
Deputy Director

OTS-5720.1

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

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

(2) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be

more stringent than the current regulations. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

- (a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.
- (b) Automobiles, trucks, aircraft.
- (c) Those sources under the jurisdiction of the energy facility site evaluation council.

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

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

- (1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.
 - (a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
 - (b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.
 - (c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.
- (2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.
- (3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."
- (4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.
- (5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:
 - (a) The applicable standards as in 40 C.F.R. Part 60, 61, 62, or 63;

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

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

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

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

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

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

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

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

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

(13) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter ((70.94)) 70A.15 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

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

the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

(24) **"Dispersion technique"** means a method that attempts to affect the concentration of a pollutant in the ambient air other than by

the use of pollution abatement equipment or integral process pollution controls.

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

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

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

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

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

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

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

(31) **"Emissions unit" or "emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter ((70.94)) 70A.15 or ((70.98)) 70A.388 RCW.

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

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

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

(35) **"Federal Clean Air Act (FCAA)"** means the federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963,

42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(64) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

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

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

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

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

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

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

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

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

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

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

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

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

(77) "**Prevention of significant deterioration (PSD)**" means the program in WAC 173-400-700 to 173-400-750.

(78) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

(79) "**Reasonably attributable**" means attributable by visual observation or any other technique the state deems appropriate.

(80) "**Reasonably available control technology (RACT)**" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual

source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(81) "**Regulatory order**" means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapter ((70.94)) 70A.15 RCW or rules adopted thereunder; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

(82) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(83) "**Shutdown**" means, generally, the cessation of operation of a stationary source or emission unit for any reason.

(84) "**Source**" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(85) "**Source category**" means all sources of the same type or classification.

(86) "**Stack**" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(87) "**Stack height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.

(88) "**Standard conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane

(HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCH_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCH_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ($n-C_3F_7OCH_3$ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear completely fluorinated ethers with no saturations;
- (iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and
- (iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 C.F.R. Part 60, Appendix A (in effect on the date in WAC 173-400-025). Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology, the authority, or EPA the amount of negligibly reactive compounds in the source's emissions.

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

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

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

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

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

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

(a) Opacity emission standard in:

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

(b) Sulfur dioxide emission standard in:

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

(c) Particulate matter emission standards in:

- (i) WAC 173-400-050(1) and 173-400-060;
- (ii) WAC 173-405-040 (1)(a), (2), (3)(a), and (5);
- (iii) WAC 173-410-040(2);
- (iv) WAC 173-415-030(2); and
- (v) WAC 173-434-130(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Completeness determination.

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

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

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

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

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

(c) Final determination.

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

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

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

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

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

(iv) A permitting authority shall not issue a final order until ecology notifies the permitting authority in writing that the proposed

alternative emission limit is consistent with the purposes of the Washington Clean Air Act as required by RCW ((70.94.380)) 70A.15.3050. If on review, ecology denies the request, ecology will inform the permitting authority and the applicant of the reason(s) for the denial; and

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

(5) The draft regulatory order must include:

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

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

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

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

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

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

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

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

(2) A condition contained in an order issued under this section shall be less than the source's or stationary source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of ((the)) chapter ((70.94)) 70A.15 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For purposes of this section:

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

(ii) "New source" includes:

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

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

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

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

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

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

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

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

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

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

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

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

- (a) An increase in a plant-wide cap; or
- (b) An increase in an emission unit or activity specific emission limit.

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

- (a) Maintenance/construction:
 - (i) Cleaning and sweeping of streets and paved surfaces;
 - (ii) Concrete application, and installation;
 - (iii) Dredging wet spoils handling and placement;
 - (iv) Paving application and maintenance. This provision does not exempt asphalt plants from this chapter;
 - (v) Plant maintenance and upkeep activities (grounds keeping, general repairs, house keeping, plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);
 - (vi) Plumbing installation, plumbing protective coating application and maintenance activities;
 - (vii) Roofing application and maintenance;
 - (viii) Insulation application and maintenance;
 - (ix) Janitorial services and consumer use of janitorial products;
 - (x) Construction activities that do not result in new or modified stationary sources or portable stationary sources.
- (b) Storage tanks:

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

- (i) Lubricating oil storage tanks. This provision does not exempt wholesale distributors of lubricating oils from this chapter;
- (ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;
- (iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;
- (iv) Process and white water storage tanks;
- (v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cubic feet);
- (vi) Operation, loading and unloading of storage tanks, \leq 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC, max. VP 550 mm mercury at 21°C;
- (vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;
- (viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.
- (c) New or modified emission units with combined aggregate heat inputs to combustion units (excluding emergency engines exempted by subsection (4) (h) (xxxix) of this section), less than or equal to all of the following, as applicable:
 - (i) \leq 500,000 Btu/hr using coal with \leq 0.5% sulfur or other solid fuels with \leq 0.5% sulfur;

- (ii) $\leq 500,000$ Btu/hr using used oil, per the requirements of RCW ((70.94.610)) 70A.15.4510;
- (iii) $\leq 400,000$ Btu/hr using wood waste or paper;
- (iv) $\leq 1,000,000$ Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with $\leq 0.05\%$ sulfur;
- (v) $\leq 4,000,000$ Btu/hr using natural gas, propane, or LPG.
- (d) Material handling:
 - (i) Continuous digester chip feeders;
 - (ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;
 - (iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is $\leq 10\%$;
 - (iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm mercury at 21°C , with lids or other appropriate closure.
- (e) Water treatment:
 - (i) Septic sewer systems, not including active wastewater treatment facilities;
 - (ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;
 - (iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;
 - (iv) Process water filtration system and demineralizer vents;
 - (v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;
 - (vi) Demineralizer tanks;
 - (vii) Alum tanks;
 - (viii) Clean water condensate tanks.
- (f) Environmental chambers and laboratory equipment:
 - (i) Environmental chambers and humidity chambers using only gases that are not toxic air pollutants listed in chapter 173-460 WAC;
 - (ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;
 - (iii) Installation or modification of a single laboratory fume hood;
 - (iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.
 - (v) Laboratory calibration and maintenance equipment.
- (g) Monitoring/quality assurance/testing:
 - (i) Equipment and instrumentation used for quality control/assurance or inspection purpose;
 - (ii) Hydraulic and hydrostatic testing equipment;
 - (iii) Sample gathering, preparation and management;
 - (iv) Vents from emission monitors and other analyzers.
- (h) Miscellaneous:
 - (i) Single-family residences and duplexes;
 - (ii) Plastic pipe welding;
 - (iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

- (iv) Comfort air conditioning;
- (v) Flares used to indicate danger to the public;
- (vi) Natural and forced air vents and stacks for bathroom/toilet activities;
- (vii) Personal care activities;
- (viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
- (ix) Tobacco smoking rooms and areas;
- (x) Noncommercial smokehouses;
- (xi) Blacksmith forges for single forges;
- (xii) Vehicle maintenance activities, not including vehicle surface coating;
- (xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);
- (xiv) Wax application;
- (xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- (xvi) Ozone generators and ozonation equipment;
- (xvii) Solar simulators;
- (xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- (xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- (xx) Pulse capacitors;
- (xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
- (xxii) Fire suppression equipment;
- (xxiii) Recovery boiler blow-down tank;
- (xxiv) Screw press vents;
- (xxv) Drop hammers or hydraulic presses for forging or metal working;
- (xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- (xxvii) Kraft lime mud storage tanks and process vessels;
- (xxviii) Lime grits washers, filters and handling;
- (xxix) Lime mud filtrate tanks;
- (xxx) Lime mud water;
- (xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
- (xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- (xxxiii) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;
- (xxxiv) Surface coating, aqueous solution or suspension containing $\leq 1\%$ (by weight) VOCs, or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC;
- (xxxv) Cleaning and stripping activities and equipment using solutions having $\leq 1\%$ VOCs (by weight) or $\leq 1\%$ (by weight) toxic air pollutants. Acid solutions used on metallic substances are not exempt;
- (xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC.
- (xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency internal combustion engines with an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities with annual gasoline throughputs less than those specified in WAC 173-491-040 (4) (a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) **Exemptions based on emissions.**

(a) Except as provided in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in Table 110(5) Exemption levels is exempt from new source review.

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in Table 110(5) Exemption levels of this subsection is exempt from new source review.

(b) Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emission unit, may request that the permitting authority impose emission limits and/or operation limitations for greenhouse gas in any new source review order of approval.

Table 110(5) Exemption levels:

POLLUTANT	LEVEL (TONS PER YEAR)
Carbon monoxide	5.0
Lead	0.005
Nitrogen oxides	2.0
PM-10	0.75
PM-2.5	0.5
Total suspended particulates	1.25
Sulfur dioxide	2.0
Volatile Organic Compounds, total	2.0
Ozone Depleting Substances, total	1.0
Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

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

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

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

- (1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter (~~70-94~~) 70A.15 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.
- (2) The proposed new source or modification will achieve LAER for any air contaminants for which:
 - (a) The area has been designated nonattainment; and
 - (b) (i) The proposed new source is major; or
 - (ii) The existing source is major and the major modification is significant.
- (3) The proposed new source will employ BACT for those air contaminants not subject to LAER that the new source will emit or for which the proposed modification will cause an emissions increase.
- (4) The proposed new source or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.
- (5) If the proposal is a new major stationary source or a major modification as those terms are defined in WAC 173-400-810 then it must also comply with WAC 173-400-800 through 173-400-860.

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

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

- (1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter (~~70-94~~) 70A.15 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

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

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

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

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

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

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

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

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

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (1) Any **person** proposing to replace or substantially alter

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

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

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

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

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

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

(4) Construction shall not "**commence**," as defined in WAC 173-400-030, on a project subject to review under this section until **ecology** or the **authority** issues a final **order of approval**. However, any **notice of construction application** filed under this section shall be deemed to be approved without conditions if **ecology** or the **authority** takes no action within ((thirty)) 30 days of receipt of a complete **notice of construction application**.

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

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

WAC 173-400-171 Public notice and opportunity for public comment. The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to prevention of significant deterioration, and relocation of portable sources.** This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet notice of application.**

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet website.

(b) The internet posting must remain on the permitting authority's website for a minimum of ~~((fifteen))~~ 15 consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, or electronic means during the ~~((fifteen))~~ 15-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the ~~((fifteen))~~ 15-day internet posting period.

(3) **Actions subject to a mandatory public comment period.** The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117; or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and ~~((sixty-five))~~ 65 meters, by means of a fluid model or a field study, for the purposes of establishing an emission limit; or

(g) An order to authorize a bubble; or

- (h) An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or
- (i) A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or
- (j) A notice of construction application or regulatory order used to establish a creditable emission reduction; or
- (k) An order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or
- (l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or
- (m) An extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or
- (n) An application or other action for which the permitting authority determines that there is significant public interest; or
- (o) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP.

(4) Advertising the mandatory public comment period.

- (a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must be posted on the permitting authority website for the duration of the public comment period.
- (i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. The applicant or other initiator of the action must pay the publishing cost for all supplemental noticing.
- (ii) A permitting authority must publish a notice of the public comment period in a newspaper of general circulation in the area of the proposed action until June 30, 2019. We recommend that a permitting authority continue publishing a notice in a newspaper for a project with high interest. The applicant or other initiator of the action must pay this publishing cost.
- (b) This public notice can be posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

(c) The notice must be posted or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied.

(5) Information available for public review.

- (a) Administrative record. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection. A permitting authority may comply with this requirement by making these materials available on its website or in at least one physical location near the proposed project.
- (b) The permitting authority must post the following information on its website for the duration of the public comment period:
 - (i) Public notice complying with subsection (6) of this section;
 - (ii) Draft permit, order, or action; and
 - (iii) Information on how to access the administrative record.
- (c) Exemptions from this requirement include information protected from disclosure under any applicable law including, but not limited to, RCW (~~(70.94.205)~~) 70A.15.2510 and chapter 173-03 WAC.

(6) Public notice components.

- (a) The notice must include:

- (i) The date the notice is posted;
- (ii) The name and address of the owner or operator and the facility;
- (iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;
- (iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;
- (v) The location where those documents made available for public inspection may be reviewed;
- (vi) Start date and end date for a public comment period consistent with subsection (7) of this section;
- (vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

(viii) The name, address, and telephone number and email address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

(7) Length of the public comment period.

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

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(8) Requesting a public hearing. The applicant, any interested governmental entity, any group, or any person may request a public hearing within the public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, or electronic means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) Setting the hearing date and providing hearing notice. If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(10) Notice of public hearing.

(a) At least ~~((thirty))~~ 30 days prior to the hearing the permitting authority must provide notice of the hearing as follows:

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

(ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the

proposed source or action, or by other methods appropriate to notify the local community; and

(iii) Distribute by electronic means or via the United States postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) In the case of a permit action, the applicant must pay all supplemental notice costs when the permitting authority determines a supplemental notice is appropriate. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(11) **Notifying the EPA.** The permitting authority must distribute by electronic means or via the United States postal service a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least (~~thirty~~) 30 days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 (in effect on the date in WAC 173-400-025).

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

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

WAC 173-400-175 Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW (~~70.94.205~~) 70A.15.2510, is available

for public inspection at the issuing agency. This includes copies of notice of construction applications, orders, and applications to modify orders.

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

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

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

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

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

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

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

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

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

(2) **Civil penalties.**

(a) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter ~~((70.94))~~ 70A.15 or ~~((70.120))~~ 70A.25 RCW, or any of the rules in

force under such chapters may incur a civil penalty in an amount as set forth in RCW ((70.94.431)) 70A.15.3160. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

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

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

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

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

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

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

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

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

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

(4) **Restraining orders, injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chap-

ter, the director, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

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

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

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

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

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

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

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

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

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

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.

(2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Administrative record. Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Ecology may comply with this requirement by making these materials available on ecology's website or at a physical location.

(i) Some materials comprising the administrative record (such as air quality modeling data) may be too large to post on a website but may be made available as part of the record either in hard copy or on a data storage device.

(ii) Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW ((~~70.94.205~~) 70A.15.2510 and chapter 173-03 WAC.

(b) Notify the public.

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

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

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

(B) PSD draft permit;

(C) PSD technical support document; and

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

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

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

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

(C) Distribute a copy of the extension notice by electronic means or via the United States postal service to whomever requested the extension and the organizations and individuals listed in (c) and (d) of this subsection.

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

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

(c) Distribute by electronic means or via the United States postal service a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Distribute by electronic means or via the United States postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC; and

(v) Individuals or organizations who request a copy.

(3) **Public notice content.** The public notice shall contain at least the following information:

- (a) The name and address of the applicant;
- (b) The location of the proposed project;
- (c) A brief description of the project proposal;
- (d) The preliminary determination to approve or disapprove the application;
- (e) How much increment is expected to be consumed by this project;
- (f) The name, address, and telephone number of the person to contact for further information;
- (g) A brief explanation of how to comment on the project;
- (h) An explanation on how to request a public hearing;
- (i) The start date and end date of the public comment period consistent with subsection (2)(b)(i) of this section;
- (j) A statement that a public hearing may be held if ecology determines within the public comment period that significant public interest exists;
- (k) The length of the public comment period in the event of a public hearing; and
- (l) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the public comment period established consistent with subsection (2)(b)(i) of this section. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least (~~thirty~~) 30 days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same website where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:

- (i) A copy of the final PSD permit or the determination to deny the permit;
- (ii) A summary of the comments received;
- (iii) Ecology's response to those comments;
- (iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall post the final determination on the same web page where the draft permit and public notice was posted according to subsection (2)(b) of this section.

(c) Ecology shall distribute by electronic means or via the United States postal service a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal; and

(ii) Other individuals who requested notification of PSD permits.

(d) Ecology shall distribute a copy of the final determination to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC; and

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

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

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

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

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

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

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

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

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

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

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

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

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

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

(3) **Definitions.**

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

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

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

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

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

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

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

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

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.

OTS-5315.2

AMENDATORY SECTION (Amending WSR 23-01-102, filed 12/19/22, effective 1/19/23)

WAC 173-400-025 Adoption by reference. (1) Adoption by reference date: (~~August 24, 2022~~) February 12, 2025.

(2) Federal rules mentioned in this rule are adopted as they exist on the date in subsection (1) of this section. Adoption by reference means the federal rule applies as if it was copied into this rule.

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

WAC 173-400-040 General standards for maximum emissions. (1) **General requirements.**

(a) 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 takes precedence over a general emission standard listed in this chapter.

(b) 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.

(c) 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, the permitting authority shall, as provided in RCW (~~(70.94.154)~~) 70A.15.2230, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow 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)~~) 20 percent opacity as determined by ecology method 9A. The following are exceptions to this standard:

(a) Soot blowing or grate cleaning alternate visible emission standard.

(i) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. The opacity emission standard in subsection (2) of this section shall apply except when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed (~~(twenty)~~) 20 percent opacity for more than (~~(fifteen)~~) 15 minutes in any eight consecutive hours. The intent of this provision is to allow 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 the permitting authority must be advised of the schedule.

(ii) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to soot blowing or grate cleaning of a hog fuel or wood-fired boiler: Visible emissions (as determined by ecology method 9A) shall not exceed (~~(twenty)~~) 20 percent opacity; except that opacity shall not exceed (~~(forty)~~) 40 percent for up to a (~~(fifteen)~~) 15 minute period in any eight consecutive hours. For this provision to apply, the owner or operator must:

(A) Schedule the soot blowing and/or grate cleaning for the same approximate time(s) each day;

(B) Notify the permitting authority in writing of the schedule before using the (~~(forty)~~) 40 percent standard; and

(C) Maintain contemporaneous records sufficient to demonstrate compliance. Records must include the date, start time, and stop time of each episode, and the results of opacity readings conducted during this time.

(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)~~) 20 percent or an alternative opacity standard established in this section.

(c) When two or more emission units are connected to a common stack, the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternative opacity limit has been established per RCW ((~~70.94.331~~) 70A.15.3000) (2)(c), WAC 173-400-081(4) or 173-400-082.

(e) Alternative visible emission standard for a hog fuel or wood-fired boiler in operation before January 24, 2018. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to planned startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the following requirements are met.

Note: This subsection does not apply to a combustion unit with wet particulate matter controls.

(i) A planned startup or shutdown means that the owner or operator notifies the permitting authority:

(A) At least ((~~twenty-four~~) 24) hours prior to the planned boiler startup or shutdown; or

(B) Within two hours after restarting the boiler for a startup within ((~~twenty-four~~) 24) hours after the end of an unplanned shutdown (i.e., malfunction or upset).

Note: A shutdown due to a malfunction is part of the malfunction.

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends:

(A) When the boiler starts supplying useful thermal energy; or

(B) Four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in (e)(vi)(B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy, or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) The facility complies with one of the following requirements:

(A) Visible emissions during startup or shutdown shall not exceed ((~~forty~~) 40) percent opacity for more than three minutes in any hour, as determined by ecology method 9A; or

(B) During startup or shutdown, the owner or operator shall:

(I) Operate all continuous monitoring systems;

(II) In the boiler, use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, Subpart DDDDD;

(III) Engage all applicable control devices so as to comply with the ((~~twenty~~) 20) percent opacity standard within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan.

The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator shall use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The facility maintains records sufficient to demonstrate compliance with (e)(i) through (v) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended;

(D) The compliance option in (e)(vi) of this subsection that was chosen (either (A) or (B)) and documentation of how the conditions of that option were met.

(f) Furnace refractory alternative visible emission standard. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur during curing of furnace refractory in a lime kiln or boiler, visible emissions (as determined by ecology method 9A) shall not exceed (~~forty~~) 40 percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator must meet all of the following requirements:

(i) The total duration of refractory curing shall not exceed (~~thirty-six~~) 36 hours; and

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, Subpart DDDDD; and

(iii) The owner or operator provides a copy of the manufacturer's instructions on curing refractory to the permitting authority; and

(iv) The manufacturer's instructions on curing refractory must be followed, including all instructions on temperature increase rates and holding temperatures and time; and

(v) The emission controls must be engaged as soon as possible during the curing process; and

(vi) The permitting authority must be notified at least one working day prior to the start of the refractory curing process.

(g) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used during testing and certifying visible emission readers are exempt from the (~~twenty~~) 20 percent opacity limit. Testing must follow testing and certification requirements in 40 C.F.R. Part 60, Appendix A, Test Method 9 (in effect on the date in WAC 173-400-025) and Source Test Methods 9A and 9B in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of (~~September 20, 2004~~) February 12, 2025, on file at ecology.

(h) Military training exercises. Visible emissions during military obscurant training exercises are exempt from the (~~twenty~~) 20 percent opacity limit when the following requirements are met:

(i) No visible emissions shall cross the boundary of the military training site/reservation.

(ii) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(i) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities occurring during the training of firefighters are exempt from the (~~twenty~~) 20 percent opacity limit. Compliance with chapter 173-425 WAC is required.

(3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or 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, the owner or operator 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 air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of her or his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow 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.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of (~~one thousand~~) 1,000 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~~) 60 consecutive minutes.

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

(a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

AMENDATORY SECTION (Amending WSR 23-01-102, filed 12/19/22, effective 1/19/23)

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 allow 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 waste wood for the production of steam. No person shall allow 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 40 C.F.R. Part 60, Appendix A, Test Method 5 (in effect on the date in WAC 173-400-025) (~~or approved procedures in Source Test Manual — Procedures for Compliance Testing, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.~~

~~(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures in Source Test Manual — Procedures for Compliance Testing, state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.~~

~~(a))~~.

~~(2) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, Subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, Subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.~~

~~((b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by Source Test Method 14 procedures in Source Test Manual — Procedures for Compliance Testing, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.))~~

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. A commercial and industrial solid waste incineration unit that commenced construction on or before November 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025).

((Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this subsection is a federal requirement.))

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, Subpart Ea or Subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), Subparts Ea, Eb, and AAAA, and WAC

173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste, as defined in 40 C.F.R. 60.2265.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste, as these terms are defined in 40 C.F.R. 60.2265.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under 40 C.F.R. Part 63, Subpart LLL (National Emission Standards for Hazardous Air Pollutants

from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators*. Incineration units regulated under 40 C.F.R. Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units*. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units*. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;
- Waste management plan requirements in 60.2620 through 60.2630;
- Operator training and qualification requirements in 60.2635 through 60.2665;
- Emission limitations and operating limits in 60.2670 through 60.2685;
- Performance testing requirements in 60.2690 through 60.2725;
- Initial compliance requirements in 60.2700 through 60.2725;
- Continuous compliance requirements in 60.2710 through 60.2725;
- Monitoring requirements in 60.2730 through 60.2735;
- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;
- Air curtain incinerator requirements in 60.2810 through 60.2870;

- Definitions in 60.2875; and

- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. A small municipal waste combustion unit constructed on or before August 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart JJJ (in effect on the date in WAC 173-400-025).

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary

starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.*

Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are

defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart AAAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

- (D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;
- (E) Emission limits in 60.1700 through 60.1710;
- (F) Continuous emission monitoring in 60.1715 through 60.1770;
- (G) Stack testing in 60.1775 through 60.1800;
- (H) Other monitoring requirements in 60.1805 through 60.1825;
- (I) Recordkeeping reporting in 60.1830 through 60.1855;
- (J) Reporting in 60.1860 through 60.1905;
- (K) Equations in 60.1935;
- (L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

- (A) "State plan" in the federal rule means WAC 173-400-050(5).
- (B) "You" in the federal rule means the owner or operator.
- (C) "Administrator" includes the permitting authority.
- (D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.
- (h) Compliance schedule.
- (i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.
- (ii) Small municipal waste combustion units must achieve compliance by May 6, 2005, for all Class II units, and by November 6, 2005, for all Class I units.
- (iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, Subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

- (I) December 6, 2003; or
- (II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, Subpart HHH (in effect on the date in WAC 173-400-025).

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

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 allow 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. Test methods from 40 C.F.R. Parts 51, 60, 61, and 63 (in effect on the date in WAC 173-400-025) (~~and any other approved test procedures in ecology's "Source Test Manual - Procedures For Compliance Testing" as of September 20, 2004,~~) must be used to determine compliance.

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

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source must upon notification by 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 and operator of an air contaminant source must submit an inventory of emissions from the source each year. The inventory must include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. Sources must provide registration information in a manner prescribed by the permitting authority for the submittal of these inventories. When the permitting authority requests emission inventory information for a calendar year, the owner or operator must submit the emissions inventory no later than April 15th after the end of the calendar year for which the emissions inventory was requested. If April 15th falls on a weekend, then the deadline to file shall be the next business day. The owner and operator must maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. The owner or operator may base emission estimates used in the inventory on the most recent published EPA emission factors for a source category, or other information available to the owner and operator, whichever is the better estimate.

(2) **Monitoring.** Ecology must 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 must 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, the permitting authority may conduct or require that the owner or operator of a source conduct a test using approved test methods from 40 C.F.R. Parts 51, 60, 61, 62, 63, 75 and 1065, as applicable (in effect on the date in WAC 173-400-025) or procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of (~~September 20, 2004~~) February 12, 2025, on file at ecology. The permitting authority may require the operator of a source to provide the necessary platform and sampling ports for ecology per-

sonnel or others to perform a test of an emissions unit. The source owner or operator must allow the permitting authority to obtain a sample from any emissions unit. The permitting authority shall give the operator of the source 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 must 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~~) 250,000,000 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~~) 250,000,000 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~~) 30 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~~) 300 tons per day, expressed as (~~one hundred~~) 100 percent acid, except for those facilities where conversion to sulfuric acid is used 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~~) 20,000 barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than (~~one hundred million~~) 100,000,000 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 must be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection must demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 C.F.R. Part 51, Appendix P, Sections 3, 4 and 5 (in effect on the date in WAC 173-400-025).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, the permitting authority will establish alternative monitoring and reporting procedures 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 emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement contained in 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all

in effect on the date in WAC 173-400-025) or a permitting authority's adoption by reference of the federal standards. Emission units and sources subject to those standards must comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

(6) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter ((70.94)) 70A.15 or ((70.120)) 70A.25 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required by 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all in effect on the date in WAC 173-400-025), or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 C.F.R. Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator must recover valid hourly monitoring data for at least ((~~ninety-five~~)) 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonably preventable condition, and the source conducts any necessary repairs to the monitoring system in a timely manner.

Note: This means that a continuous emissions monitor (CEM) must provide valid data for all but ((~~thirty-six~~)) 36 hours for each month (((~~ninety-five~~)) 95 percent standard).

(b) The owner or operator must install a continuous emission monitoring system that meets the performance specification in 40 C.F.R. Part 60, Appendix B in effect at the time of its installation, and must operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), and EPA's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) An owner or operator must reduce monitoring data commencing on the clock hour and containing at least ((~~forty-five~~)) 45 minutes of monitoring data to one hour averages. An owner or operator must reduce monitoring data for opacity six minute block averages unless otherwise specified in the order of approval or permit. An owner or operator must include all monitoring data in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, a source must collect no valid data until the monitoring system passes a quality assurance test or audit.

(d) An owner or operator must maintain continuous operation of all continuous monitoring systems except for instances of system breakdowns, repairs, calibration checks, and zero and span adjustments required under (a) of this subsection.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each

successive (~~ten~~) 10 second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity must complete a minimum of one cycle of sampling, analyzing, and recording for each successive (~~fifteen~~) 15 minute period.

(e) The owner or operator must retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator must submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within (~~thirty~~) 30 days after the end of the month (or other specified reporting period) in which the owner or operator recorded the data. The owner or operator may combine the report required by this section with any excess emission report required by WAC 173-400-108. This report must include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least (~~ninety~~) 90 percent of the hours that the equipment (required to be monitored) was operated each day;

Note: A continuous emissions monitor (CEM) must provide valid data for all but two hours per day (~~ninety~~) 90 percent standard).

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(8) No person shall render inaccurate any monitoring device or method required under chapter (~~70.94~~) 70A.15 or (~~70.120~~) 70A.25 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

OTS-5721.1

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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)~~) 50 miles of the permitted source.

(3) **"Affected unit"** means a fossil-fuel fired combustion device or a source that opts-in under 40 C.F.R. 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 C.F.R. 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)~~) 70A.15 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)~~) 70A.388 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) "**Continuous compliance**" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.
- (8) "**Delegated authority**" means an air pollution control authority that has been delegated the permit program pursuant to RCW (~~(70.94.161)~~) 70A.15.2260 (2) (b).
- (9) "**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.
- (10) "**Draft permit**" means the version of a permit for which the permitting authority offers public participation or affected state review.
- (11) "**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.
- (12) "**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.
- (13) The "**EPA**" or the "**administrator**" means the administrator of the U.S. Environmental Protection Agency or her/his designee.
- (14) "**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.
- (15) "**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 C.F.R. §§ 70.7 and 70.8.
- (16) "**General permit**" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.
- (17) "**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.
- (18) "**Intermittent compliance**" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of noncompliance, or periods of time during which the monitoring required by the permit was not performed or recorded.
- (19) "**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~~) 10 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~~) 25 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~~) 100 tpy or more of any air pollutant subject to regulation (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~~) 250 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~~) 250,000,000 British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding (~~three hundred thousand~~) 300,000 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~~) 250,000,000 British thermal units per hour heat input; or

(xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

(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~~) 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," (~~fifty~~) 50 tpy or more in areas classified as "serious," (~~twenty-five~~) 25 tpy or more in areas classified as "severe," and (~~ten~~) 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to (~~one hundred, fifty, twenty-five, and ten~~) 100, 50, 25, and 10 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~~) 50 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~~) 50 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~~) 70 tpy or more of PM-10.

(20) "**Permit modification**" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(21) "**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).

(22) "**Permit revision**" means any permit modification or administrative permit amendment.

(23) "**Permitting authority**" means the department of ecology, local air authority, or other agency authorized under RCW (~~70.94.161~~) 70A.15.2260 (3) (b) and approved by EPA to carry out a permit program under this chapter.

(24) "**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.

(25) "**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 C.F.R. 70.8.

(26) **"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~~) 18 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~~) 70A.15.3000, 70A.15.3050, and 70A.15.3080.

(27) **"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.

(28) **"Renewal"** means the process by which a permit is reissued at the end of its term.

(29) **"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~~) 250 persons or have gross annual sales or expenditures exceeding (~~forty-three million~~) \$43,000,000 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 C.F.R. Part 70.

(30) "**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), record-keeping, reporting, or compliance certification requirements.

(31) "**Small business stationary source**" means a stationary source that:

(a) Is owned or operated by a person that employs (~~one hundred~~) 100 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~~) 50 tons or more per year of any regulated pollutant; and

(e) Emits less than (~~seventy-five~~) 75 tons per year of all regulated pollutants.

(32) "**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.

(33) "**State**" means any nonfederal permitting authority, including any local agency, interstate association, or statewide program.

(34) "**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.

(35) "**Subject to regulation**" means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 C.F.R. chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 C.F.R. 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation under this chapter unless, as of January 2, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions and the source is otherwise required to have an operating permit.

(b) The term "tpy (tons per year) CO₂ equivalent emissions" (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 C.F.R. part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e. For purposes of this subsection (b), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

(36) "**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.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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.

(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. A small municipal waste combustion unit constructed on or before August 30, 1999, and

regulated under WAC 173-400-050(5) becomes subject to this chapter on July 1, 2002.

(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.

A commercial and industrial solid waste incineration unit constructed on or before November 30, 1999, and regulated under WAC 173-400-050(4) becomes subject to this chapter on July 1, 2002.

(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 C.F.R. 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)) 70A.15.2260(4) using the procedures in subsection (5) of this section.

(c) Any other source which chooses to apply for a permit.

(d) A municipal solid waste landfill constructed, reconstructed or modified before May 30, 1991, and regulated under WAC 173-400-070(9) becomes subject to this chapter on September 20, 2001.

Note: Under 40 C.F.R. 62.14352(e) (in effect on July 1, 2000), an affected landfill must have submitted its chapter 401 application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), an affected source may not operate if it has not submitted a timely and complete application.

(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: The administrator completes a rule making 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 EPA'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 rule makings, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt EPA'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 C.F.R. 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.

(a) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any nonmajor source, the permitting authority shall include in the permit all applicable requirements applicable to the emission units that cause the source to be subject to this chapter.

(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 contribute to 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 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) Legally and practicably 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 shall be exempt from the requirement to obtain an operating permit when legally and practicably 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 legally and practicably enforceable restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200. 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 legally and practicably enforceable limitations:

(i) Regulatory orders. At the request of the owner or operator of a source, the permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC 173-400-091.

(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; 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)) 70A.15.2260(11).

(c) A source receiving a legally and practicably 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).

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

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)) 70A.15.2260 (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 statewide 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 C.F.R. 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~~) 90 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~~) 30-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.

AMENDATORY SECTION (Amending WSR 02-19-078, filed 9/16/02, effective 10/17/02)

WAC 173-401-500 Permit applications. (1) Source identification. Within (~~ninety~~) 90 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~~) 30 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. 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. Renewal applications shall be sent to the source as specified in WAC 173-401-710.

(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~~) 180 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 appli-

cation must be submitted within (~~twelve~~) 12 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~~) 12 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~~) 60 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~~) 60 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) All of the data described in WAC 173-401-510(2), including the required information for each emission unit (other than insignificant emission units) at the facility, along with any necessary supporting data and calculations. The use of a standard application is not required if all of the data elements required in WAC 173-401-510(2) are provided;

(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)~~) 70A.15.2210 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)~~) 70A.15.1030(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 C.F.R. 70.8.

(b) Construction of new source. Any person who proposes to construct a new source, within the meaning of RCW (~~(70.94.030)~~) 70A.15.1030(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 ap-

proval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 C.F.R. 70.8.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

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)) 70A.15 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)) 70A.388 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.

AMENDATORY SECTION (Amending WSR 93-20-075, 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)) 70A.15 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)) 70A.15.2510.

(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)) 70A.15 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)) 30 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.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

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~~) 45 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~~) 18 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~~) 70A.15.2210 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~~) 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification proce-

dures, 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~~) 180 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~~) 70A.15.2210.

AMENDATORY SECTION (Amending WSR 02-19-078, filed 9/16/02, effective 10/17/02)

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) 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~~) 70A.15.2210.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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 WAC 173-401-530. 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)) 70A.15.2210.

AMENDATORY SECTION (Amending WSR 97-08-084, filed 4/2/97, effective 5/3/97)

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)) 70A.15.2260(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)) 30 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 C.F.R. 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 RCW 34.05.570, 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.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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.

(i) Fee allocation. 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:

(A) Tier 1: The number of sources under its jurisdiction;

(B) Tier 2: The complexity of the sources under its jurisdiction; and

(C) Tier 3: The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant (for fee calculation) emitted.

(ii) Each of the three tiers shall be equally weighted.

(iii) Complexity level determination in (b)(i)(B) of this subsection.

(A) Ecology must annually assign a complexity level to each source based on ecology's operating permit related work activity.

(B) A source's complexity level determination must correspond to the relative difficulty of issuing and maintaining an operating permit and the time spent in permit related activities.

(C) Ecology must annually determine the complexity portion of the fee for each source.

(iv) Public process for complexity determination. Ecology must use the following process when determining the complexity portion of the fee:

(A) Ecology must post on ecology's website on or about October 31st of each year the basis for the complexity level determination.

(B) Ecology must provide (~~thirty~~) 30 days for public comment.

(C) Ecology has (~~thirty~~) 30 days to respond to comments after the close of the public comment period.

(D) If ecology concludes adjustments are necessary, ecology will provide revised fee statements based on updated calculations.

(v) 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.

(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 legally and practicably 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~~) 70A.15.1010(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 assess-

ment 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.

AMENDATORY SECTION (Amending WSR 94-02-041, 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)) 70A.15.2270 shall be deposited in the air operating permit account created under RCW ((70.94.015)) 70A.15.1010. All receipts from fees collected by delegated local authorities from permit program sources pursuant to RCW ((70.94.162)) 70A.15.2270 shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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 of 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, including information on availability of the data used for the determination. 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)) 60 days for public comment on the draft biennial workload analysis and draft biennial

budget. Such ((sixty)) 60-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)) 70A.15.2270, 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) Fiscal audits and reports.

(a) Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a fiscal audit of ecology's and each delegated local authority's operating permit program every other year.

(b) Fiscal audits shall address the following:

(i) Determine how much operating permit fee revenue was collected each fiscal year.

(ii) Determine whether operating permit fee revenue covered all authorized program expenses.

(iii) Determine whether the fees were computed correctly.

(iv) Determine whether invoices were sent out in a timely manner.

(v) Determine whether billed fees were collected.

(vi) Determine how fee revenues and expenses were accounted for, including amounts of shortfalls and overages and an explanation for them.

(vii) Determine if there was a program budget increase or decrease over the period being audited.

(viii) Determine whether operating permit fee revenues were used only for authorized activities.

(4) Performance audits and reports. Ecology and each local authority (the agencies) shall have a performance audit at least every three years.

(a) Overview performance audit. Every three years, the agencies shall:

(i) Conduct an overview audit using data collected in previous years. Each agency shall collect and analyze their data and provide a summary to the air operating permit performance audit advisory committee (the committee).

(ii) Consider program efficiencies that could reduce costs or improve performance of the operating permit program and report any identified efficiencies to the committee.

(b) Intensive performance audit.

(i) The committee, as established in subsection (5) of this section, may recommend an agency participate in a more intensive audit.

(ii) The public may submit a request for an intensive audit to the committee. The request must identify issues of concern and explain how the overview performance audit does not address them.

(iii) An intensive audit will not take place more frequently than every six years.

(iv) Ecology shall determine final recommendations for the requirements of the overview and intensive performance audits.

(c) Performance audit elements. The following are intended to serve as a guideline for operating permit program intensive performance audits.

Intensive performance audits may include, but are not limited to, assessing the following elements:

(i) Administration of program - Review of activities such as program administration, training, data management, fee administration, and clerical support.

(ii) Permit processing - Review of activities such as review of required permit elements, adequacy of statement of basis, adequacy of technical support document, timeliness of permit processing, permit modifications, permit amendments, and permit appeals.

(iii) Permit management - Review of activities such as inspections, stack test oversight, reports, complaint investigations, administrative enforcement, and compliance.

(iv) Technical assistance - Review of the operating permit technical assistance program.

(v) Education and outreach - Review of activities such as public notification, permit register maintenance, notifications to EPA and affected states, and publications.

(d) Reports on the overview and intensive audit results.

Ecology shall publish a report for each audit. The report shall include:

(i) Recommendations from the committee members.

(ii) Ecology's final recommendations for performance audit requirements.

(iii) Audit results. Ecology shall distribute a copy of the report to the delegated local authorities and the committee members. Ecology shall also post the report on their website.

(5) Air operating permit performance audit advisory committee (the committee).

(a) Ecology shall establish the committee.

(b) The committee shall operate under a written charter. In consultation with the committee, ecology shall establish the committee charter.

- (c) The committee shall meet at least once every three years and begin the first overview performance audit no later than January 2017.
- (d) Ecology shall appoint committee members.
- (e) Committee membership shall include, at a minimum:
 - (i) Representation from ecology.
 - (ii) Representation from the regulated community.
 - (iii) Representation from a delegated local authority.
 - (iv) The following representation is desirable:
 - (A) Environmental group(s).
 - (B) General public.
- (f) The committee shall:
 - (i) Develop a timeline for the schedule of agency reviews, collecting reports, reviewing reports, and submitting recommendations to ecology.
 - (ii) Every three years, review data reports prepared by the agencies.
 - (iii) Submit to ecology:
 - (A) Recommendations for evaluating and improving program performance statewide.
 - (B) Observations from the data review, including trends analysis (identifying trends).
 - (C) Recommendations for intensive audit content if an intensive audit is recommended.
- (g) Public process. The committee meetings shall be open to the public. Ecology shall announce the public meeting and opportunity to comment on performance audit recommendations.
- (6) Conducting intensive performance audits.
 - (a) If ecology determines that an intensive performance audit is needed, ecology shall establish the intensive audit schedule.
 - (b) Ecology shall audit the delegated local authorities. A delegated local authority shall audit ecology. An independent contractor may be used to conduct a required intensive audit.
 - (c) Performance audit contractor requirements.
 - (i) If an independent contractor is used to conduct an intensive performance audit, the contractor must have experience with the operating permit program.
 - (ii) To the extent possible, the contractor shall be free of any conflicts of interest. A contractor applying to conduct the audits shall disclose any potential conflicts of interest in its application.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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;

(p) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act; and

(q) Provision of assistance to small business consistent with RCW ((~~70.94.162~~)) 70A.15.2270.

(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~~)) 70A.15.2260(2) and ((~~70.94.860~~)) 70A.15.6240;

(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~~)) 70A.15.6050, 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.

OTS-5316.1

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

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 alloca-

tion determination. Such preliminary statement shall be provided to the permit program sources and to other persons on the mailing list on or before July 31st 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 31st 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 30th of each year. Such response shall state the observations 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~~)) 173-401-920 (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 31st 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-401-645 Emergency provision.