Chapter 173-400 WAC
GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-400-080 Compliance schedules. [Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-080, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331.

WSR 79-06-012 (Order DE 78-21), § 173-400-080, filed 5/8/79; Order DE 76-38, § 173-400-080, filed 12/21/76. Formerly WAC 18-04-080.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-090 Sensitive area designation. [Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-090, filed 8/20/80; Order DE 76-38, § 173-400-090, filed 12/21/76. Formerly WAC 18-04-090.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-130 Regulatory actions. [Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-130, filed 5/8/79; Order DE 76-38, § 173-400-130, filed 12/21/76. Formerly WAC 18-04-130.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-135 Criminal penalties. [Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-135, filed 5/8/79.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-140 Appeals. [Order DE 76-38, § 173-400-140, filed 12/21/76. Formerly WAC 18-04-140.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-141 Prevention of significant deterioration (PSD). [Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-141, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-141, filed 9/13/96, effective 10/14/96; WSR 93-18-007 (Order 93-03), § 173-400-141, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-141, filed 2/19/91, effective 3/22/91.] Repealed by WSR 05-03-033 (Order 03-07), filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 70.94.152.

173-400-150 Variance. [Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-150, filed 5/8/79; Order DE 76-38, § 173-400-150, filed 12/21/76. Formerly WAC 18-04-150.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-160 Maintenance of pay. [Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-160, filed 5/8/79.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

173-400-170 Requirements for boards and director. [Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-170, filed 5/8/79.] Repealed by WSR 83-09-036 (Order DE 83-13), filed 4/15/83. Statutory Authority: Chapters 43.21A and 70.94 RCW.

WAC 173-400-010 Policy and purpose. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish technically feasible and reasonably attainable standards and to establish rules generally applicable to the control and/or prevention of the emission of air contaminants.

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-010, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-010, filed 4/15/83; Order DE 76-38, § 173-400-010, filed 12/21/76. Formerly WAC 18-04-010.]

WAC 173-400-020 Applicability. (1) The provisions of this chapter shall apply 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 and 70.94.331.

(2) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

(a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.

(b) Automobiles, trucks, aircraft.

(c) Those sources under the jurisdiction of the energy facility site evaluation council.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-020, filed 11/28/12, effective 12/29/12; WSR 91-05-064 (Order 90-06), § 173-400-020, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-020, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-020, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-020, filed 5/8/79; Order DE 76-38, § 173-400-020, filed 12/21/76. Formerly WAC 18-04-020.]

WAC 173-400-025 Adoption by reference. (1) Adoption by reference date: December 23, 2020.

(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.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-400-025, filed 11/29/21, effective 12/30/21. Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-025, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-025, filed 5/31/16, effective 7/1/16.]

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 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 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 onsite 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 (O_3) sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(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 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 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_2S):	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_2S):	10 tons per year
Sulfur dioxide:	40 tons per year
Sulfuric acid mist:	7 tons per year

Air Contaminant	Annual Emission Rate
Total reduced sulfur (including H_2S):	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 or 70.98 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 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 (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(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 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 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

(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 RCW or rules adopted there under; 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 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 ($(CF_3)_2CFCF_2OCH_3$); 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 ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ($n\text{-}C_3F_7OCH_3$ 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; HCF2OCF2H (HFE-134); HCF2OCF2OCF2H (HFE-236cal2); HCF2OCF2CF2OCF2H (HFE-338pcc13); HCF2OCF2OCF2CF2OCF2H (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 unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-030, filed 8/16/18, effective 9/16/18; WSR 12-24-027 (Order 11-10), § 173-400-030, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-030, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-030, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-030, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-030, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.152. WSR 98-01-183 (Order 96-01), § 173-400-030, filed 12/23/97, effective 1/23/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-030, filed 9/13/96, effective 10/14/96; WSR 95-07-126 (Order 93-40), § 173-400-030, filed 3/22/95, effective 4/22/95; WSR 93-18-007 (Order 93-03), § 173-400-030, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-030, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-030, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-030, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-030, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-030, filed 5/8/79; Order DE 76-38, § 173-400-030, filed 12/21/76. Formerly WAC 18-04-030.]

WAC 173-400-035 Nonroad engines. (1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

(a) Any nonroad engine that is:

(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; or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

(b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.

(c) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work center, garage, or engine pool. Such engines may be operated at these facilities only for the purpose of engine maintenance, testing, and repair.

(d) A back-up nonroad engine demonstrated to have the same or lower emissions than the primary power nonroad engine.

(2) **Nonroad engines are not subject to:**

(a) New source review.

(b) Control technology determinations.

(c) Emission limits set by the SIP.

(d) Chapter 173-460 WAC.

(3) **Fuel standards.** All nonroad engines must use ultra low sulfur diesel or ultra low sulfur biodiesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG). A facility that receives deliveries of only ultra low sulfur diesel or ultra low sulfur biodiesel is deemed to be compliant with this fuel standard.

(4) **> 500 and ≤ 2000 BHP.** This section applies to a project that requires the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

(a) Notification of intent to operate is required before operations begin.

The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:

(i) Name and address of owner or operator;

(ii) Site address or location;

(iii) Date of equipment arrival at the site;

(iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. For each site, the owner or operator must record the following information for each nonroad engine:

(i) Site address or location;

(ii) Date of equipment arrival at the site;

(iii) Date of equipment departure from the site;

(iv) Engine function or purpose;

(v) Identification of each component as follows:

(A) Equipment manufacturer, model number and its unique serial number;

(B) Engine model year;

(vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep the records of the current engine and equipment activity in hard

copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.

(5) **> 2000 BHP.** This section applies to a project that requires the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 2000 BHP.

(a) Notification of intent to operate.

(i) Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4).

(ii) The notification must contain, at a minimum, the information in subsection (4)(a) of this section.

(b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

(c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (4)(b) and (c) of this section.

(6) Integrated review. Applicants seeking approval to construct or modify a stationary source that requires review under WAC 173-400-110 or 173-400-560 and to operate one or more nonroad engines in conjunction with the new or modified stationary source may elect to integrate the reviews. The notification process for integrated review must comply with the new source review public involvement procedures for the stationary source as applicable (i.e., WAC 173-400-171 or 173-400-740).

(7) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

(8) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final decision to the applicant.

(9) Conditions to assure compliance with NAAQS. Subject to the limitations of subsection (2) of this section, the permitting authority may set specific conditions for operation as necessary to ensure that the nonroad engines do not cause or contribute to a violation of National Ambient Air Quality Standards.

(10) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

(11) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-035, filed 8/16/18, effective 9/16/18; WSR 11-06-060 (Order 09-01), § 173-400-035, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. WSR 07-19-005 (Order 07-10), § 173-400-035, filed 9/6/07, effective 10/7/07. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331,

[70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-035, filed 8/15/01, effective 9/15/01.]

WAC 173-400-036 Relocation of portable sources. (1) **Applicability.**

(a) Portable sources that meet the requirements of this section may without obtaining a site-specific or permitting authority-specific order of approval relocate and operate in any jurisdiction in which the permitting authority has adopted this section by reference. The owner or operator of a portable source may file a new notice of construction application in compliance with WAC 173-400-110 each time the portable source relocates in lieu of participating in the inter-jurisdictional provisions in this section.

(b) Permitting authority participation in the inter-jurisdictional provisions of this section is optional. This section applies only in those jurisdictions where the permitting authority has adopted it. Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here except that subsection (2) of this section applies statewide.

(c) This section applies to sources that move from the jurisdiction of one permitting authority to the jurisdiction of another permitting authority, inter-jurisdictional relocation. This section does not apply to intra-jurisdictional relocation.

(d) Engines subject to WAC 173-400-035 Nonroad engines are not portable sources subject to this section.

(2) **Portable sources in nonattainment areas.** If a portable source is locating in a nonattainment area and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, then the source must acquire a site-specific order of approval.

(3) **Major stationary sources.** If a portable source is a major stationary source then it must also comply with WAC 173-400-700 through 173-400-750 as applicable.

(4) **Relocation requirements.** Portable sources are allowed to operate at a new location without obtaining an order of approval from the permitting authority with jurisdiction over the new location provided that:

(a) A permitting authority in Washington state issued a notice of construction order of approval for the portable source after July 1, 2010, identifying the emission units as a "portable source";

(b) The owner/operator of the portable source submits a relocation notice on a form provided by the permitting authority and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location;

(c) The owner/operator submits the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the preceding year. The data must be sufficient in detail to enable each permitting authority to calculate the emissions within its jurisdiction and the yearly aggregate.

(d) Operation at any location under this provision is limited to one year or less. Operations lasting more than one year must obtain a site specific order of approval.

(5) **Enforcement of the order of approval.** The permitting authority with jurisdiction over the location where a portable source is operating has authority to enforce the conditions of the order of approval that authorizes the portable source operation, regardless of which permitting authority issued the order of approval. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

(6) **Change of conditions to orders of approval.** To change the conditions in an order of approval, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

(7) **Portable source modification.** Prior to beginning actual construction or installation of a modification of a portable source, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-036, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-036, filed 3/1/11, effective 4/1/11.]

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, 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 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 percent opacity for more than fifteen 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 percent opacity; except that opacity shall not exceed forty percent for up to a fifteen 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 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 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 (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 hours prior to the planned boiler startup or shutdown; or

(B) Within two hours after restarting the boiler for a startup within twenty-four 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 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 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 onsite 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 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 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 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, on file at ecology.

(h) Military training exercises. Visible emissions during military obscurant training exercises are exempt from the twenty 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 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 ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes.

(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).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-040, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-040, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-040, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-040, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-040, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-040, filed 11/22/00, effective 12/23/00. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-040, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-040, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-040, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-040, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-040, filed 5/8/79; Order DE 76-38, § 173-400-040, filed 12/21/76. Formerly WAC 18-04-040.]

WAC 173-400-045 Control technology fees. Fees can be found in chapter 173-455 WAC.

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. WSR 07-19-005 (Order 07-10), § 173-400-045, filed 9/6/07, effective 10/7/07. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-045, filed 9/13/96, effective 10/14/96. Statutory Authority: RCW 70.94.153 and 70.94.154. WSR 94-17-070, § 173-400-045, filed 8/15/94, effective 9/15/94.]

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or 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) **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.

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

(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) 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 AAAA (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).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-050, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-050, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-050, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-050, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-050, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-050, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR

79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

WAC 173-400-060 Emission standards for general process units. General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or 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.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-060, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-060, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-060, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-060, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-060, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-060, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-060, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-060, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-060, filed 8/20/80; Order DE 76-38, § 173-400-060, filed 12/21/76. Formerly WAC 18-04-060.]

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner may operate until midnight December 31, 2019, provided it complies with the following:

(a) All wigwam and silo burners designed to dispose of waste wood must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4), 173-400-115, or 40 C.F.R. Part 62, Subpart III in effect on the date in WAC 173-400-025 as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary

openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) 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. It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(c) 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. It is unlawful to burn any material or operate an orchard-heating device that causes a visible emission exceeding twenty percent opacity as specified in WAC 173-400-040(2).

(4) **Grain elevators.** Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Other waste wood burners.**

(a) Waste wood burners not specifically provided for in this section shall meet all applicable provisions of:

(i) WAC 173-400-040 and 173-400-050;

(ii) 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025); and

(iii) 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025).

(b) Such waste wood burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(6) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally

exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submittal of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b)(2)(v).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-070, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-070, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-070, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-070, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-070, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-070, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-070, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-070, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-070, filed 9/13/96, effective 10/14/96; WSR 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices (in effect on the date in WAC 173-400-025) are adopted. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority.

(2) The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 C.F.R. Parts 61, 62, 63 and 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 C.F.R. Parts 51, 60, 61, 62, 63 and 65, as applicable.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) Submit reports required by 40 C.F.R. Parts 61 and 63 to the permitting authority, unless otherwise instructed.

(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

Adoption of federal rules.

(a) The term "administrator" in 40 C.F.R. Part 63 includes the permitting authority.

(b) **Major sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices (in effect on the date in WAC 173-400-025) are adopted as they apply to major sources of hazardous air pollutants.

(c)(i) **Nonmajor sources of hazardous air pollutants (area source rules).** The stationary sources affected by the following subparts of 40 C.F.R. Part 63 are subject to chapter 173-401 WAC (Operating permit regulation). These subparts of 40 C.F.R. Part 63 and Appendices (in effect on the date in WAC 173-400-025) are adopted:

(A) Subpart X, Secondary lead smelting;

(B) Subpart EEE, Hazardous waste incineration;

(C) Subpart LLL, Portland cement;

(D) Subpart IIIII, Mercury cell chlor-alkali plants;

(E) Subpart YYYYY, Stainless and nonstainless steel manufacturing (electric arc furnace);

(F) Subpart EEEEEE, Primary copper smelting;

(G) Subpart FFFFFF, Secondary copper smelting;

(H) Subpart GGGGGG, Primary nonferrous metal;

(I) Subpart MMMMMM, Carbon black production;

(J) Subpart NNNNNN, Chromium compounds;

(K) Subpart SSSSSS, Pressed and blown glass manufacturing;

(L) Subpart VVVVVV, Chemical manufacturing for synthetic minors; and

(M) Subpart EEEEEEE, Gold mine ore processing and production.

(ii) 40 C.F.R. Part 63 and Appendices are adopted (WAC 173-400-025) as they apply to a stationary source located at a source subject to chapter 173-401 WAC (Operating permit regulation).

(7) **Consolidated federal air rule (synthetic organic chemical manufacturing industry).** 40 C.F.R. Part 65 (in effect on the date in WAC 173-400-025) is adopted.

(8) **Emission standards for perchloroethylene dry cleaners.**

(a) **Applicability.**

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1.
PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 C.F.R. Part 63, subpart M (in effect on the date in WAC 173-400-025).

(iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) **Operations and maintenance record.**

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(d) **General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2.
Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.	Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.

(e) **Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3 and Table 4:

TABLE 3.
Minimum Inspection Frequency

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Once every 2 weeks.	Once every week.	Once every week.	Once every week.

TABLE 4.
Minimum Inspection Frequency Using Portable Leak Detector

Small area source	Large area source	Major source	Dry cleaner located in a building where people may live
Once every month.	Once every month.	Once every month.	Once every week.

(ii) You must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of perchloroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;
(D) Pumps;
(E) Solvent tanks and containers;
(F) Water separators;
(G) Muck cookers;
(H) Stills;
(I) Exhaust dampers; and
(J) Cartridge filter housings.

(iv) The dry cleaning system must be inspected while it is operating.

(v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(f) **Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(g) **Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(h) **Requirements for systems with carbon adsorbers.** A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-075, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-075, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-075, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR

07-11-039 (Order 06-03), § 173-400-075, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-075, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 70.94.331. WSR 02-15-068 (Order 02-09), § 173-400-075, filed 7/11/02, effective 8/11/02. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-075, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-075, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-075, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-075, filed 9/13/96, effective 10/14/96; WSR 93-05-044 (Order 92-34), § 173-400-075, filed 2/17/93, effective 3/20/93; WSR 91-05-064 (Order 90-06), § 173-400-075, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-075, filed 3/6/85. Statutory Authority: Chapter 70.94 RCW. WSR 84-10-019 (Order DE 84-8), § 173-400-075, filed 4/26/84. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-075, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-075, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-075, filed 5/8/79; Order DE 76-38, § 173-400-075, filed 12/21/76. Formerly WAC 18-04-075.]

WAC 173-400-081 Emission limits during startup and shutdown. (1) In promulgating technology-based emission standards and establishing emission limits in a permit or order the permitting authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

(2) When the permitting authority determines, as part of its control technology determination, that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission limit or standard during startup or shutdown, the permitting authority must include in the rule, order, or permit appropriate alternative emission limitations to regulate the performance of the source during startup or shutdown conditions.

(3) In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the permitting authority shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule.

(4) An emission limitation or other parameter adopted under this section which increases allowable emissions during a startup or shutdown event over levels authorized in Washington's SIP shall not take effect until:

(a) Approved by EPA as a SIP amendment; and

(b) The permitting authority has complied with WAC 173-400-082 (4)(c)(i)(A) and (B) and (iv) when applicable.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-081, filed 8/16/18, effective 9/16/18; WSR 11-06-060 (Order

09-01), § 173-400-081, filed 3/1/11, effective 4/1/11; WSR 93-18-007 (Order 93-03), § 173-400-081, filed 8/20/93, effective 9/20/93.]

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 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 days of receipt of a complete application, the permitting authority must:

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

(B) Send the draft order and supporting materials electronically to ecology at least thirty 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. 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-082, filed 8/16/18, effective 9/16/18.]

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 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-091, filed 3/1/11, effective 4/1/11; WSR 93-18-007 (Order 93-03), § 173-400-091, filed 8/20/93, effective 9/20/93.]

WAC 173-400-099 Registration program. (1) Program purpose.

(a) The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(b) Permit program sources, as defined in RCW 70.94.030(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

(2) Program components. The components of the registration program consist of:

(a) Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter 70.94 RCW.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

(e) Staff review, including engineering analysis for accuracy and currentness of information provided by source owners pursuant to registration program requirements.

(f) Clerical and other office support in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

[Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-099, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-099, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW. WSR 95-07-126 (Order 93-40), § 173-400-099, filed 3/22/95, effective 4/22/95.]

WAC 173-400-100 Source classifications. (1) **Source classification list.** In counties without a local air pollution control authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories must register the source with ecology:

(a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;

(b) Agricultural drying and dehydrating operations;

(c) Any category of stationary source that includes an emissions unit subject to a new source performance standard (NSPS) under 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), other than subpart AAA (Standards of Performance for New Residential Wood Heaters);

(d) Any stationary source that includes an emissions unit subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 C.F.R. Part 61 (in effect on the date in WAC 173-400-025), other than:

(i) Subpart M (National Emission Standard for Asbestos); or

(ii) Sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 C.F.R. Part 61, subparts H and/or I, and that are not sub-

ject to any other part of 40 C.F.R. Parts 61, 62, or 63, or any other parts of this section.

(e) Any source, or emissions unit subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories under 40 C.F.R. Part 63 (in effect on the date in WAC 173-400-025) that is not subject to chapter 173-401 WAC;

(f) Any source, stationary source or emission unit with an emission rate of one or more pollutants equal to or greater than an "emission threshold" defined in WAC 173-400-030;

(g) Asphalt and asphalt products production facilities;

(h) Brick and clay manufacturing plants, including tiles and ceramics;

(i) Casting facilities and foundries, ferrous and nonferrous;

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(k) Chemical manufacturing plants;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

(m) Concrete product manufacturers and ready mix and premix concrete plants;

(n) Crematoria or animal carcass incinerators;

(o) Dry cleaning plants;

(p) Materials handling and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

(q) Flexible vinyl and urethane coating and printing operations;

(r) Grain, seed, animal feed, legume, and flour processing operations, and handling facilities;

(s) Hay cubers and pelletizers;

(t) Hazardous waste treatment and disposal facilities;

(u) Ink manufacturers;

(v) Insulation fiber manufacturers;

(w) Landfills, active and inactive, including covers, gas collections systems or flares;

(x) Metal plating and anodizing operations;

(y) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

(z) Mills such as lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

(aa) Mineralogical processing plants;

(bb) Other metallurgical processing plants;

(cc) Paper manufacturers;

(dd) Petroleum refineries;

(ee) Petroleum product blending operations;

(ff) Plastics and fiberglass product fabrication facilities;

(gg) Rendering plants;

(hh) Soil and groundwater remediation projects;

(ii) Surface coating manufacturers;

(jj) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

(kk) Synthetic fiber production facilities;

(ll) Synthetic organic chemical manufacturing industries;

(mm) Tire recapping facilities;

(nn) Wastewater treatment plants;

(oo) Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.

(2) **Equipment classification list.** In counties without a local authority, the owner or operator of the following equipment must register the source with ecology:

(a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

(b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;

(c) Chemical concentration evaporators;

(d) Degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;

(e) Ethylene oxide (ETO) sterilizers;

(f) Flares utilized to combust any gaseous material;

(g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;

(h) Incinerators designed for a capacity of one hundred pounds per hour or more;

(i) Ovens, burn-out and heat-treat;

(j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;

(k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;

(l) Vapor collection systems within commercial or industrial facilities;

(m) Waste oil burners above 0.5 mm Btu heat output;

(n) Woodwaste incinerators;

(o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);

(p) Small municipal waste combustion units subject to WAC 173-400-050(5).

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-100, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-100, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-100, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-100, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 95-07-126 (Order 93-40), § 173-400-100, filed 3/22/95, effective 4/22/95; WSR 93-18-007 (Order 93-03), § 173-400-100, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-100, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-100, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-100, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Or-

der DE 80-14), § 173-400-100, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-100, filed 5/8/79; Order DE 76-38, § 173-400-100, filed 12/21/76. Formerly WAC 18-04-100.]

WAC 173-400-101 Registration 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 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 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(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-101, filed 10/25/18, effective 11/25/18. Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-101, filed 3/1/11, effective 4/1/11; WSR 95-07-126 (Order 93-40), § 173-400-101, filed 3/22/95, effective 4/22/95; WSR 94-10-042 (Order 93-39), § 173-400-101, filed 4/29/94, effective 5/30/94.]

WAC 173-400-102 Scope of registration and reporting requirements. (1) Applicability. This section applies to sources subject to WAC 173-400-100 located in a county without a local air pollution control authority.

(2) A source that is subject to WAC 173-400-100, but not subject to new source review under WAC 173-400-110(5) must register with ecology.

(3) Emissions inventory report.

(a) An owner or operator must submit an emissions inventory report in a manner specified by ecology:

(i) Annually when mandated by an order of approval or a regulatory order; or

(ii) Upon request from ecology.

(b) An emissions inventory report must include the information required by ecology, an order of approval, or regulatory order:

(i) Emission sources;

(ii) Types and amounts of raw materials and fuels used;

(iii) Types, amounts and concentrations of air contaminants emitted;

(iv) Data on emission units and control devices;

(v) Data on emission points;

(vi) Other information related to the registration program as requested by ecology.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-102, filed 10/25/18, effective 11/25/18. Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-102, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-102, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-102, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 95-07-126 (Order 93-40), § 173-400-102, filed 3/22/95, effective 4/22/95.]

WAC 173-400-103 Emission estimates. (1) This section applies to a source subject to WAC 173-400-100 located in a county without a local air pollution control authority.

(2) Procedure for estimating emissions from a source.

(a) An emissions inventory report may include:

(i) An estimate of actual emissions taking into account equipment;

(ii) Operating conditions;

(iii) Air pollution control measures;

(iv) A flowchart of plant processes;

(v) Operational parameters; and

(vi) Specifications of air pollution control equipment.

(b) An owner or operator must base the emissions estimate on actual test data or, in the absence of test data, on procedures acceptable to ecology.

(c) Emission data submitted to ecology must be verifiable using currently accepted engineering criteria. Sources may use the following procedures to estimate emissions from individual sources or emissions units:

(i) Source-specific testing data;

(ii) Mass balance calculations;

(iii) A published, verifiable emission factor applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions acceptable to ecology.

(3) Owner or operator review.

(a) By August 1st of each year, ecology must provide the owner or operator of the source an opportunity to review emission estimates prepared by ecology.

(b) An owner or operator may submit additional information and justification for not using the procedures in subsection (2) of this subsection.

(i) The owner or operator may propose a source-specific appropriate method.

(ii) Ecology must evaluate the information provided to determine whether the owner or operator based it on currently accepted engineering criteria.

(iii) If none of these methods are available or applicable to the source, ecology must establish and approve an appropriate method on a case-by-case basis.

(c) When estimating emissions, ecology must consider updates and revisions made to a source's operations during a calendar year to apply to emissions occurring during the entire calendar year.

(d) Emissions inventory review process.

(i) Ecology must:

(A) Notify each source of their draft emissions inventory by August 1st of each year in connection with notice on the draft tier placement in WAC 173-455-039;

(B) Distribute the notice by electronic means or by means of the United States postal service if ecology does not have an electronic means for the source or the source requests postal service notification.

(ii) Comment deadlines. An owner or operator must provide comments to ecology by:

(A) September 30th to change a tier placement or an emissions inventory determined by WAC 173-455-039 for an upcoming year; or

(B) October 1st or later to update a future emissions inventory.

(iii) Ecology must evaluate the request and make a final determination by:

(A) January 1st if a request was sent by September 30th of that year; or

(B) Within ninety days of receiving a request submitted under (ii)(B) of this subsection.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-103, filed 10/25/18, effective 11/25/18. Statutory Authority: Chapter 70.94 RCW. WSR 95-07-126 (Order 93-40), § 173-400-103, filed 3/22/95, effective 4/22/95.]

WAC 173-400-104 Registration fees. See chapter 173-455 WAC for ecology's fee schedule for 2019, 2020, 2021, and ecology's process for establishing registration fees for 2022 and beyond.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-104, filed 10/25/18,

effective 11/25/18. Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-104, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. WSR 07-19-005 (Order 07-10), § 173-400-104, filed 9/6/07, effective 10/7/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-104, filed 1/10/05, effective 2/10/05. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-104, filed 11/22/00, effective 12/23/00. Statutory Authority: Chapter 70.94 RCW. WSR 95-07-126 (Order 93-40), § 173-400-104, filed 3/22/95, effective 4/22/95.]

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, on file at ecology. The permitting authority may require the operator of a source to provide the necessa-

ry platform and sampling ports for ecology personnel 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 BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is 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 barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection 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 or 70.120 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 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 hours for each month (ninety-five 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 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 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 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 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 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 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 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-400-105, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-105, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-105, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-105, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-105, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-105, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-105, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-105, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-105, filed 9/13/96, effective 10/14/96; WSR 93-18-007 (Order 93-03), § 173-400-105, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order

90-06), § 173-400-105, filed 2/19/91, effective 3/22/91; WSR 87-20-019 (Order 87-12), § 173-400-105, filed 9/30/87.]

WAC 173-400-107 Excess emissions. This section is in effect until the effective date of EPA's removal of the September 20, 1993, version of this section from the SIP. This section is not effective starting on that date.

(1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.

(2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.

(3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(6) Excess emissions due to a malfunction or upset shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-107, filed 8/16/18, effective 9/16/18; WSR 11-06-060 (Order

09-01), § 173-400-107, filed 3/1/11, effective 4/1/11; WSR 93-18-007 (Order 93-03), § 173-400-107, filed 8/20/93, effective 9/20/93.]

WAC 173-400-108 Excess emissions reporting. (State-only requirement not federally enforceable.) This section takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Notify the permitting authority.

(a) When excess emissions represent a potential threat to human health or safety, the owner or operator must notify the permitting authority by phone or electronic means as soon as possible, but not later than **twelve hours** after the excess emissions were discovered.

(b) For all other excess emissions, the owner or operator must notify the permitting authority in a report as provided in subsection (2) of this section.

(2) Report. The owner or operator must report all excess emissions to the permitting authority:

(a) To claim emissions as unavoidable under WAC 173-400-109, the report must contain the information in subsection (4) of this section.

(b) Chapter 173-401 WAC source: As provided in WAC 173-401-615(3) and subsection (4) of this section. Subsection (3) of this section does not apply to a chapter 401 source reporting under WAC 173-401-615.

(c) All other sources:

(i) Within thirty days after the end of the month during which the event occurred; or

(ii) As part of the next routine emission monitoring report.

(3) The report must contain at least the following information:

(a) Date, time, duration of the episode;

(b) Known causes;

(c) For exceedances of an emission limitation other than opacity, an estimate of the quantity of excess emissions;

(d) The corrective actions taken; and

(e) The preventive measures taken or planned to minimize the chance of recurrence.

(4) For an excess emission event that the owner or operator claims was unavoidable under WAC 173-400-109, the report must also include the following information:

(a) Properly signed contemporaneous records or other relevant evidence documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and

(c) All additional information required under WAC 173-400-109(5) supporting the claim that the excess emissions were unavoidable.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-108, filed 8/16/18, effective 9/16/18; WSR 11-06-060 (Order 09-01), § 173-400-108, filed 3/1/11, effective 4/1/11.]

WAC 173-400-109 Unavoidable excess emissions. (State-only requirement not federally enforceable.) This section takes effect on the

effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, rule, permit, or regulatory order.

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source and the criteria in subsection (5) of this section.

(b) Excess emissions determined by the permitting authority to be unavoidable are:

(i) A violation subject to WAC 173-400-230 (3), (4), and (6); but

(ii) Not subject to civil penalty under WAC 173-400-230(2).

Note: Nothing in a state rule limits a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action.

(2) The owner or operator of a source shall have the burden of proving to the permitting authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsection (5) of this section.

(3) This section does not apply to an exceedance of an emission standard in 40 C.F.R. Parts 60, 61, 62, 63, and 72, or a permitting authority's adoption by reference of these federal standards.

(4) Excess emissions that occur due to an upset or malfunction during a startup or shutdown event are treated as an upset or malfunction under subsection (5) of this section.

(5) Excess emissions due to an upset or malfunction will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates to the permitting authority that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(c) When the operator knew or should have known that an emission standard or other permit condition was being exceeded, the operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action. Actions taken could include slowing or shutting down the emission unit as necessary to minimize emissions;

(d) If the emitting equipment could not be shutdown during the malfunction or upset to prevent the loss of life, prevent personal injury or severe property damage, or to minimize overall emissions, repairs were made in an expeditious fashion;

(e) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(f) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible; and

(g) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-109, filed 8/16/18, effective 9/16/18; WSR 11-06-060 (Order 09-01), § 173-400-109, filed 3/1/11, effective 4/1/11.]

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, 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, ≤ 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) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other solid fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr using used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr using wood waste or paper;

(iv) ≤ 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with ≤0.05% sulfur;

(v) ≤ 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 ≤ 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 ≤ 1% (by weight) VOCs, or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ≤ 1% VOCs (by weight) or ≤ 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 ≤ 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 permit-

ting authority specific approval order to relocate if the portable source complies with the provisions of WAC 173-400-036.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-110, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-110, filed 3/1/11, effective 4/1/11. Statutory Authority: Washington Clean Air Act, RCW 70.94.152. WSR 09-11-131 (Order 05-19), § 173-400-110, filed 5/20/09, effective 6/20/09. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-110, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-110, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-110, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-110, filed 7/21/98, effective 8/21/98. Statutory Authority: RCW 70.94.152. WSR 98-01-183 (Order 96-01), § 173-400-110, filed 12/23/97, effective 1/23/98. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-110, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-110, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-110, filed 4/15/83. Statutory Authority: RCW 70.94.331, 70.94.510, and 70.94.785. WSR 81-03-002 (Order DE 80-53), § 173-400-110, filed 1/8/81. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-110, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-110, filed 5/8/79; Order DE 76-38, § 173-400-110, filed 12/21/76. Formerly WAC 18-04-110.]

WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources. 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.

(1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must 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.

(b) A complete application contains all the information necessary for processing the application. At a minimum, the application must provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification, as well as the location, design, construction, and operation of the new source as needed to enable the permitting authority to determine that the construction or modification will meet the requirements of WAC 173-400-113. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3). The applicant must send a copy of the application and

all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be issued until the following criteria are met as applicable:

(a) The requirements of WAC 173-400-112;

(b) The requirements of WAC 173-400-113;

(c) The requirements of WAC 173-400-117;

(d) The requirements of WAC 173-400-171;

(e) The requirements of WAC 173-400-200 and 173-400-205;

(f) The requirements of WAC 173-400-700 through 173-400-750;

(g) The requirements of WAC 173-400-800 through 173-400-860;

(h) The requirements of chapter 173-460 WAC; and

(i) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - Time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must 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.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to

the pollution control hearings board as provided under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source, as defined in WAC 173-400-810, in a nonattainment area or a major modification, as defined in WAC 173-400-810, of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commence construction date.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard set by regulation or rule;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the permitting authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-111, 173-400-112, 173-400-113, 173-400-720, 173-400-830, and 173-460-040, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) The applicant must consider the criteria in 40 C.F.R. 52.21 (r)(4) (in effect on the date in WAC 173-400-025) or 173-400-830(3), as applicable, when determining which new source review approvals are required.

(9) Fees. Chapter 173-455 WAC lists the required fees payable to ecology for various permit actions.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-111, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-111, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-111, filed 3/1/11, effective 4/1/11.]

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 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-112, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-112, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-112, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-112, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-112, filed 8/20/93, effective 9/20/93.]

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 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-113, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-113, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-113, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and

43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-113, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-113, filed 8/20/93, effective 9/20/93.]

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (1) Any **person** proposing to replace or substantially alter the **emission** control technology installed on an existing **stationary source** or **emission unit** shall file a **notice of construction application** with the appropriate **authority**, or with **ecology** in areas or for **sources** over which **ecology** has jurisdiction. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

(2) 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 RCW.

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

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

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

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-114, filed 11/28/12, effective 12/29/12. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), §

173-400-114, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-114, filed 8/20/93, effective 9/20/93.]

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) **Adoption of federal rules.**

(a) 40 C.F.R. Part 60 and Appendices (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b) of this subsection.

(b) Exceptions to adopting 40 C.F.R. Part 60.

(i) The term "administrator" in 40 C.F.R. Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 C.F.R. Part 60 are not adopted:

(A) 40 C.F.R. 60.5 (determination of construction or modification);

(B) 40 C.F.R. 60.6 (review of plans);

(C) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, MMMM, UUUU (emission guidelines); and

(D) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 C.F.R. Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-115, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-115, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-115, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-115, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-115, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-115, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-115, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.785. WSR 98-22-019 (Order 98-02), § 173-400-115, filed 10/23/98, effective 11/23/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-115, filed 9/13/96, effective 10/14/96; WSR 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; WSR 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and

70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-115, filed 4/15/83; WSR 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

WAC 173-400-116 Increment protection. This section takes effect on the effective date of EPA's incorporation of this section into the Washington state implementation plan.

(1) Ecology will periodically review increment consumption. Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published in 40 C.F.R. 52.21(c) (in effect on the date in WAC 173-400-025).

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by EPA. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by EPA.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-116, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 11-17-037 (Order 11-04), § 173-400-116, filed 8/10/11, effective 9/10/11; WSR 11-06-060

(Order 09-01), § 173-400-116, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. WSR 07-19-005 (Order 07-10), § 173-400-116, filed 9/6/07, effective 10/7/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-116, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-116, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-116, filed 9/13/96, effective 10/14/96. Statutory Authority: RCW 70.94.153 and 70.94.154. WSR 94-17-070, § 173-400-116, filed 8/15/94, effective 9/15/94.]

WAC 173-400-117 Special protection requirements for federal Class I areas. (1) **Definitions.** The following definitions apply to this section:

(a) **"Adverse impact on visibility"** means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(i) Times of visitor use of the federal Class I area; and

(ii) The frequency and timing of natural conditions that reduce visibility.

(b) The terms "major stationary source," "major modification," and "net emissions increase" are defined in WAC 173-400-720 for projects located in areas designated as attainment or unclassifiable for the pollutants proposed to increase as a result of the project and are defined in WAC 173-400-810 for projects located in areas designated as nonattainment for the pollutants proposed to increase as a result of the project.

(2) **Applicability.** The requirements of this section apply to all of the following permitting actions:

(a) A PSD permit application for a new major stationary source or a major modification; or

(b) A notice of construction application for a major stationary source or a major modification to a stationary source in a nonattainment area, as either of those terms are defined in WAC 173-400-810.

(3) **Contents and distribution of application.**

(a) The application shall include an analysis of the anticipated impacts of the project on visibility in any federal Class I area.

(b) The applicant must mail a copy of the application for the project and all amendments to the application to the permitting authority, EPA and to the responsible federal land managers. Ecology will provide a list of the names and addresses of the federal land manager.

(4) **Notice to federal land manager.**

(a) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) If, prior to receiving a notice of construction application or a PSD permit application, the permitting authority receives notice of a project described in subsection (2) of this section that may affect visibility in a federal Class I area, the permitting authority

shall notify the responsible federal land manager within thirty days of the notification.

(5) **Analysis by federal land manager.**

(a) The permitting authority will consider any demonstration presented by the responsible federal land manager that emissions from a proposed new major stationary source or the net emissions increase from a proposed major modification described in subsection (2) of this section would have an adverse impact on visibility in any federal Class I area, provided that the demonstration is received by the permitting authority within thirty days of the federal land manager's receipt of the complete application.

(b) If the permitting authority concurs with the federal land manager's demonstration, the PSD permit or approval order for the project either shall be denied, or conditions shall be included in the approval order to prevent the adverse impact.

(c) If the permitting authority finds that the federal land manager's analysis does not demonstrate that the project will have an adverse impact on visibility in a federal Class I area, the permitting authority shall explain its decision in compliance with the notice requirements of WAC 173-400-171 for those permits subject to WAC 173-400-800 through 173-400-860. For permits subject to the prevention of significant deterioration program, the permitting authority shall state in the public notice required by WAC 173-400-740 that an explanation of the decision appears in the Technical Support Document for the proposed permit.

(6) **Additional requirements for projects that require a PSD permit.**

(a) For sources impacting federal Class I areas, the permitting authority shall provide notice to EPA of every action related to consideration of the PSD permit.

(b) The permitting authority shall consider any demonstration received from the responsible federal land manager prior to the close of the public comment period on a proposed PSD permit that emissions from the proposed new major stationary source or the net emissions increase from a proposed major modification would have an adverse impact on the air quality-related values (including visibility) of any mandatory Class I federal area.

(c) If the permitting authority concurs with the demonstration, the PSD permit either shall be denied, or conditions shall be included in the PSD permit to prevent the adverse impact.

(7) **Additional requirements for projects located in nonattainment areas.** In reviewing a PSD permit application or notice of construction application for a new major stationary source or major modification proposed for construction, as those terms are defined in WAC 173-400-810, in an area classified as nonattainment, the permitting authority must ensure that the proposed new source's emissions or the proposed modification's increase in emissions will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility by human-caused air pollution in mandatory Class I federal areas. In determining the need for approval order conditions to meet this requirement, the permitting authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(8) **Monitoring.** The permitting authority may require post-construction monitoring of the impact from the project. The monitoring

shall be limited to the impacts on visibility in any federal Class I area near the proposed project.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-117, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-117, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-117, filed 8/15/01, effective 9/15/01.]

WAC 173-400-118 Designation of Class I, II, and III areas. (1) **Designation.**

(a) Lands within the exterior boundaries of Indian reservations may be proposed for redesignation by an Indian governing body or EPA. This restriction does not apply to nontrust lands within the 1873 Survey Area of the Puyallup Indian Reservation.

(b) All areas of the state must be designated either Class I, II or III.

(i) The following areas are the Class I areas in Washington state:

(A) Alpine Lakes Wilderness;

(B) Glacier Peak Wilderness;

(C) Goat Rocks Wilderness;

(D) Adams Wilderness;

(E) Mount Rainier National Park;

(F) North Cascades National Park;

(G) Olympic National Park;

(H) Pasayten Wilderness; and

(I) Spokane Indian Reservation.[1]

(ii) All other areas of the state are Class II, but may be redesignated as provided in subsections (2) and (3) of this section.

1. EPA redesignated this land based on a request from the Spokane Tribal Council. See 40 C.F.R. 52.2497 and 56 FR 14862, April 12, 1991, for details.

(2) **Restrictions on area classifications.**

(a) Except for the Spokane Indian Reservation, the Class I areas listed in subsection (1) of this section may not be redesignated.

(b) Except as provided in (a) of this subsection, the following areas that exceed 10,000 acres in size may be redesignated as Class I or II:

(i) Areas in existence on August 7, 1977:

(A) A national monument;

(B) A national primitive area;

(C) A national preserve;

(D) A national wild and scenic river;

(E) A national wildlife refuge;

(F) A national lakeshore or seashore; or

(G) A national recreation area.

(ii) Areas established after August 7, 1977:

(A) A national park;

(B) A national wilderness area; or

(C) Areas proposed by ecology for designation or redesignation.

(3) **Redesignation of area classifications.**

(a) Ecology shall propose the redesignation of an area classification as a revision to the SIP.

(b) Ecology may submit to EPA a proposal to redesignate areas of the state as Class I or II if:

(i) Ecology followed the public involvement procedures in WAC 173-400-171(12);

(ii) Ecology explained the reasons for the proposed redesignation, including a description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation;

(iii) Ecology made available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation;

(iv) Ecology notified other states, tribal governing bodies, and federal land managers (as defined in 40 C.F.R. 52.21 (b)(24)) whose lands may be affected by the proposed redesignation at least thirty days prior to the public hearing;

(v) Ecology consulted with the elected leadership of local governments in the area covered by the proposed redesignation before proposing the redesignation; and

(vi) Ecology followed these procedures when a redesignation includes any federal lands:

(A) Ecology notified in writing the appropriate federal land manager on the proposed redesignation. Ecology allowed forty-five days for the federal land manager to confer with ecology and to submit written comments.

(B) Ecology responded to any written comments from the federal land manager that were received within forty-five days of notification. Ecology's response was available to the public in advance of the notice of the hearing.

(I) Ecology sent the written comments of the federal land manager, along with ecology's response to those comments, to the public location as required in WAC 173-400-171 (2)(a).

(II) If ecology disagreed with the federal land manager's written comments, ecology published a list of any inconsistency between the redesignation and the comments of the federal land manager, together with the reasons for making the redesignation against the recommendation of the federal land manager.

(c) Ecology may submit to EPA a proposal to redesignate any area other than an area to which subsection (1) of this section applies as Class III if:

(i) The redesignation followed the public involvement requirements of WAC 173-400-171 and 173-400-118(3);

(ii) The redesignation has been specifically approved by the governor of Washington state, after consultation with the appropriate committees of the legislature if it is in session, or with the leadership of the legislature, if it is not in session;

(iii) The redesignation has been approved by local governments representing a majority of the residents of the area to be redesignated. The local governments enacted legislation or passed resolutions concurring in the redesignation;

(iv) The redesignation would not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area or any National Ambient Air Quality Standard; and

(v) A PSD permit under WAC 173-400-720 for a new major stationary source or major modification could be issued only if the area in question were redesignated as Class III, and material submitted as part of

that application was available for public inspection prior to any public hearing on redesignation of the area as Class III.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-118, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-118, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-118, filed 8/15/01, effective 9/15/01.]

WAC 173-400-120 Bubble rules. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting authority.

(a) The contaminants exchanged must be of the same type, that is, PM_{10} for PM_{10}, sulfur dioxide for sulfur dioxide, etc.

(b) The bubble will not interfere with the attainment and maintenance of air quality standards. No bubble shall be authorized in a nonattainment area unless there is an EPA-approved SIP which demonstrates attainment for that area.

(c) The bubble will not result in a delay in compliance by any source, nor a delay in any existing enforcement action.

(d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous contaminants shall not be increased.

(e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.

(f) A bubble may not be authorized only for opacity limits. However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:

(i) The new opacity limit shall be specific for the given emissions unit;

(ii) The new opacity limit shall be consistent with the new particulates limit;

(iii) An opacity greater than sixty percent shall never be authorized;

(iv) If the given emissions unit emits or has the potential to emit one hundred tons per year or more of particulate matter, the opacity shall be monitored continuously.

(g) The emission limits of the bubble are equivalent to existing limits in enforceability.

(h) Concurrent with or prior to the authorization of a bubble, each emission unit involved in a bubble shall receive or have received a regulatory order or permit that establishes total allowable emissions from the source for the contaminant being bubbled, expressed as weight of the contaminant per unit time.

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but

not be limited to public perception of opacity and public perception of odorous contaminants.

(j) Specific situations may require additional demonstration as requested by the permitting authority.

(3) Jurisdiction. Whenever a bubble application involves emissions units, some of which are under the jurisdiction of an authority, approval will require concurrence by both authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, the permitting authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all the required information has been received, the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit affected by the bubble. The regulatory order or equivalent document shall include any conditions required to assure that subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment. The regulatory order establishing the bubble is subject to the public involvement requirements of WAC 173-400-171.

[Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-120, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-120, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-120, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 89-02-055 (Order 88-39), § 173-400-120, filed 1/3/89; WSR 83-09-036 (Order DE 83-13), § 173-400-120, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-120, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-120, filed 5/8/79; Order DE 76-38, § 173-400-120, filed 12/21/76. Formerly WAC 18-04-120.]

WAC 173-400-131 Issuance of emission reduction credits. (1) **Applicability.** The owner or operator of any source may apply to the permitting authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) **Time of application.** The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting authority.

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions

rate, whichever is the lesser, minus the new allowable emissions rate. The old actual emissions rate is the average emissions rate occurring during the most recent twenty-four-month period preceding the request for an ERC. An alternative twenty-four-month period from within the previous five years may be accepted by the permitting authority if the owner or operator of the source demonstrates to the satisfaction of the permitting authority that the alternative period is more representative of actual operations of the unit or source.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The reduction must be: Greater than otherwise required by an applicable emission standard, order of approval, or regulatory order and be permanent, quantifiable, and federally enforceable.

(d) The reduction must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830, nor as part of a bubble transaction under WAC 173-400-120.

(f) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress in an amendment to the state implementation plan.

(g) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a federally enforceable regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(h) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an ERC application and all supporting data and documentation, the permitting authority may require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all required information has been received, the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (h) of this section have been satisfied or not. If the application is approved, the permitting authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsection (3)(a) through (h) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminants involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued. The emission reduction credit listed in the certificate shall be less than the amount of emission reduction ach-

ieved by the source. The difference between the emission reduction and the emission reduction credit must be a decrease of at least one ton per year or one percent of the emission reduction, whichever decrease is greater.

(c) The certificate of emission reduction credit shall include the expiration date of the credit.

[Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-131, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-131, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-131, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-131, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-131, filed 2/19/91, effective 3/22/91.]

WAC 173-400-136 Use of emission reduction credits (ERC). (1) **Permissible use.** An ERC may be used to:

(a) Satisfy the requirements for authorization of a bubble under WAC 173-400-120;

(b) As an offsetting reduction to satisfy the requirements for new source review in WAC 173-400-830 or 173-400-113(4);

(c) Or if the reduction meets the criteria to be a creditable contemporaneous emission reduction, to demonstrate a creditable contemporaneous emission reduction for determining a net emissions increase under WAC 173-400-700 through 173-400-750 and 173-400-800 through 173-400-860.

(2) **Surrender of ERC certificate.** When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the permitting authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) **Conditions of use.**

(a) An ERC may be used only for the air contaminants for which it was issued.

(b) The permitting authority may impose additional conditions of use to account for temporal and spatial differences between the emissions units that generated the ERC and the emissions units that use the ERC.

(4) **Sale of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) **Redemption period.** An unused ERC expires ten years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard, issued ERCs may be discounted as necessary to reach attainment.

(a) Issued ERCs may be discounted if:

(i) Reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard;

(ii) The ambient standard cannot be met through controls on operating sources; and

(iii) The plan must be revised.

(b) The discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

(c) ERCs may be discounted by the permitting authority only after notice to the public according to WAC 173-400-171 and the owners of affected ERCs.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-136, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-136, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-136, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-136, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-136, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-136, filed 2/19/91, effective 3/22/91.]

WAC 173-400-151 Retrofit requirements for visibility protection. (1) The requirements of this section apply to an existing stationary facility. An "existing stationary facility" means a stationary source of air contaminants that meets all of these conditions:

(a) The stationary source must have the potential to emit 250 tons per year or more of any air contaminant. Fugitive emissions, to the extent quantifiable, must be counted in determining the potential to emit; and

(b) The stationary source was not in operation prior to August 7, 1962, and was in existence on August 7, 1977; and

(c) Is in one of the following 26 source categories:

Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,	Coke oven batteries,
Coal cleaning plants (thermal dryers),	Sulfur recovery plants,
Kraft pulp mills,	Carbon black plants (furnace process),
Portland cement plants,	Primary lead smelters,
Primary zinc smelters,	Fuel conversion plants,
Iron and steel mill plants,	Sintering plants,
Primary aluminum ore reduction plants,	Secondary metal production facilities,
Primary copper smelters,	Chemical process plants,
Municipal incinerators capable of charging more than 250 tons of refuse per day,	Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
Hydrofluoric, sulfuric, and nitric acid plants,	Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
Petroleum refineries,	Taconite ore processing facilities,

Lime plants,	Glass fiber processing plants, and
Phosphate rock processing plants,	Charcoal production facilities.

(d) For purposes of determining whether a stationary source is an existing stationary facility, the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended in the 1977 supplement.

(2) Ecology shall identify each existing stationary facility which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class 1 federal area in Washington and any adjacent state.

(3) For each existing stationary facility identified under subsection (2) of this section, ecology, in consultation with the permitting authority shall determine BART for each air contaminant of concern and any additional air pollution control technologies that are to be required to reduce impairment from the existing stationary facility.

(4) Each existing stationary facility shall apply BART as new technology for control of the air contaminant becomes reasonably available if:

(a) The existing stationary facility emits the air contaminant contributing to visibility impairment;

(b) Controls representing BART for that air contaminant have not previously been required under this section; and

(c) The impairment of visibility in any mandatory Class 1 federal area is reasonably attributable to the emissions of the air contaminant.

[Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-151, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-151, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-151, filed 2/19/91, effective 3/22/91.]

WAC 173-400-161 Compliance schedules. (1) **Issuance.** Whenever a source is found to be in violation of an emission standard or other provision of this chapter, ecology or the authority may issue a regulatory order requiring that the source be brought into compliance within a specified time. The order shall contain a schedule for installation, with intermediate benchmark dates and a final completion date, and shall constitute a compliance schedule. Requirements for public involvement (WAC 173-400-171) must be met.

(2) **Federal action.** A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included with a regulatory order are being met. Such compliance does not preclude federal enforcement action by the EPA un-

til and unless the schedule is submitted and adopted as an amendment to the state implementation plan.

(3) **Penalties for delayed compliance.** Sources on a compliance schedule but not meeting emissions standards may be subject to penalties as provided in the Federal Clean Air Act.

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-161, filed 2/19/91, effective 3/22/91.]

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 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-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-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 accepta-

ble 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 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 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 days and start at least thirty 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 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 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-171, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-171, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-171, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-171, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-171, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-171, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-171, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 95-07-126 (Order 93-40), § 173-400-171, filed 3/22/95, effective 4/22/95; WSR 93-18-007 (Order 93-03), § 173-400-171, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-171, filed 2/19/91, effective 3/22/91.]

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

[Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-175, filed 1/10/05, effective 2/10/05.]

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

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

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

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

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

[Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011. WSR 07-19-005 (Order 07-10), § 173-400-180, filed 9/6/07, effective 10/7/07. Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-180, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-180, filed 2/19/91, effective 3/22/91.]

WAC 173-400-190 Requirements for nonattainment areas. The development of specific requirements for nonattainment areas shall include consultation with local government in the area and shall include public involvement per WAC 173-400-171.

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-190, filed 2/19/91, effective 3/22/91.]

WAC 173-400-200 Creditable stack height and dispersion techniques. (1) Applicability. These provisions shall apply to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Outdoor burning for agricultural or silvicultural purposes as covered under the smoke management plan;

(e) Residential wood combustion and open burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(2) Prohibitions. No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack which exceeds the greater of:

(i) Sixty-five meters, measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$

where: H_g = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,
H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,
L = lesser dimension, height or projected width, of nearby structure(s), subject to the proviso below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the

height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(3) Exception. EPA, ecology, or a permitting authority may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the EPA Guideline for Determination of Good Engineering Practice Height (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 C.F.R. 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over a PSD increment. The emission rate

used in this demonstration shall be the emission rate specified in the state implementation plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

[Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-200, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-200, filed 2/19/91, effective 3/22/91.]

WAC 173-400-205 Adjustment for atmospheric conditions. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant is prohibited, except as directed according to air pollution episode regulations.

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-205, filed 2/19/91, effective 3/22/91.]

WAC 173-400-210 Emission requirements of prior jurisdictions. Any emissions unit that was under the jurisdiction of an authority and now is under the jurisdiction of ecology, shall meet all emission requirements that were applicable prior to transfer of jurisdiction if those standards are more stringent than the standards of this chapter or the specific chapter relating to that source.

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-210, filed 2/19/91, effective 3/22/91.]

WAC 173-400-220 Requirements for board members. (1) **Public interest.** A majority of the members of any ecology or authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

(2) **Disclosure.** Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.

(3) **Define significant income.** For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or

state government shall not be considered in the determination of "significant portion of income."

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-220, filed 2/19/91, effective 3/22/91.]

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

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

(2) **Civil penalties.**

(a) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 or 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

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

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

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

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

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

(e) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in

violation of this chapter which shall be enforced as provided in RCW 60.36.050.

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

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

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

(4) **Restraining orders, injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the director, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

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

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

[Statutory Authority: Chapter 70.94 RCW. WSR 93-05-044 (Order 92-34), § 173-400-230, filed 2/17/93, effective 3/20/93; WSR 91-05-064 (Order 90-06), § 173-400-230, filed 2/19/91, effective 3/22/91.]

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

[Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-240, filed 2/19/91, effective 3/22/91.]

WAC 173-400-250 Appeals. Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-18-007 (Order 93-03), § 173-400-250, filed 8/20/93, effective 9/20/93; WSR 91-05-064 (Order 90-06), § 173-400-250, filed 2/19/91, effective 3/22/91.]

WAC 173-400-260 Conflict of interest. All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest (Section 128).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-260, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-260, filed 2/19/91, effective 3/22/91.]

WAC 173-400-560 General order of approval. In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may apply for coverage under a general order of approval issued under this section. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including nonroad engines as defined in section 216 of the Federal Clean Air Act, subject to the conditions in this section. A general order of approval shall identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered emission unit or source. At a minimum, these terms and conditions shall include:

(a) Applicable emissions limitations and/or control requirements;

(b) Best available control technology;

(c) Appropriate operational restrictions, such as:

(i) Criteria related to the physical size of the unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria determined by a permitting authority;

(d) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;

(e) Appropriate initial and periodic emission testing requirements;

(f) Compliance with chapter 173-460 WAC, WAC 173-400-112 and 173-400-113 as applicable;

(g) Compliance with 40 C.F.R. Parts 60, 61, 62, and 63; and

(h) The application and approval process to obtain coverage under the specific general order of approval.

(2) **Public comment.** Compliance with WAC 173-400-171 is required for a proposed new general order of approval or modification of an existing general order of approval.

(3) **Modification of general orders of approval.** A permitting authority may review and modify a general order of approval at any time. Only the permitting authority that issued a general order of approval may modify that general order of approval. Modifications to general orders of approval shall follow the procedures of this regulation and shall only take effect prospectively.

(4) **Application for coverage under a general order of approval.**

(a) In lieu of applying for an individual order of approval under WAC 173-400-110, an owner or operator of an emission unit or source may apply for and receive coverage from a permitting authority under a general order of approval if:

(i) The owner or operator of the emission unit or source applies for coverage under a general order of approval in accordance with this regulation and any conditions of the approval related to application for and granting coverage under the general order of approval;

(ii) The emission unit or source meets all the qualifications listed in the requested general order of approval;

(iii) The requested emission unit or source is not part of a new major stationary source or major modification of a major stationary source subject to the requirements of WAC 173-400-113 (3) and (4), 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860; and

(iv) The requested emission unit or source does not trigger applicability of the operating permit program under chapter 173-401 WAC or trigger a required modification of an existing operating permit.

(b) Owners or operators of emission units or sources applying for coverage under a general order of approval shall do so using the forms supplied by a permitting authority and include the required fee. The application must include all information necessary to determine qualification for, and to assure compliance with, a general order of approval.

(c) An application shall be incomplete until a permitting authority has received any required fees.

(d) The owner or operator of a new source or modification of an existing source that qualifies for coverage under a general order of approval may not begin actual construction of the new source or modification until its application for coverage has been approved or accepted under the procedures established in subsection (5) of this section.

(5) **Processing applications for coverage under a general order of approval.** Each general order of approval shall include a section on how an applicant is to request coverage and how the permitting authority will grant coverage. The section of the general order of approval will include either the method in (a) or (b) of this subsection to describe the process for the applicant to be granted coverage.

(a) Within thirty days of receipt of an application for coverage under a general order of approval, the permitting authority shall notify an applicant in writing that the application is incomplete, approved, or denied. If an application is incomplete, the permitting authority shall notify an applicant of the information needed to complete the application. If an application is denied, the permitting authority shall notify an applicant of the reasons why the application is denied. Coverage under a general order of approval is effective as of the date of issuance of approval by the permitting authority.

(b) The applicant is approved for coverage under the general order of approval thirty-one days after an application for coverage is received by the permitting authority, unless the owner or operator receives a letter from the permitting authority, postmarked within thirty days of when the application for coverage was received by the permitting authority, notifying the owner or operator that the emissions unit or source does not qualify for coverage under the general order of approval. The letter denying coverage shall notify the applicant of the disqualification and the reasons why coverage is denied.

(6) **Termination of coverage under a general order of approval.** An owner or operator who has received approval of an application for coverage under a general order of approval may later request to be excluded from coverage under that general order of approval by applying to the same permitting authority for an individual order of approval, un-

der WAC 173-400-110, or for coverage under another general order of approval. If the same permitting authority issues an individual order of approval or other permit or order serving the same purpose as the original general order of approval, or approves coverage under a different general order of approval, coverage under the original general order of approval is automatically terminated, effective on the effective date of the individual order of approval, order or permit or new general order of approval.

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement action for establishment of a new source in violation of WAC 173-400-110 if a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-560, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-560, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-560, filed 1/10/05, effective 2/10/05.]

PERMITTING OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS TO MAJOR STATIONARY SOURCES

WAC 173-400-700 Review of major stationary sources of air pollution. (1) The following sections are to be used by ecology when reviewing and permitting new major stationary sources and major modifications to major stationary sources located in attainment or unclassified areas in Washington.

(2) WAC 173-400-700 through 173-400-750 apply statewide except:

(a) Where the authority has received delegation of the federal PSD program from EPA or has a SIP approved PSD program.

(b) To projects under the jurisdiction of the energy facility site evaluation council site certification process pursuant to chapter 80.50 RCW.

(3) The construction of a major stationary source or major modification subject to the permitting requirements of the following section might also be subject to the permitting programs in WAC 173-400-110 and 173-400-800 through 173-400-860.

[Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-700, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-700, filed 1/10/05, effective 2/10/05.]

WAC 173-400-710 Definitions. (1) For purposes of WAC 173-400-720 through 173-400-750 the definitions in 40 C.F.R. 52.21(b) (in effect on the date in WAC 173-400-025) must be used. Exception: The definition of "secondary emissions" as defined in WAC 173-400-030 must be used.

(2) All usage of the term "source" in WAC 173-400-710 through 173-400-750 and in 40 C.F.R. 52.21 must be interpreted to mean "stationary source" as defined in 40 C.F.R. 52.21 (b)(5). A stationary source (or source) does not include emissions resulting directly from

an internal combustion engine for transportation purposes, from a nonroad engine, or a nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-710, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-710, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-710, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-710, filed 1/10/05, effective 2/10/05.]

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (1) through (4);

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-200;

(iv) WAC 173-400-205;

(v) Allowable emission limits established under WAC 173-400-081 must also meet the criteria of 40 C.F.R. 52.21 (k)(1) and 52.21 (p)(1) through (4) (in effect on the date in WAC 173-400-025); and

(vi) The following subparts of 40 C.F.R. 52.21 (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b)(i), (ii), (iii), and (iv) of this subsection:

Section	Title
40 C.F.R. 52.21 (a)(2)	Applicability Procedures.
40 C.F.R. 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 C.F.R. 52.21 (c)	Ambient air increments.
40 C.F.R. 52.21 (d)	Ambient air ceilings.
40 C.F.R. 52.21 (h)	Stack heights.
40 C.F.R. 52.21 (i)	Review of major stationary sources and major modifications - Source applicability and exemptions.
40 C.F.R. 52.21 (j)	Control technology review.

Section	Title
40 C.F.R. 52.21 (k)	Source impact analysis.
40 C.F.R. 52.21 (l)	Air quality models.
40 C.F.R. 52.21 (m)	Air quality analysis.
40 C.F.R. 52.21 (n)	Source information.
40 C.F.R. 52.21 (o)	Additional impact analysis.
40 C.F.R. 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - Additional requirements
40 C.F.R. 52.21 (r)	Source obligation.
40 C.F.R. 52.21 (v)	Innovative control technology.
40 C.F.R. 52.21 (w)	Permit rescission.
40 C.F.R. 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 C.F.R. 52.21 by reference.

(i) Every use of the word "administrator" in 40 C.F.R. 52.21 means ecology except for the following:

(A) In 40 C.F.R. 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 C.F.R. 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 C.F.R. 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 C.F.R. 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 C.F.R. 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 C.F.R. 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 C.F.R. 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 C.F.R. 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p)(1), (2), (3) and (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21:

(A) In 40 C.F.R. 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 C.F.R. 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 C.F.R. 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 C.F.R. 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant

emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 C.F.R. 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 C.F.R. 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 C.F.R. 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 C.F.R. 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 C.F.R. 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 C.F.R. 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 C.F.R. 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(vi) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (r)(6)(vi)(b) of this subsection, and not also within the meaning of (r)(6)(vi)(a) of this subsection, then the provisions of (r)(6)(vi)(ii) through (v) of this subsection do not apply to the project."

(E) 40 C.F.R. 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 C.F.R. 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 C.F.R. 70.4 (b)(3)(viii)."

(F) 40 C.F.R. 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

(G) 40 C.F.R. 52.21 (aa)(5) "Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in

accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

(H) 40 C.F.R. 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

(I) 40 C.F.R. 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 C.F.R. 52.21 (aa)(14)(i) through (iii)."

(J) 40 C.F.R. 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) 40 C.F.R. 52.21 (r)(2) is not adopted.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-720, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-720, filed 11/28/12, effective 12/29/12; WSR 11-17-037 (Order 11-04), § 173-400-720, filed 8/10/11, effective 9/10/11; WSR 11-06-060 (Order 09-01), § 173-400-720, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-720, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-720, filed 1/10/05, effective 2/10/05.]

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) **Application submittal.**

(a) The applicant shall submit an application that provides complete information necessary for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

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

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for the initial request, renewal or expiration of a PAL under 40 C.F.R. 52.21(aa) shall be done as provided in 40 C.F.R. 52.21(aa)(3) through (5) (in effect on the date in WAC 173-400-025). Exception: Public participation must comply with WAC 173-400-740.

(2) **Application processing.**

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology 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. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) As expeditiously as possible after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) Within one year of the date of receipt of the complete application and as expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) Once the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a determination will be either the date of issuance of the final determination, or a later date if specified in the final determination.

Until the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-730, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-730, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-730, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-730, filed 1/10/05, effective 2/10/05.]

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 and chapter 173-03 WAC.

(b) Notify the public.

(i) Public notice must be posted on ecology's website for a minimum of thirty 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 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.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-740, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-740, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-740, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-740, filed 1/10/05, effective 2/10/05.]

WAC 173-400-750 Revisions to PSD permits. (1) The owner or operator may request, at any time, a change in conditions of a PSD permit and ecology may approve the request provided ecology finds that:

(a) The change in conditions will not cause the source to exceed an emissions standard established by regulation;

(b) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

(c) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(d) The revised PSD permit will continue to require BACT for each new or modified emission unit approved by the original PSD permit; and

(e) The revised PSD permit continues to meet the requirements of WAC 173-400-800 through 173-400-860, and 173-400-113, as applicable.

(2) A request to revise a PSD permit must be acted upon using the timelines found in WAC 173-400-730. The fee schedule found in chapter 173-455 WAC also applies.

(3) All revisions to PSD permits are subject to public involvement except for the following administrative revisions:

(a) Change of the owner or operator's business name and/or mailing address;

(b) Corrections to typographical errors;

(c) Revisions to compliance monitoring methods that provide for more frequent monitoring, replace a periodic monitoring requirement with a continuous monitoring, result in replacement of a manual emission testing method with an instrumental method, or other similar changes that based on ecology's technical evaluation of the proposal, do not reduce the ability of the permittee, the public, the permitting authority, EPA, or ecology to determine compliance with the emission limitations;

(d) Revisions to reporting requirements contained in a PSD permit to coordinate reporting with reporting requirements contained in the air operating permit issued to the source or that result in more frequent reporting by the permittee; or

(e) Any other revision, similar to those listed above, that based on ecology's technical evaluation of the proposal, does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-750, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-750, filed 3/1/11, effective 4/1/11. Statutory

Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-750, filed 1/10/05, effective 2/10/05.]

WAC 173-400-800 Major stationary source and major modification in a nonattainment area. WAC 173-400-800 through 173-400-860 apply statewide except where a permitting authority has a permitting program for major stationary sources in a nonattainment area incorporated into the Washington state implementation plan as replacement for these sections.

These requirements apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

[Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-800, filed 3/1/11, effective 4/1/11.]

WAC 173-400-810 Major stationary source and major modification definitions. The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limitation (WAC 173-400-850), then that definition must be used for purposes of the Plant Wide Applicability Limitation program.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting 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 unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at

which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by EPA, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that EPA proposed or promulgated under 40 C.F.R. Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or main-

tenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demo-

lition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of

the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(7)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14)(a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by EPA);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection (14) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(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 fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(15)(a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 C.F.R. 52.21 or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or 40 C.F.R. 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by EPA implementing 40 C.F.R. 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or 40 C.F.R. 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 C.F.R. Part 51, Appendix S (in effect on the date in WAC 173-400-025) shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is sub-

ject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(17)(a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 C.F.R. 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 or in issuing any permit under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by EPA and incorporated into the plan to implement the requirements of 40 C.F.R. 51.165, or a program that implements 40 C.F.R. Part 51, Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by EPA and incorporated into the plan to implement the requirements of 40 C.F.R. 51.166, or under the program in 40 C.F.R. 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23)(a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions in-

crease or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b)(i) through (iii) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24)(a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable

particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of WAC 173-400-800 through 173-400-850.

(25)(a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practi-

cal matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Reviewing authority means "permitting authority" as defined in WAC 173-400-030.

(27) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Lead	0.6 tons per year
PM-10	15 tons per year
PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions; 40 tons per year of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided EPA has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject

to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(28) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(29) Source and stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(30) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(31) Best available control technology (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing 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 or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-810, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-810, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-810, filed 3/1/11, effective 4/1/11.]

WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements. (1) Any new major stationary source located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, that is major for the pollutant for which the area is designated nonattainment is subject to the permitting requirements of WAC 173-400-830 through 173-400-850. Any major modification of an existing major stationary source that is major for the pollutant for which the area is designated nonattainment and is located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, and that has a significant net emissions increase of the pollutant for which the area is designated nonattainment is sub-

ject to the permitting requirements of WAC 173-400-830 through 173-400-850. A modification to an existing major stationary source must use the following procedures to determine if the modification would result in a significant net emissions increase of the nonattainment pollutant.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - A significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in WAC 173-400-850.

(5) The following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(d) The owner or operator shall submit a report to the permitting authority within sixty days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within sixty days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(f) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (f)(ii) of this subsection, and not also within the meaning of (f)(i) of this subsection, then (c) through (f) of this subsection does not apply to the project.

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in chapter 173-401 WAC.

[Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-820, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-820, filed 3/1/11, effective 4/1/11.]

WAC 173-400-830 Permitting requirements. (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, is authorized to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source 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.

(b) The permitting authority has determined, based on review of an analysis performed by the owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source 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, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants and designated precursors to those air contaminants, except that it will achieve LAER for the air contaminants and designated precursors to those air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source is major or for which the existing source is major and the proposed modification is a major modification.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant and designated precursors to those air contaminants are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(f) The owner or operator of the proposed new major stationary source or major modification of an existing major stationary source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is also a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program under 40 C.F.R. 52.21 delegated to ecology by EPA Region 10, while such delegated program remains in effect. The proposed new major stationary source or major modification will comply with the PSD program in WAC 173-400-700 through 173-400-750 for all air contaminants for which the area has not been designated nonattainment when that PSD program has been approved into the Washington SIP.

(h) The proposed new major stationary source or the proposed major modification meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where EPA has granted a NO_X waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(j) The requirements of this section applicable to major stationary sources and major modifications of PM-10 and PM-2.5 shall also apply to major stationary sources and major modifications of PM-10 and PM-2.5 precursors, except where EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after

August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 C.F.R. 51.165, or the requirements of 40 C.F.R. Part 51, Appendix S, as applicable, shall apply to the source or modification as though construction had not yet commenced on the source or modification. 40 C.F.R. Part 51, Appendix S shall not apply to a new or modified source for which enforceable limitations are established after WAC 173-400-800 through 173-400-850 have been approved into Washington's SIP.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-830, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-830, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-830, filed 3/1/11, effective 4/1/11.]

WAC 173-400-840 Emission offset requirements. (1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(a) In any marginal nonattainment area for ozone - 1.1:1;

(b) In any moderate nonattainment area for ozone - 1.15:1;

(c) In any serious nonattainment area for ozone - 1.2:1;

(d) In any severe nonattainment area for ozone - 1.3:1; and

(e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185B of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 C.F.R. 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(6) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets are required for the incremental increase in allowable emissions occurring during startup and shutdown operations

at the new or modified emission units subject to nonattainment area major new source review. The incremental increase is the difference between the allowable emissions during normal operation and the allowable emissions for startup and shutdown contained in the nonattainment new source review approval.

(8) Emission offsets including those described in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or precurtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (7)(b)(iii)(A)(I) of this section.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status than the nonattainment area where the source proposing to use the reduction is located; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51, subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

(9) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). This document is also available from Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-840, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-840, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-840, filed 3/1/11, effective 4/1/11.]

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). The Actuals Plantwide Applicability Limitations (PAL) program in Section IV.K of Appendix S (Emission Offset Interpretive Ruling) to 40 C.F.R. Part 51, (in effect on the date in WAC 173-400-025) is adopted with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 C.F.R. 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-850, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-850, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-850, filed 3/1/11, effective 4/1/11.]

WAC 173-400-860 Public involvement procedures. The public involvement procedures in WAC 173-400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued pursuant to WAC 173-400-830 or 173-400-850 must comply with WAC 173-400-171.

[Statutory Authority: Chapter 70.94 RCW. WSR 11-06-060 (Order 09-01), § 173-400-860, filed 3/1/11, effective 4/1/11.]

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 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 biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty 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.

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-930, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-930, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-930, filed 3/1/11, effective 4/1/11.]