



Request for Delegation of Authority to Implement and Enforce the Federal Plan Requirements for Sewage Sludge Incineration Units Constructed On or Before October 14, 2010 (81 FR 26040; April 29, 2016)

The U.S. Environmental Protection Agency (EPA) promulgated Emission Guidelines (EGs) for existing Sewage Sludge Incineration (SSI) Units under 40 C.F.R. Part 60, Subpart Mmmm. The Federal plan for SSI units is codified in 40 C.F.R. Part 62, Subpart LLL (Federal plan). Northwest Clean Air Agency (NWCAA) requests delegation of authority to implement and enforce the Federal SSI plan in accordance with 40 C.F.R. § 62.15865.

Background

Section 129 of the Clean Air Act (CAA) requires the EPA to develop and adopt standards for solid waste incineration units pursuant to Sections 111 and 129 of the CAA. On March 21, 2011, the EPA promulgated New Source Performance Standards (NSPS) for “new” SSI units and EGs for “existing” SSI units located at wastewater treatment facilities designed to treat domestic sewage sludge which are codified in 40 C.F.R. Part 60, Subparts LLLL and Mmmm, respectively. Sections 111(b) and 129(a) of the CAA address emissions from new units (i.e., NSPS), and CAA sections 111(d) and 129(b) address emissions from existing units (i.e., EGs).

The NSPS are federal regulations directly enforceable upon SSI units, and, under CAA section 129(f)(1), become effective 6 months after promulgation. Unlike the NSPS, the EGs provide direction for developing state plans; the EGs are not themselves directly enforceable. The EGs are implemented under an EPA-approved state or tribal plan or EPA-adopted Federal plan that implements and enforces them once the state, tribal, or Federal plan has become effective. Note that under 40 C.F.R. § 60.2, “state” includes local agencies, such as NWCAA.

Section 129(b)(2) of the CAA and 40 C.F.R. Part 60, Subpart Mmmm direct states with existing SSI unit(s) subject to the EGs to submit state plans to the EPA that implement and enforce the EGs. There are two existing SSI units in NWCAA's jurisdiction. 40 C.F.R. Part 62, Subpart LLL, in 40 C.F.R. § 62.15865, provides an option for a state to request delegation of the Federal plan for existing SSI units rather than submit a state plan. The deadline for states to submit state plans to the EPA for review was March 21, 2012. Sections 111 and 129(b)(3) of the CAA and 40 C.F.R. § 60.27(c) and (d) require the EPA to develop, implement, and enforce a Federal plan for SSI units in any state without an approvable state plan within 2 years after promulgation of the EGs. The Federal plan for SSI units is codified in 40 C.F.R. Part 62 Subpart LLL.

NWCAA intends to adopt and implement the Federal plan for SSI units. Hence, NWCAA did not submit a state plan for the EG for SSI units by March 21, 2012. NWCAA requests delegation of authority to implement and enforce the Federal SSI plan in accordance with 40 C.F.R. § 62.15865.

40 C.F.R. Part 60, Subpart LLLL and 40 C.F.R. Part 62, Subpart LLL, as in effect as of June 18, 2016, are adopted by reference in Section 104 of the NWCAA Regulations as of August 11, 2016. NWCAA received delegation of 40 C.F.R. Part 60, Subpart LLLL under CAA Section 111(c)(1) from EPA Region 10 on August 2, 2016.

Demonstration of Adequate Resources (40 C.F.R. § 62.15865(a)(1))

NWCAA has delegation for numerous NSPS and NESHAPs under Parts 60, 61, and 63. NWCAA has adequate resources and authority to administer and enforce the NSPS and NESHAPs for which it already has delegation as well as the Federal SSI plan requirements codified in 40 C.F.R. Part 62, Subpart LLL.

NWCAA will be the implementing agency and its personnel will be assigned to implement and enforce the requirements of 40 C.F.R. Part 62, Subpart LLL in Whatcom, Skagit, and Island Counties in Washington State. NWCAA has 21 employees, including administrators, program managers, chemical engineers, environmental engineers, chemists, air quality scientists, air quality specialists, inspectors, and clerical staff. Work duties of the technical staff include construction and operation permitting, inspection, compliance, and enforcement with experience in process auditing, field inspections, analytical techniques, source testing, environmental monitoring, data analysis, and asbestos remediation.

Regarding 40 C.F.R. 62 Subpart LLL, two subject SSI units operate at facilities within the NWCAA jurisdiction. Each facility will be assigned to a NWCAA employee who will be primarily responsible for inspection and reviewing facility compliance with applicable rules. Additional employees provide support through writing construction and operating permits, aiding in the review of source tests, and program administration, as needed.

Demonstration of Legal Authority (40 C.F.R. § 62.15865(a)(1))

Pursuant to 40 C.F.R. § 62.15865(a)(1), NWCAA must demonstrate that it has the legal authority to administer and enforce the Federal plan. According to 40 C.F.R. § 60.26(a), the demonstration of legal authority must show that NWCAA has the legal authority to carry out the plan, including authority to (1) adopt emission standards and compliance schedules applicable to designated facilities; (2) enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief; (3) obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities; (4) require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to NWCAA on the nature and amounts of emissions from such facilities; and (5) make such data available to the public as reported and as correlated with applicable emission standards. Note that, as required under 40 C.F.R. § 62.16035, each SSI unit is required to obtain a Title V Air Operating Permit and, thus, will also be subject to the requirements under that program.

A legal opinion demonstrating NWCAA's authority to receive delegation of a federal program was submitted to Ecology on December 18, 1996 and to EPA on May 5, 1997 as part of the request for straight delegation of the National Emission Standards for Hazardous Air

Pollutants (NESHAPs). EPA authorized a straight delegation of the NESHAPs to NWCAA on December 1, 1998 (63 FR 66054).

Pursuant to 81 FR 26054 (April 29, 2016), if a legal opinion was previously submitted, the opinion should be updated at the time a new delegation request is submitted. An opinion by NWCAA counsel, Laughlin Clark, is enclosed in the Attachment stating that NWCAA has the legal authority "to receive delegation and demonstrate that the rule will be implemented and enforced relative to the designated facilities".

Inventory of Affected SSI Units and Associated Emissions (40 C.F.R. §§ 62.15865(a)(2), 60.5015(a)(1) & (2))

The following is a list of the SSI units in the NWCAA jurisdiction (Whatcom, Skagit, and Island Counties in Washington State) that are subject to the Federal SSI plan. Tables 1 and 2 list the results of the source testing under 40 C.F.R. §§ 60.5185(a), 62.15980(a) all corrected to 7% O₂.

1. Post Point Wastewater Treatment Plant (Post Point WWTP) – Existing Multiple Hearth Incinerator (MHI)
Bellingham, Whatcom County
Testing: February 23-25, 2016 (Incinerator 1)
February 16-19, 2016 (Incinerator 2)
2. Anacortes Wastewater Treatment Plant (Anacortes WWTP) – Existing Fluidized Bed Incinerator (FBI)
Anacortes, Skagit County
Testing: December 17-18, 2014

Table 1. Post Point WWTP SSI Test Results

Pollutant	Incinerator 1	Incinerator 2	MHI Emissions Limit	Units
PM	0.95	4.4	80	mg/dscm
SO ₂	2.24	0.25	26	ppmvd
NO _x	168	196	220	ppmvd
CO	2,346	3,152	3,800	ppmvd
Fugitives	Zero Visible Emissions	Zero Visible Emissions	Visible Emissions	--
PCDD/PCDF TEQ	0.011	0.012	0.32	ng/dscm
PCDD/PCDF TMB	0.231	0.21	5.0	ng/dscm
HCl	0.134	0.24	1.2	ppmvd
Cadmium	0.00	0.0003	0.095	mg/dscm
Mercury	0.030	0.060	0.28	mg/dscm
Lead	0.0005	0.002	0.30	mg/dscm

Table 2. Anacortes WWTP SSI Test Results

Pollutant	SSI	FBI Emissions Limit	Units
PM	8.6	18	mg/dscm
SO ₂	44 ²	15	ppmvd
NO _x	40	150	ppmvd
CO	15	64	ppmvd
Fugitives	Zero Visible Emissions	Visible Emissions	--
PCDD/PCDF TEQ	0.0018 ¹	0.10	ng/dscm
PCDD/PCDF TMB	0.086 ¹	1.2	ng/dscm
HCl	0.23	0.51	ppmvd
Cadmium	0.00006	0.0016	mg/dscm
Mercury	0.073 ²	0.037	mg/dscm
Lead	0.00094	0.0074	mg/dscm

¹ Taken from October 24-26, 2012 testing.

² Anacortes uses a venturi scrubber as control which is not a control device listed in the regulation. Anacortes submitted a petition to EPA for limits on their venturi scrubber with new mercury control modules and received approval on August 5, 2016.

The 2016 tests at the Post Point WWTP SSI unit demonstrated compliance with the 40 C.F.R. Part 62, Subpart LLL standards. The Anacortes WWTP recently installed new mercury controls on its SSI unit and is expected to perform testing to demonstrate compliance with 40 C.F.R. 62 Subpart LLL and their approved petition during the second quarter of 2017.

There are no SSI units that have ceased operation but have not been dismantled in NWCAA's jurisdiction.

Provision For State Progress Reports to EPA (40 C.F.R. §§ 62.15865(a)(2), 60.5015(a)(7), 60.25(e) & (f))

NWCAA will submit periodic reports at least annually to EPA that meet the requirements of 40 C.F.R. § 60.25(e) and (f). The first progress report will be submitted to EPA one year after EPA approval of the delegation request.

Public Involvement (40 C.F.R. §§ 62.15865(a)(3), 60.23(d) & (e))

The public notice and hearing information was published in the Bellingham Herald (Whatcom County), Skagit Valley Herald (Skagit County), and Whidbey Island News (Island County) and on NWCAA's website at least 30 days prior to the hearing date. This document and associated regulatory background were posted on the NWCAA website for the full public notice period.

The hearing will be held on July 13, 2017 at 9:00 am at NWCAA's office at 1600 South 2nd St, Mount Vernon, WA 98273. The public comment period began on June 7, 2017 and will

end at close of business on July 14, 2017. If appropriate, the sign-in sheet from the hearing listing each of the commenters and their organizational affiliations will be attached to the application along with a brief written summary of each presentation or written submission.

NWCAA will maintain records of the hearing, including the sign-in sheet from the hearing listing each of the commenters and their organizational affiliations, and each presentation or written submission, for a minimum of 2 years.

The hearing will be conducted in accordance with 40 C.F.R. § 62.15865(a)(3). A certification to this fact will accompany the application.

Memorandum of Agreement Commitment (40 C.F.R. § 62.15865(a)(4))

NWCAA requests delegation of 40 C.F.R. Part 62, Subpart LLL and commits to enter into a Memorandum of Agreement with the EPA Regional Administrator that sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority, in accordance with 40 C.F.R. § 62.15865(a)(4).

Attachment

Demonstration of Legal Authority



May 26, 2017

LAUGHLAN H. CLARK | Attorney
LClark@CarmichaelClark.com

Tim Hamlin
Director
Office of Air & Waste
U.S. EPA-Region 10
1200 Sixth Avenue OAW-150
Seattle, WA 98101

Re: Legal Opinion in Support of Northwest Clean Air Agency's Request for Delegation
of Authority to Implement and Enforce the Federal Plan Requirements for
Sewage Sludge Incineration Units

Dear Mr. Hamlin:

I am legal counsel to Northwest Clean Air Agency ("NWCAA") and write to provide my opinion as to NWCAA's legal authority to administer and enforce the Federal Plan under 40 CFR 62 Subpart LLL as to Sewage Sludge Incineration Units in accordance with 40 CFR 62.15865 (40 CFR 62 Subpart LLL) (the "Federal Plan").

A legal opinion demonstrating NWCAA's authority to receive delegation of a federal program was submitted to Ecology on December 18, 1996, and to EPA on May 5, 1997, as part of the request for straight delegation of the National Emission Standards for Hazardous Air Pollutants ("NESHAPs"). This opinion should be considered an update of the prior opinions pursuant to 81 FR 26054 (April 29, 2016).

1. Introduction.

NWCAA is a local control agency in the State of Washington operating pursuant to Revised Code of Washington (RCW) chapter 70.94, Washington's Clean Air Act. Specifically, chapter 70.94 RCW grants local air pollution control agencies in Washington State the authority and responsibility to regulate air quality within their jurisdictions. RCW 70.94.141. Pursuant to RCW 70.94.141(1), local air control agencies have the authority to promulgate rules and regulations to implement chapter 70.94 RCW. Local air control agencies may implement and enforce state regulations adopted by Washington Department of Ecology pursuant to RCW 70.94.331, or may adopt their own regulations regarding emissions standards which must not be less stringent than the state regulations. RCW 70.94.380. NWCAA has promulgated its own regulations relating to air quality including emissions standards, and, as noted with more specificity below, NWCAA has also adopted by reference into its regulations (NWCAA Regulation 104.1) many provisions of the Washington Administrative Code (WAC) Title 173 pertaining to the regulation of air quality, and any WAC sections cited herein have been so adopted. Copies of all statutes and regulations cited herein are enclosed for your reference.

In this instance, NWCAA has, pursuant to its statutory powers, enacted 40 CFR 60 Subpart LLLL and 40 CFR 62 Subpart LLL, as in effect as of June 18, 2016, by adopting these into its Regulation 104. A copy of Regulation 104 is enclosed.

2. NWCAA's Legal Authority to Carry Out the Federal Plan.

It is my opinion that the Washington Clean Air Act, chapter 70.94 RCW, provides the necessary legal authority for NWCAA to fully administer and enforce the Federal Plan. NWCAA's legal authority in this regard includes the following specific powers:

a.) Adopt Emission Standards and Compliance Schedules applicable to designated facilities.

NWCAA has the authority to adopt emissions standards and compliance schedules as to designated facilities as follows: RCW 70.94.141(1) (Authority to adopt, amend and repeal its own rules and regulations to implement chapter 70.94 RCW); RCW 70.94.141(3) and NWCAA Regulation 121 (General authority to issue orders to effectuate and enforce chapter 70.94 RCW); RCW 70.94.155(2) (Authority to issue compliance schedules setting forth timetables for the achievement of compliance for emissions sources either by permit or order); RCW 70.94.380 (Agency required to have requirements for emissions controls not less stringent than state law); and RCW 70.94.860 (Authority to take delegation of federal programs).

b.) Enforce Applicable Laws, Regulations, Standards and Compliance Schedules; Injunctive Relief.

NWCAA has legal authority to enforce applicable laws, regulations, standards and compliance schedules, and the right to seek injunctive relief as follows: RCW 70.94.141(1) and (3) (Enforcement of compliance schedules established by permit or order); RCW 70.94.141(2) and 142 and NWCAA Regulation 120 (Subpoena powers to compel attendance and production of evidence); RCW 70.94.211 and NWCAA Regulation 131 (Notices of violation and orders to take necessary corrective action); RCW 70.94.425 and NWCAA Regulation 134 (Right to obtain judicial injunctive relief, including restraining orders, as to acts or practices in violation of chapter 70.94 RCW); RCW 70.94.430 and NWCAA Regulation 132 (Right to seek criminal sanction); RCW 70.94.431 and NWCAA Regulation 133 (Imposition of civil penalties); and RCW 70.94.860 (Authority to take delegation of federal programs).

c.) Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

NWCAA has the legal authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping, and to make inspections and conduct tests as follows: RCW 70.94.141(2) and 142 and NWCAA Regulation 120 (Subpoena powers to compel attendance and production of evidence); RCW 70.94.141(3) and NWCAA Regulation 121 (General authority to issue orders to effectuate and enforce chapter 70.94 RCW); RCW 70.94.141(4) (Require access

to books and records, files, and other information specific to the control, recovery, or release of air contaminants); RCW 70.94.151 (Sources subject to registration required to submit emission and other relevant information); RCW 70.94.152 (Notice of construction of new contaminant source required, plan submission and approval); See also NWCAA Regulation 300, 301, 303, and 324.2; WAC 173-400-111, 112 and 113; RCW 70.94.161(2), chapter 173-401 WAC, and NWCAA Regulation 322 (Establish operating permit program satisfying FCAA requirements); RCW 70.94.161(6) (Permit program applicants required to submit compliance plan); RCW 70.94.200 and NWCAA Regulation 110 (Obtain access, conduct inspections and testing of sources as to air contaminants); WAC 173-400-105 (Require records, monitoring, access, and reporting); WAC 173-400-161 (Issue orders to implement compliance schedules); WAC 173-401-615 (Required recordkeeping); WAC 173-401-620(2)(e) (Duty to provide information); and WAC 173-401-630 (Inspection and entry, compliance schedule, and periodic compliance certifications).

- d.) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.

NWCAA further has the legal authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports on the nature and amounts of emissions from such facilities as follows: RCW 70.94.141(3) and NWCAA Regulation 121 (General authority to issue orders to effectuate and enforce chapter 70.94 RCW); RCW 70.94.141(9) (Collect and disseminate data); RCW 70.94.151(1) and (2) (Require registration and reporting for air contaminant sources); RCW 70.94.152 (Notice of construction of new contaminant source required, plan submission and approval); See also NWCAA Regulation 300, 301, 303, and 324.2; WAC 173-400-111, 112 and 113; RCW 70.94.161(2), chapter 173-401 WAC, and NWCAA Regulation 322 (Establish operating permit program satisfying FCAA requirements); NWCAA Regulation 150 and WAC 173-400-105 (Emissions inventories); and chapter 42.56 RCW and NWCAA Regulation 106 (Public Records Act requiring NWCAA to make available for public inspection all records, subject only to very narrowly defined exceptions.)

All the authorities identified above are contained in statutes and regulations which have been lawfully adopted as of the date of this letter and fully effective. In summary, based on all these authorities it is my opinion that NWCAA has the legal authority to receive delegation and to ensure that the Federal Plan will be implemented and enforced relative to the designated facilities.

Sincerely,



Laughlan H. Clark

Encs. Ref.

LHC/mw

cc: Client

NWCAA OPINION LETTER TABLE OF AUTHORITIES

STATUTES
RCW 70.94.141
RCW 70.94.142
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RCW 70.94.141

Air pollution control authority—Powers and duties of activated authority.

The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, * 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter.

[1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

NOTES:

***Reviser's note:** RCW 34.05.355 was repealed by 1995 c 403 § 305.

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

RCW 70.94.142

Subpoena powers—Witnesses, expenses and mileage—Rules and regulations.

In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181 and 70.94.221, the board or the department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be statewide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or department, shall be paid by the board or department. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing, or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or department and otherwise in accordance with law, shall punish him or her as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The department may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter.

[2012 c 117 § 407; 1987 c 109 § 35; 1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

NOTES:

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 70.94.151**Classification of air contaminant sources—Registration—Fee—Registration program defined—Adoption of rules requiring persons to report emissions of greenhouse gases.**

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity

of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW 70.235.010 where those emissions from a single facility, source, or site, or from fossil fuels sold in Washington by a single supplier meet or exceed ten thousand metric tons of carbon dioxide equivalent annually. The department may phase in the requirement to report greenhouse gas emissions until the reporting threshold in this subsection is met, which must occur by January 1, 2012. In addition, the rules must require that:

(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass;

(ii) Reporting will start in 2010 for 2009 emissions. Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by October 31st of the year in which the report is due. However, starting in 2011, a person who is required to report greenhouse gas emissions to the United States environmental protection agency under 40 C.F.R. Part 98, as adopted on September 22, 2009, must submit the report required under this section to the department concurrent with the submission to the United States environmental protection agency. Except as otherwise provided in this section, the data for emissions in Washington and any corrections thereto that are reported to the United States environmental protection agency must be the emissions data reported to the department; and

(iii) Emissions of carbon dioxide associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington where the annual emissions associated with that combustion or oxidation equal or exceed ten thousand metric tons be reported to the department. Each person who is required to file periodic tax reports of motor vehicle fuel sales under *RCW 82.36.031 or special fuel sales under **RCW 82.38.150, or each distributor of aircraft fuel required to file periodic tax reports under ***RCW 82.42.040 must report to the department the annual emissions of carbon dioxide from the complete combustion or oxidation of the fuels listed in those reports as sold in the state of Washington. The department shall not require suppliers to use additional data to calculate greenhouse gas emissions other than the data the suppliers report to the department of licensing. The rules may allow this information to be aggregated when reported to the department. The department and the department of licensing shall enter into an interagency

agreement to ensure proprietary and confidential information is protected if the departments share reported information. Any proprietary or confidential information exempt from disclosure when reported to the department of licensing is exempt from disclosure when shared by the department of licensing with the department under this provision.

(b)(i) Except as otherwise provided in this subsection, the rules adopted by the department under (a) of this subsection must be consistent with the regulations adopted by the United States environmental protection agency in 40 C.F.R. Part 98 on September 22, 2009.

(ii) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70.235.010 only if the gas has been designated as a greenhouse gas by the United States congress or by the United States environmental protection agency. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70.235.010, the department shall notify the appropriate committees of the legislature. Decisions to amend the rule to include additional gases must be made prior to December 1st of any year and the amended rule may not take effect before the end of the regular legislative session in the next year.

(iii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than ten thousand metric tons carbon dioxide equivalent annually.

(iv) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c) The department shall review and if necessary update its rules whenever the United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases. However, the department shall not amend its rules in a manner that conflicts with (a) of this subsection.

(d) The department shall share any reporting information reported to it with the local air authority in which the person reporting under the rules adopted by the department operates.

(e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction. However, neither the department nor a local air authority approved under this section are authorized to assess enforcement penalties on persons required to report under (a) of this subsection until six months after the department adopts its reporting rule in 2010.

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

(g) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this

section does not indicate whether such a person, source, or category is appropriate for inclusion in state, regional, or national greenhouse gas reduction programs or strategies. Furthermore, aircraft fuel purchased in the state may not be considered equivalent to aircraft fuel combusted in the state.

(h)(i) The definitions in RCW 70.235.010 apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in *RCW 82.36.010; (B) a special fuel supplier or a special fuel importer, as those terms are defined in ****RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms are defined in RCW 82.42.010.

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator, as those terms are defined by the United States environmental protection agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on September 22, 2009; and (B) a supplier.

[2010 c 146 § 2; 2008 c 14 § 5; 2005 c 138 § 1; 1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

NOTES:

Reviser's note: *(1) Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2016.

** (2) RCW 82.38.150 was amended by 2013 c 225 § 116, deleting the term "special fuel," effective July 1, 2016.

*** (3) RCW 82.42.040 was amended by 2013 c 225 § 304, removing the requirement of "periodic tax reports," effective July 1, 2016. See RCW 82.42.140.

**** (4) RCW 82.38.020 was amended by 2013 c 225 § 102, deleting the definitions of "special fuel supplier" and "special fuel importer," effective July 1, 2016.

Findings—Intent—Scope of chapter 14, Laws of 2008—2008 c 14: See RCW 70.235.005 and 70.235.900.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 70.94.152**Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined.**

(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single-family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be 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.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or

devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board 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 sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment.

[1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

NOTES:

Reviser's note: This section was amended by 1996 c 29 § 1 and by 1996 c 67 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with new source review program: RCW 70.94.850.

RCW 70.94.155**Control of emissions—Bubble concept—Schedules of compliance.**

(1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by permit or regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by [the] United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned.

[1991 c 199 § 305; 1981 c 224 § 1; 1973 1st ex.s. c 193 § 3.]

NOTES:

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with bubble program: RCW 70.94.850.

RCW 70.94.161**Operating permits for air contaminant sources—Generally—Fees, report to legislature.**

The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection. However, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW 70.94.030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a

standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

- (a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;
- (b) This chapter and rules adopted thereunder;
- (c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;
- (d) Chapter 70.98 RCW and rules adopted thereunder; and
- (e) Chapter 80.50 RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW 70.94.395 shall be filed with the department. Permit program sources outside the territorial jurisdiction of

a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal-fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

- (i) The number of sources;
- (ii) The complexity of sources; and
- (iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15)(a) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1, 1993, the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

(b) All fees identified in this section shall be due and payable on March 1, 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW 70.94.161 do not have the effect of terminating, or in any way modifying, any liability, civil or

criminal, incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) Emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required by RCW 70.94.151. The reporting provisions of RCW 70.94.151 shall not apply to any other emissions from any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program.

[2008 c 14 § 6; 1993 c 252 § 5; 1991 c 199 § 301.]

NOTES:

Findings—Intent—Scope of chapter 14, Laws of 2008—2008 c 14: See RCW 70.235.005 and 70.235.900.

Finding—1991 c 199: See note following RCW 70.94.011.

Air operating permit account: RCW 70.94.015.

RCW 70.94.200

Investigation of conditions by control officer or department—Entering private, public property.

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

[1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

NOTES:

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 70.94.331**Powers and duties of department.**

- (1) The department shall have all the powers as provided in RCW 70.94.141.
- (2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall:
 - (a) Adopt rules establishing air quality objectives and air quality standards;
 - (b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new woodstoves and opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;
 - (c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.
- (3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new woodstoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.
- (4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.
- (5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. No such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies.

[1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

NOTES:

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1985 c 372: See note following RCW 70.98.050.

RCW 70.94.380**Emission control requirements.**

(1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: PROVIDED, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.30 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[(2)] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new woodstoves and the opacity levels for residential solid fuel burning devices shall be statewide.

[1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

NOTES:

Severability—1987 c 405: See note following RCW 70.94.450.

RCW 42.56.070**Documents and indexes to be made public.**

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused

only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

[2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

NOTES:

***Reviser's note:** Subsection (6) of this section was renumbered as subsection (7) by 1992 c 139 § 3; and subsection (7) was subsequently renumbered as subsection (9) by 1995 c 341 § 1.

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Effective date—1989 c 175: See note following RCW 34.05.010.

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

Board in writing and shall include minority opinions in cases of serious disagreement.

- 103.4 The Control Officer is empowered by the board to sign official complaints and/or issue violations and/or apply to any court of competent jurisdiction for necessary orders and with Board approval or ratification, commence legal action. Nothing herein contained shall be construed to limit the Control Officer from using any other legal means to enforce the provisions of the Regulations of the NWCAA.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, April 14, 1993

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

- 104.1 All provisions of State Law that are in effect as of June 8, 2016, which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedure Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except - -035, -036, -040(1), -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.
- 104.2 All provisions of the following federal rules that are in effect as of June 8, 2016 are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards); 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O,

Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWW, YYYYY, ZZZZZ, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHHH, JJJJJ, MMMMM, NNNNN, QQQQQ, SSSSS, TTTTT, VVVVV, WWWW, XXXXX, ZZZZZ, AAAAA, DDDDD, EEEEE, and HHHHH; 40 CFR Part 65 (Consolidated Federal Air Rule); and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016

SECTION 105 - SEPARABILITY

- 105.1 If a section of the Regulation of the NWCAA is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the constitutionality or validity of every other provisions of the Regulation of the NWCAA shall not be affected thereby.

SECTION 106 - PUBLIC RECORDS

- 106.1 The purpose of this section is to implement the requirements of RCW 42.56 Public Records.
- 106.2 Definitions
- 106.21 The terms "agency", "public record", and "writing" shall have the same meaning as stated in RCW 42.17.020.
- 106.3 Public records available
- 106.31 All public records of the NWCAA are available for public inspection and copying at its office located at 1600 South Second Street, Mount Vernon, Washington 98273-5202 pursuant to these rules subject to subsections 106.32, 106.33, and 106.34 of this section.
- 106.32 Availability of public records is subject to exemptions and requirements of RCW 42.56.070.
- 106.33 When a public record includes information, the disclosure of which would lead to an unreasonable invasion of personal privacy, and the

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NWCAA becomes aware of this fact, the NWCAA shall delete such information before making the record available.

106.34 Within 5 days of receiving a public records request the NWCAA will respond by either:

- (a) Providing the records requested
- (b) Acknowledging the request and providing a reasonable estimate of time the agency needs to respond to the request, or
- (c) Denying the public request.

106.4 Records Index. The NWCAA does not maintain an index of just the public records listed in RCW 42.56.070. The NWCAA's Board of Directors are of the opinion that the establishment of such an index would be unduly burdensome and interfere with the NWCAA's operation because a significant and integral portion of the NWCAA's records are exempt from public inspection and copying pursuant to RCW 42.56.070. The release of such records would be an unreasonable invasion of personal privacy or the violation of the confidentiality of records and information provisions of the State Clean Air Act (RCW 70.94.205).

The NWCAA is in substantive compliance with RCW 42.56.070 by making available for public inspection and copying public records listed in RCW 42.56.070(7)(a)(b),(8) and (9). These include promulgated regulations of the NWCAA, final opinions made in adjudicated cases, minutes and resolutions of the Board of Directors, monthly activity reports, policy memorandums of the Control Officer, logs of Notice of Violations issued, upset, breakdown and startup reports, assessment of penalties, index of registered sources, annual emission inventory summaries and summaries of ambient air monitoring data, annual state and federal grant applications, including the annual program plan, certification to operate, inspection reports for air pollution sources, variance and notice of construction records with confidential records and information deleted in accordance with RCW 70.94.205.

The Control Officer or designee shall assist any person to obtain public records requested from the NWCAA's record files.

106.5 Request for public records.

106.51 All requests for inspection or copying of public records shall be made on a form as follows:

106.52 REQUEST FOR PUBLIC RECORDS

Date: _____ Time: _____

Name: _____

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Address: _____

Telephone No.: _____

Description of Records: _____

I certify that lists of individuals obtained through this request for public records will not be used for commercial purposes.

Signature

FOR NWCAA USE:

Number of Copies: _____

Number of Pages: _____

Per Page Charge: \$ _____

Total Charge: \$ _____

All requests made in person may be made at the NWCAA office during regular business hours, Monday through Friday, excluding legal holidays.

A request for inspection or copying of public records may be made by mail, email or fax – containing the following information:

- (a) The name and address of the person making the request and the organization the person represents.
- (b) The time of day and calendar date on which the person wishes to inspect the public records.
- (c) A description of the public records requested.
- (d) A statement whether access to copying equipment is desired.
- (e) A phone number where the person can be reached in case the Control Officer or designee needs to contact the person for further description of the material or any other reason.
- (f) A signed statement certifying that the person making the request will not use, for commercial purposes, any information which identifies an individual or individuals.

All requests must be received by the NWCAA at least three business days before the requested date of inspection to allow the Control Officer

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or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

- 106.6 Fees. No fee shall be charged for the inspection of public records. For printed, typed and written material a maximum size of 8 1/2" by 14", the NWCAA shall charge a reasonable fee, determined from time to time by the Control Officer, for providing copies of public records and for use of the NWCAA's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the NWCAA for its actual costs incident to such copying. Copies of maps, photos, reports, and other nonstandard items shall be furnished at the regular price established by the NWCAA. When other special copy work for nonstandard items is requested, the fee charged will reflect the total cost, including the time of NWCAA personnel.
- 106.7 Statement of reason for denial of public records request. When the NWCAA refuses, in whole or part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.
- 106.8 Review of denials of public records request.
- 106.81 Any person who objects to the refusal of a written request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the Control Officer or designee which constituted or accompanied the refusal.
- 106.82 Immediately after receiving a written request for review of a decision denying a public record, the Control Officer or designee denying the request shall refer it to the NWCAA Board of Directors. The Board shall promptly consider the matter and either affirm or reverse such refusal. The final decision shall be sent to the objecting persons.
- 106.83 Whenever the agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request judicial review of the agency decision.
- 106.9 Protection of public records. In order to adequately protect the public records of the NWCAA, the following guidelines shall be adhered to by any person inspecting such public records:
- 106.91 No public records shall be removed from the NWCAA premises.
- 106.92 Inspection of any public record shall be conducted in the presence of a designated NWCAA employee.

- 106.93 No public records may be marked or defaced in any manner during inspection.
- 106.94 Public records, which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by the Control Officer or designee.
- 106.95 Access to file cabinets, shelves, and other storage areas is restricted to NWCAA personnel, unless other arrangements are made with the Control Officer or designee.

PASSED: August 9, 1978 AMENDED: November 8, 2007

SECTION 110--INVESTIGATION AND STUDIES

- 110.1 The Control Officer and/or his qualified agents may make any reasonable investigation or study which is necessary for the purpose of standards or any amendments thereto on reducing the amount or kind of contaminant.
- 110.2 When investigating conditions specific to the control, recovery or release of air contaminants, the Control Officer or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property, except non-multiple unit private dwellings housing two families or less.
- 110.3 If an authorized employee of the NWCAA, during the course of an inspection desires to obtain a sample of air contaminant, he shall notify the owner or lessee of the time and place of obtaining a sample so the owner or lessee has the opportunity to take a similar sample at the same time and place. A receipt shall be given to the owner or lessee for the sample obtained.

PASSED: January 8, 1969

SECTION 111 - INTERFERENCE OR OBSTRUCTION

- 111.1 No person shall willfully interfere with or obstruct the Control Officer or any NWCAA employee and/or assigned agent in carrying out any lawful duty.

PASSED: January 8, 1969

SECTION 112 - FALSE AND MISLEADING ORAL STATEMENT: UNLAWFUL REPRODUCTION OR ALTERATION OF DOCUMENTS

- 112.1 No person shall willfully make a false or misleading oral statement to the NWCAA Board, Control Officer, or their duly authorized representatives as to any matter within the jurisdiction of the Board.

SECTION 120 - HEARINGS

- 120.1 The Board shall retain authority to hold hearings, issue subpoenas for witnesses and evidence, and take testimony under oath and do all things not prohibited by or in a conflict with state law, in any hearing held under the Regulations of the NWCAA.
- 120.11 The Board shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. The Board shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.
- 120.12 All evidence, including but not limited to records, and documents in the possession of the Board of which it desired to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- 120.13 Every party shall have the right to cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.
- 120.14 The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may utilize their experience, technical competence, and their specialized knowledge in the evaluation of the evidence presented to them.
- 120.2 Any hearings held under this section, under the Washington Clean Air Act (RCW 70.94 and 43.21B) shall be pursuant to the provisions of RCW 34.05 as now or hereafter amended.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1977, April 14, 1993, November 8, 2007

SECTION 121 - ORDERS

- 121.1 The NWCAA may issue such orders as may be necessary to effectuate and enforce the purposes of chapter 70.94 RCW or the rules adopted thereunder.
- 121.2 If the NWCAA has reason to believe that any provision of chapter 70.94 RCW or the rules adopted thereunder has been violated, the NWCAA may, in addition to any other remedy of law, issue an order that requires corrective action be taken within a reasonable time. Such compliance orders may

include dates by which the violation or violations shall cease and may set time schedules for necessary action in preventing, abating, or controlling the emissions.

- 121.3 Orders of approval related to the establishment of a source are addressed under NWCAA 300, in lieu of the requirements in this section.
- 121.4 General Orders of Approval are issued under WAC 173-400-560, as adopted in NWCAA 104.1, in lieu of the requirements in this section.
- 121.5 Any order issued under this section that includes an action listed in NWCAA 305.2(A) is subject to the public involvement provisions of NWCAA 305.
- 121.6 For regulatory orders related to a RACT determination, a fee shall be assessed in accordance with NWCAA 309.7. For all other orders issued under NWCAA 121, the NWCAA shall assess a fee as specified in NWCAA 324.7 to cover the costs of processing and issuing such order.
- 121.7 When an applicant requests a regulatory order to limit the potential to emit of any air contaminant or contaminants pursuant to WAC 173-400-091, as adopted in NWCAA 104.1, or requests a modification to such an order, the NWCAA shall issue such order consistent with the requirements of WAC 173-400-091 as adopted in NWCAA 104.1 in addition to the requirements of this Regulation.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 8, 2007, March 14, 2013

SECTION 123 – APPEAL OF ORDERS

- 123.1 Any order issued by the NWCAA shall become final unless, no later than thirty (30) days after the date that the order is served, any person appeals the order to the Pollution Control Hearings Board as provided by chapter 43.21B RCW. This is the exclusive means of appeal of such an order.
- 123.2 Any order issued by the NWCAA under appeal in accordance with chapter 43.21B RCW shall remain in effect during the pendency of such appeal unless the Control Officer, at his/her discretion, issues a stay of the original order. At any time during the pendency of an appeal of such an order to the Pollution Control Hearings Board, the appellant may apply to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW to stay or vacate the order.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 15, 1988, November 8, 2007, March 14, 2013

**SECTION 124 - DISPLAY OF ORDERS, CERTIFICATES AND OTHER NOTICES:
REMOVAL OR MUTILATION PROHIBITED**

- 124.1 Any order, registration certificate or other certificate required to be obtained by the Regulations of the NWCAA shall be available on the premises designated on the order or certificate.
- 124.2 In the event that the NWCAA requires a notice to be displayed, it shall be posted. No person shall mutilate, obstruct or remove any notice unless authorized to do so by the Board or the Control Officer.

PASSED: January 8, 1969 AMENDED: February 14, 1973

SECTION 131 - NOTICE TO VIOLATORS

- 131.1 At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, or NWCAA 132 or 133, the NWCAA shall cause written notice of violation to be served upon the alleged violator. The notice shall specify the provisions of chapter 70.94 RCW or the orders, rules, or regulations adopted pursuant thereto alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order pursuant to NWCAA 121 directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Control Officer may require that the alleged violator appear before the Board for a hearing pursuant to NWCAA 120. Every notice of violation shall offer to the alleged violator an opportunity to meet with the NWCAA prior to the commencement of enforcement action.
- 131.2 The NWCAA, upon issuance of notice of violation, may require the alleged violator to respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken. Failure to respond shall constitute a prima facie violation of this Regulation and the NWCAA may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

PASSED: January 8, 1969 AMENDED: February 14, 1973, March 13, 1997, July 14, 2005, November 8, 2007, March 14, 2013

SECTION 132 - CRIMINAL PENALTY

- 132.1 Any person who knowingly violates any of the provisions of Chapter 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000, or by imprisonment in the county jail for up to 364 days, or by both for each separate violation.

- 132.2 Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for up to 364 days, or both.
- 132.3 Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than \$50,000, or by imprisonment for not more than five years, or both.
- 132.4 Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 as referenced in NWCAA 104.1 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$5,000.
- 132.5 Any person who knowingly renders inaccurate any required monitoring device or method required by chapter 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA is guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$10,000 per day for each separate violation.
- 132.6 Any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by chapter 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation, in force pursuant thereto, including the Regulation of the NWCAA is guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$10,000 per day for each separate violation.

PASSED: January 6, 1969 AMENDED: April 14, 1993, October 13, 1994, March 13, 1997, November 8, 2007, August 13, 2015

SECTION 133 - CIVIL PENALTY

- 133.1 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 RCW, or any of the rules in force pursuant thereto, including the Regulation of the NWCAA may incur a civil penalty in an amount not to exceed \$19,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

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Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than \$19,000 for each day of continued noncompliance.

133.2 The penalty is due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

(A) Within 30 days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

(B) If such penalty is not paid to the NWCAA within 30 days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

(C) Any judgment will bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

133.4 In addition to other penalties, 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 90 days late with such payments, may be subject to a penalty equal to three times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within five years from the date of said suspension. After five years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015

SECTION 134 - RESTRAINING ORDERS - INJUNCTIONS

- 134.1 Notwithstanding the existence or use of any other remedy, 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 provisions of the Regulation of the NWCAA, or any rule, regulation or order issued by the Board or the Control Officer or his authorized agent, the Board, 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.

PASSED: January 8, 1969 AMENDED: October 1, 1969, February 14, 1973,
February 10, 1993

SECTION 135 - ASSURANCE OF DISCONTINUANCE

- 135.1 The NWCAA may accept an assurance of discontinuance of any act or practice deemed in violation of these Regulations from any person engaging in, or who has engaged in, such an act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of these Regulations or an order issued which makes the practice unlawful for the purpose of securing an injunction or other relief from the Superior Court as provided in Section 134.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978,
November 8, 2007

SECTION 140 - REPORTING BY GOVERNMENT AGENCIES

- 140.1 State and Federal agencies, within the jurisdiction of the NWCAA, which are required by State and Federal law to abide by the Regulation of the NWCAA shall notify the NWCAA, prior to construction of any facility which has the potential to create air pollution, the name and location of the agency involved, the nature of the construction and the type and quantity of equipment involved and the type and quantity of pollutants involved.
- 140.2 All governmental agencies which lie wholly or partially within the jurisdiction of the NWCAA, including but not limited to city and county planning agencies which recommend or adopt land-use and zoning regulations including the issuance of variances such as conditional or special use permits for the construction of any facilities which they have reason to believe may emit air pollutants; shall notify the NWCAA of any such action or construction prior to recommending or adopting of such regulations or the issuance of any such permits.

PASSED: February 14, 1973 AMENDED: August 9, 1978, April 14, 1993

SECTION 150 - POLLUTANT DISCLOSURE - REPORTING BY AIR CONTAMINANT SOURCES

- 150.1 Every person operating a registered air contaminant source with actual annual emissions of 25 tons or more of a single air pollutant or a source subject to the operating permit program shall file annually at a time determined by the NWCAA and on forms furnished by the NWCAA a report setting forth:
- 150.11 The nature of the enterprise.
 - 150.12 A list of process materials which are potentially significant sources of emissions used in, and incidental to, its manufacturing processes, including by-products and waste products.
 - 150.13 The estimated calendar year emissions of each criteria air pollutant, hazardous air pollutant and volatile organic compounds (VOC). Every person filing an annual emissions inventory shall retain at the facility the calculations and emission factors used to obtain the estimates.
 - 150.14 Annual calendar year emission reports shall be submitted to the NWCAA by no later than April 15 of the following year (e.g., 2010 emission report is due April 15, 2011). If the emission report is not submitted by the required date and the emissions are used to determine operating permit fees as described in Section 322.4, potential to emit may be used to determine said fees.
- 150.2 Every person operating a registered source other than those identified in 150.1 may be required by the Control Officer to submit periodic emission reports.
- 150.3 Every person operating any source or sources which directly or indirectly emits or contributes air contaminants within the jurisdictional area of the NWCAA may be required to report to the Control Officer, at a time or times, selected by the Control Officer, such as production rates, sales or other data (including quantities of products used or any other information) as may be required to estimate the emissions from the various air contaminant sources. Data will be held confidential under Section 114 if so requested by the owner or manager and such request meets the requirements of Section 114. Such sources include, but are not limited to, dealers in gaseous liquid or solid fossil fuels for public consumption in motor vehicles or for space heating purposes.

PASSED: February 14, 1973 AMENDED: September 8, 1993, December 8, 1993, November 12, 1999, November 8, 2007

SECTION 300 – NEW SOURCE REVIEW

300.1 A Notice of Construction and/or PSD permit application must be filed by the owner or operator and an Order of Approval and/or PSD permit issued by the NWCAA, or other designated permitting agency, prior to the establishment of any new source, except for:

- a) Those stationary sources exempt under NWCAA 300.4 (categorical) or NWCAA 300.5 (emission thresholds); and
- b) Relocation of any temporary source operating in accordance with NWCAA Section 301.

For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in NWCAA Section 200, and "new source" shall include any "modification" to an existing "stationary source", as those terms are defined in NWCAA Section 200.

300.2 Regardless of any other subsection of this section, a Notice of Construction or PSD permit application must be filed and an order of approval or PSD permit issued by the NWCAA prior to establishment of any of the following new sources:

- a) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Subpart AAA (Wood stoves) and such provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines;
- b) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;
- c) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, and Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines;
- d) Any project that qualifies as a new major stationary source, or a major modification;
- e) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

300.3 New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing stationary source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-113, as applicable.

300.4 Emission unit and activity exemptions.

Except as provided in NWCAA 300.1 and 300.2 of this section, establishment of a new emission unit that falls within one of the categories listed below is exempt from new source review. Modification of any emission unit listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The installation or modification of a unit exempt under this subsection does not require the filing of a Notice of Construction application.

a) Maintenance/construction:

- 1) Cleaning and sweeping of streets and paved surfaces;
- 2) Concrete application, and installation;
- 3) Dredging wet spoils handling and placement;
- 4) Paving application and maintenance, excluding asphalt plants;
- 5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house-keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);
- 6) Plumbing installation, plumbing protective coating application and maintenance activities;
- 7) Roofing application;
- 8) Insulation application and maintenance, excluding products for resale;
- 9) Janitorial services and consumer use of janitorial products.

b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks therefore it is recommended that the owner or operator contact the NWCAA to determine the exemption status of storage tanks prior to their installation.

- 1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;
- 2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

- 3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;
 - 4) Process and white water storage tanks;
 - 5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);
 - 6) Operation, loading and unloading of storage tanks, less than or equal to 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21° C;
 - 7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;
 - 8) 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) A project with combined aggregate heat input capacity from combustion units, less than or equal to any of the following:
- 1) Less than or equal to 500,000 Btu/hr coal with less than or equal to 0.5% sulfur or other fuels with less than or equal to 0.5% sulfur;
 - 2) Less than or equal to 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;
 - 3) Less than or equal to 400,000 Btu/hr wood waste or paper;
 - 4) Less than 1,000,000 Btu/hr kerosene, #1, or #2 fuel oil and with less than or equal to 0.05% sulfur;
 - 5) Less than or equal to 10,000,000 Btu/hr natural gas, propane, or LPG.

Note: the heat input capacity of each combustion unit shall be based on the higher heating value of fuel to be used.

- d) Material handling:
- 1) Continuous digester chip feeders;
 - 2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture;

- 3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%;
 - 4) 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 Hg @21°C, with lids or other appropriate closure.
- e) Water treatment:
- 1) Septic sewer systems, not including active wastewater treatment facilities;
 - 2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;
 - 3) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;
 - 4) Process water filtration system and demineralizer vents;
 - 5) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;
 - 6) Demineralizer tanks;
 - 7) Alum tanks;
 - 8) Clean water condensate tanks.
- f) Environmental chambers and laboratory equipment:
- 1) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;
 - 2) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;
 - 3) Installation or modification of a single laboratory fume hood;
 - 4) Laboratory calibration and maintenance equipment.
- g) Monitoring/quality assurance/testing:
- 1) Equipment and instrumentation used for quality control/assurance or inspection purpose;
 - 2) Hydraulic and hydrostatic testing equipment;
 - 3) Sample gathering, preparation and management;
 - 4) Vents from continuous emission monitors and other analyzers.

- h) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent.
- i) Emergency Stationary Compression Ignition (CI) Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance and operating less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary CI ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.
- j) Miscellaneous:
 - 1) Single-family residences and duplexes;
 - 2) Plastic pipe welding;
 - 3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
 - 4) Comfort air conditioning;
 - 5) Flares used to indicate danger to the public;
 - 6) Natural and forced air vents and stacks for bathroom/toilet activities;
 - 7) Personal care activities;
 - 8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
 - 9) Tobacco smoking rooms and areas;
 - 10) Noncommercial smokehouses;
 - 11) Blacksmith forges for single forges;
 - 12) Vehicle maintenance activities, not including vehicle surface coating;
 - 13) Vehicle or equipment washing (see c) of this subsection for threshold for boilers);
 - 14) Wax application;

- 15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- 16) Ozone generators and ozonation equipment;
- 17) Solar simulators;
- 18) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- 19) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- 20) Pulse capacitors;
- 21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
- 22) Fire suppression equipment;
- 23) Recovery boiler blow-down tank;
- 24) Screw press vents;
- 25) Drop hammers or hydraulic presses for forging or metal working;
- 26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- 27) Kraft lime mud storage tanks and process vessels;
- 28) Lime grits washers, filters and handling;
- 29) Lime mud filtrate tanks;
- 30) Lime mud water;
- 31) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
- 32) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- 33) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;
- 34) Surface coating, aqueous solution or suspension containing less than or equal to 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

- 35) Cleaning and stripping activities and equipment using solutions having less than or equal to 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
- 36) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.
- 37) Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

300.5 Exemptions Based on Emissions Thresholds

- a) Except as provided in NWCAA 300.1 and 300.2 of this section and in this subsection:
 - 1) A new emissions unit that has an uncontrolled potential to emit below each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.
 - 2) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.
- b) The owner or operator seeking to exempt a project from new source review under this section shall notify, and upon request, file a brief project summary with the NWCAA thirty (30) days prior to beginning actual construction on the project. If the NWCAA determines that the project will have more than a de Minimus impact on air quality as defined in 300.5 d), the NWCAA shall require the filing of a Notice of Construction or PSD permit application. The NWCAA may require the owner or operator to demonstrate that the emissions increase from the new emissions unit is smaller than all of the thresholds listed below. In accordance with NWCAA 324.2, a filing and NOC applicability determination fee shall apply when the NWCAA issues a written determination that a project is exempt for new source review.
- c) The owner or operator may begin actual construction on the project thirty-one (31) days after the NWCAA receives the project summary, unless the NWCAA notifies the owner or operator within thirty (30) days that the proposed new source requires a Notice of Construction or PSD permit application.
- d) Exemption threshold table:

POLLUTANT THRESHOLD LEVEL (ton per year)

- 1) Total Suspended Particulates: 1.25
- 2) PM_{10} : 0.75
- 3) $PM_{2.5}$: 0.5
- 4) Sulfur Oxides: 2.0
- 5) Nitrogen Oxides: 2.0
- 6) Volatile Organic Compounds: total 2.0
- 7) Carbon Monoxide: 5.0
- 8) Lead: 0.005
- 9) Ozone Depleting Substances: total 1.0 (in effect on July 1, 2000)
- 10) Toxic Air Pollutants: as specified in chapter 173-460 WAC.

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

300.6 The Control Officer may require that a new source, that would otherwise be exempt under this section, submit a Notice of Construction application and be granted approval as specified in this section. This discretionary determination shall be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer, appropriate information as necessary to make this determination.

300.7 Notice of Construction – Submittal Requirements

Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;
- c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with NWCAA 155; and
- d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and
- e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special protection requirements for

Class I areas, shall send a copy of the application to the responsible federal land manager.

300.8 Notice of Construction - Completeness Determination.

- a) Within thirty (30) days after receiving a Notice of Construction or PSD permit application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of additional information necessary to complete the application.
- b) For a project subject to the Special protection requirements for federal Class I areas in 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).
- c) For a project subject to PSD review under WAC 173-400-720 through -750, a completeness determination includes a determination that the application provides all information required to conduct the PSD review.

300.9 Notice of Construction - Final Determination

- a) Within sixty (60) days of receipt of a complete Notice of Construction or PSD permit application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 on a proposed decision, followed as promptly as possible by a final decision.
- b) A person seeking approval to construct or modify a stationary source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the Notice of Construction or PSD permit application required by this section. A Notice of Construction or PSD permit application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. A PSD permit application under WAC 173-400-720 through -750, a notice of nonattainment area construction application for a major modification in a nonattainment area, or a Notice of Construction application for a major stationary source in a nonattainment area must also comply with WAC 173-400-171.
- c) Every final determination on a Notice of Construction or PSD permit application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.
- d) If the new source is a major stationary source or the change is a major modification, the application shall be processed in accordance with the applicable sections of WAC 173-400-112, 113, 117 and 171. The permitting agency shall:

- 1) Submit any control technology determination included in a final Order of Approval or PSD permit to the RACT/BACT/LAER clearinghouse maintained by EPA; and
- 2) Send a copy of the final Order of Approval or PSD permit to EPA.

300.10 Order of Approval - Appeals

An Order of Approval or PSD permit, any conditions contained in an Order of Approval or PSD permit, or the denial of a Notice of Construction or PSD permit application may be appealed to the Pollution Control Hearings Board as provided in chapter 43.21B RCW. The NWCAA shall promptly mail copies of each order approving or denying a Notice of Construction or PSD permit 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.

300.11 Order of Approval - Time Limitations.

An Order of Approval or PSD permit 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 NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171. 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.

300.12 Order of Approval - Change of Conditions.

- a) The owner or operator may request, at any time, a change in conditions of an Order of Approval or PSD permit and the NWCAA may approve the request provided the NWCAA finds that:
 - 1) The change in conditions will not cause the stationary source to exceed an emissions standard;
 - 2) No ambient air quality standard or PSD increment will be exceeded as a result of the change;
 - 3) The change will not adversely impact the ability of Ecology or the NWCAA to determine compliance with an emissions standard;
 - 4) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

- 5) The revised order meets the requirements of this section and WAC 173- 400-110, 173-400-112, 173-400-113 and 173-400-720 through -750, as applicable.
- b) Actions taken under this subsection are subject to the public involvement provisions of NWCAA Section 305 or WAC 173-400-171 as applicable.
- c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a Notice of Construction application, that application must be acted upon using the timelines found in NWCAA 300.8 and NWCAA 300.9 and the fee schedule found in NWCAA 324.

300.13 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

- a) 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 NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.
- b) For projects not otherwise reviewable under NWCAA Section 300, the NWCAA may:
 - 1) Require that the owner or operator employ RACT for the affected emission unit;
 - 2) Prescribe reasonable operation and maintenance conditions for the control equipment; and
 - 3) Prescribe other requirements as authorized by chapter 70.94 RCW.
- c) Within thirty (30) days of receipt of a Notice of Construction application under this section the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty (30) days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.
- d) Construction shall not "commence," as defined in NWCAA Section 200, on a project subject to review under this section until the NWCAA 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 the NWCAA takes no action within thirty (30) days of receipt of a complete Notice of Construction application.

- e) 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. The NWCAA 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.

300.15 Order of Approval – Requirements to Comply

It shall be unlawful for an owner or operator of a source or emission unit to not abide by the operating and reporting conditions in the Order of Approval.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, July 11, 1973, August 9, 1978, October 12, 1989, February 14, 1990, April 14, 1993, November 12, 1998, November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 13, 2015

SECTION 301 - TEMPORARY SOURCES

- 301.1 This section applies to temporary sources not exempt under NWCAA 300.4 or 300.5, which locate temporarily at sites within the jurisdiction of the NWCAA. Nonroad engines regulated by this section are limited to those listed in a) 3) of the definition of "nonroad engine" found in Section 200 of this Regulation (i.e., those that are portable or transportable, but operate in a stationary manner). The regulation of nonroad engines under this section is subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89 – State Regulation of Nonroad Internal Combustion Engines.
- 301.2 The owner or operator of a temporary source shall be allowed to operate at a temporary location without filing a Notice of Construction application or, for nonroad engines, obtaining a regulatory order from the NWCAA providing that:
 - a) The owner or operator notifies the NWCAA each calendar year of the intent to operate within the jurisdiction of the NWCAA at least fifteen (15) days prior to starting operation and pays the appropriate fees identified in NWCAA Section 324.1;
 - b) The owner or operator notifies the NWCAA of the intent to relocate within the jurisdiction of the NWCAA at least fifteen (15) days prior to relocation;

- c) The owner or operator supplies sufficient information to enable the NWCAA to determine that the operation will comply with all applicable air pollution rules and regulations;
- d) The operation does not cause a violation of ambient air quality standards;
- e) If the operation is in a nonattainment area, it shall not interfere with the scheduled attainment of ambient standards;
- f) The temporary source operates in compliance with all applicable air pollution rules and regulations;
- g) A temporary source that is considered a major stationary source within the meaning of WAC 173-400-113 shall also comply with the requirements in WAC 173-400-720 through -750;
- h) Except for nonroad engines, all temporary sources shall have a valid Order of Approval to Construct from an air quality permitting organization in the State of Washington. The temporary source shall operate in compliance with the conditions set forth in the Order of Approval to Construct. Any reports required by the Order of Approval to Construct shall be submitted to the NWCAA;
- i) Permission to operate shall not exceed ninety (90) operating days in any calendar year anywhere within the jurisdiction of the NWCAA. The NWCAA may set specific conditions for operating during that time period. No source shall continue to operate beyond the allowable 90-day period unless an Order of Approval to Construct, or for nonroad engines, a regulatory order, has been issued by the NWCAA. For the purpose of this section, an operating day shall be considered any time equipment operates within a calendar day; and
- j) Except for nonroad engines, based on the source type and emission quantity, temporary sources may be subject to new source review at the discretion of the Control Officer.

PASSED: November 12, 1998 AMENDED: March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011

SECTION 303 – WORK DONE WITHOUT AN APPROVAL

Where work for which a "Notice of Construction and Application for Approval" is required is commenced or performed prior to making application and receiving approval, the Control Officer may conduct an investigation as part of the Notice of Construction review. In such a case, an investigation fee, in addition to the fees of Section 324.2, shall be assessed in an amount equal to 3 times the fees of Section 324.2. Payment of the fees does not relieve any person from the requirement to comply with any air regulation nor from any penalties for failure to comply.

PASSED: November 12, 1998

SECTION 305 – PUBLIC INVOLVEMENT

305.1 Internet Notice

- (A) A notice shall be published on the NWCAA website for each Notice of Construction (NOC) application received by the NWCAA, and for each proposed revision to an Order of Approval to Construct (OAC) for which there is no associated NOC application. The internet notice shall remain on the NWCAA website for a minimum of 15 consecutive days and shall include the following information:
 - (1) name and location of the affected facility,
 - (2) brief description of the proposed action, and
 - (3) a statement that a public comment period may be requested within 15 days of the initial date of the internet posting.
- (B) Requests for a public comment period shall be received by the NWCAA via letter, facsimile, or electronic mail within 15 days of the initial date of the internet posting. A public notice and comment period shall be provided in accordance with this Section, for any NOC application or proposed OAC revision that receives such a request. Any NOC application or proposed OAC revision for which a public comment period is not requested may be processed without further public involvement at the end of the 15-day request period.

305.2 Actions Requiring Public Notice and Comment Period

- (A) The NWCAA shall provide public notice and a public comment period in accordance with 305.3 through 305.8 of this Section, before approving or denying any of the following types of applications or other actions:
 - (1) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2005) as part of review under Section 300 of this Regulation;
 - (2) Any order to determine Reasonably Available Control Technology (RACT);
 - (3) Any order to establish a compliance schedule or a variance;
 - (4) Any 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 limitation;

- a) 5 tons per year of carbon monoxide (CO);
- b) 2 tons per year of nitrogen oxides (NO_x);
- c) 2 tons per year of sulfur dioxide (SO₂);
- d) 1.25 tons per year of particulate matter (PM);
- e) 0.75 tons per year of fine particulate matter (PM₁₀);
- f) 2 tons per year of volatile organic compounds (VOC's);
- g) 0.005 tons per year of lead.

321.6 The Control Officer may exempt sources that do not emit measurable amounts of Class A or Class B toxic air pollutants specified in Chapter 173-460-150 WAC and Chapter 173-460-160 WAC.

PASSED: November 12, 1998 AMENDED: June 9, 2011, November 17, 2011

SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)

- 322.1 Purpose. The purpose of this section is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the Federal Clean Air Act (FCAA) Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70.94.161 and its implementing regulation Chapter 173-401 of the Washington Administrative Code (WAC).
- 322.2 Applicability. The provisions of this section shall apply to all sources within the NWCAA jurisdiction excluding those regulated by the Washington State Department of Ecology Industrial Section subject to the requirements of Section 7661(a) of the FCAA or Chapter 173-401-300 WAC.
- 322.3 Compliance. It shall be unlawful for any person to cause or allow the operation of any source subject to the requirements of Chapter 173-401 WAC without complying with the provisions of Chapter 173-401 WAC and any permit issued under its authority.
- 322.4 Air Operating Permit Fees.
- a) The NWCAA shall levy annual operating permit program fees as set forth in this section to cover the cost of administering its operating permit program.
 - b) Commencing with the effective date of the operating permit program, the NWCAA shall assess and collect annual air operating permit fees in its jurisdiction for any source specified in Section 7661(a) of Title V of the FCAA or Chapter 173-401-300 WAC (excluding sources regulated by the Washington State Department of Ecology Industrial Section). The total fees required by the NWCAA to administer the program shall

be determined by a workload analysis conducted by the staff and approved annually by a resolution by the Board of Directors. Allocation of the fees to individual affected sources shall be based on the following:

- 1) Ten percent (10%) of the total fees shall be allocated equally among all affected sources.
- 2) Ninety percent (90%) of the total fees shall be allocated based on actual emissions of regulated pollutants identified in the most recent annual emission inventory or potential emissions if actual data are unavailable. A regulated pollutant for fee calculation shall include:
 - Nitrogen oxides (NO_x);
 - Volatile organic compounds (VOC's);
 - Particulate matter with an aerodynamic particle diameter less than or equal to 10 micrometers (PM₁₀);
 - Sulfur dioxide (SO₂);
 - Lead; and
 - Any pollutant subject to the requirements under Section 112(b) of the FCAA not included in any of the above categories.
- c) Upon assessment by the NWCAA, fees are due and payable and shall be deemed delinquent if not fully paid within 90 days. Any source that fails to pay a fee imposed under this section within 90 days of the due date shall be assessed a late penalty in the amount of 50 percent of the fee. This late penalty shall be in addition to the fee assessed under this section.
- d) The NWCAA shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology to cover the Department of Ecology's program development and oversight costs attributable to subject sources within the NWCAA jurisdiction. Fees for the Department of Ecology shall be allocated to affected sources in the same manner specified in this section.
- e) An affected source subject to the operating permit program that is required to pay an annual operating permit program fee shall not be required to pay a registration fee as specified in Section 324.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 9, 2011,
November 17, 2011

SECTION 324 - FEES

324.1 Annual Registration Fees

- (A) All registered air pollution sources shall pay the appropriate fee(s), which shall be established to cover the cost of administering the program, adjusted periodically based on the three-year average change of the "December annual average - Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.
- (B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of 25 percent of the registration fee for failure to pay the registration fee within 30 days after the due date. The late penalty shall be in addition to the registration fee.

324.2 New Source Review Fees

- (A) New source review fees and fees for review of an application to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.
- (B) The applicable fee(s) shall be established to cover the direct and indirect costs of processing an application, adjusted periodically based on the three-year average change of the "December annual average - Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA.

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements, adjusted periodically based on the three-year average change

WAC 173-400-105

Records, monitoring, and reporting.

The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory will 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. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved test methods from 40 C.F.R. Parts 51, 60, 61 and 63 (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 operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

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

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

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

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

acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

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

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall 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, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any 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 such federal standards. Emission units and sources subject to those standards shall 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 shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall 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 shall 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) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval or permit. All monitoring data will be included 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, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(d) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under subsection (a) of this section, all continuous monitoring systems shall be in continuous operation.

(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 shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator shall 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 shall 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 data were recorded. The report required by this section may be combined with any excess emission report required by WAC 173-400-108. This report shall 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 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(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: 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 173-400-111

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 173-400-161

Compliance schedules.

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

(2) **Federal action.** A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included with a regulatory order are being met. Such compliance does not preclude federal enforcement action by the EPA until and unless the schedule is submitted and adopted as an amendment to the state implementation plan.

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

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

Chapter 173-401 WAC

OPERATING PERMIT REGULATION

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 173-401-830 Appendix A—Insignificant activities and emission units. [Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-830, filed 10/4/93, effective 11/4/93.] Repealed by WSR 97-21-140 (Order 97-21), filed 10/22/97, effective 11/22/97.

173-401-100

Program overview.

(1) The provisions in this chapter establish the elements of a comprehensive Washington state air operating permit program consistent with the requirements of Title V of the Federal Clean Air Act (FCAA) (42 U.S.C. 7401, et seq.).

(2) All sources subject to this regulation shall have a permit to operate that assures compliance by the source with all applicable requirements. While chapter 173-401 WAC does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(3) The requirements of this chapter, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under Title IV of the FCAA (acid rain program).

(4) Issuance of permits under this chapter may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the state, the United States Environmental Protection Agency (EPA), or the United States Army Corps of Engineers.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-100, filed 10/4/93, effective 11/4/93.]

173-401-200

Definitions.

The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

- (1) "Affected source" means a source that includes one or more affected units.
- (2) "Affected states" are the states or federally recognized Tribal Nations:
 - (a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or
 - (b) That are within fifty miles of the permitted source.
- (3) "Affected unit" means a fossil-fuel fired combustion device or a source that opts-in under 40 C.F.R. part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.
- (4) "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):
 - (a) The following provisions of the Federal Clean Air Act (FCAA):
 - (i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 C.F.R. 52;
 - (ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;
 - (iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);
 - (iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;
 - (v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;
 - (vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;
 - (vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;
 - (viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;
 - (ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;
 - (x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;
 - (xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and
 - (xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.
 - (b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.
 - (c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.
 - (d) Chapter 70.98 RCW and rules adopted thereunder.
 - (e) Chapter 80.50 RCW and rules adopted thereunder.
- (5) "Chapter 401 permit" or "permit" means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.
- (6) "Chapter 401 source" means any source subject to the permitting requirements of this chapter.

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.

(8) "Delegated authority" means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(9) "Designated representative" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(10) "Draft permit" means the version of a permit for which the permitting authority offers public participation or affected state review.

(11) "Emissions allowable under the permit" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(12) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(13) The "EPA" or the "administrator" means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(14) "Federal Clean Air Act" or "FCAA" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392. December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(15) "Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 C.F.R. §§ 70.7 and 70.8.

(16) "General permit" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(17) "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(18) "Intermittent compliance" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of noncompliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

(19) "Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;
- (c) A major stationary source as defined in part D of Title I of the FCAA, including:
 - (i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;
 - (ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;
 - (iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and
 - (iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.
- (20) "Permit modification" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.
- (21) "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).
- (22) "Permit revision" means any permit modification or administrative permit amendment.
- (23) "Permitting authority" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "Proposed permit" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 C.F.R. 70.8.

(26) "Regulated air pollutant" means the following:

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or
- (e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:
 - (i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and
 - (ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and
 - (f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(27) "Regulated pollutant (for fee calculation)," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

- (a) Carbon monoxide;
- (b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or
- (c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.
- (d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

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

(29) "Responsible official" means one of the following:

- (a) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or
 - (ii) The delegation of authority to such representative is approved in advance by the permitting authority;
- (b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;
- (c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or
- (d) For affected sources:
 - (i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and
 - (ii) The designated representative for any other purposes under 40 C.F.R. Part 70.

(30) "Section 502 (b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

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

- (a) Is owned or operated by a person that employs one hundred or fewer individuals;
- (b) Is a small business concern as defined in the Federal Small Business Act;
- (c) Is not a major source;
- (d) Does not emit fifty tons or more per year of any regulated pollutant; and
- (e) Emits less than seventy-five tons per year of all regulated pollutants.

(32) "Solid waste incineration unit" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

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

(34) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

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

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

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

(36) "Title I modification" or "modification under any provision of Title I of the FCAA" means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the

preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-200, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 11-17-037 (Order 11-04), § 173-401-200, filed 8/10/11, effective 9/10/11. Statutory Authority: RCW 70.94.161 and 70.94.510. WSR 10-24-114 (Order 10-13), § 173-401-200, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-200, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW. WSR 94-11-105 (Order 93-30), § 173-401-200, filed 5/17/94, effective 6/17/94; WSR 93-20-075 (Order 91-68), § 173-401-200, filed 10/4/93, effective 11/4/93.]

173-401-300

Applicability.

(1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

(a) Any source required by the FCAA to have an operating permit. These include the following sources:

(i) Any major source as defined in WAC 173-401-200.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the FCAA. A small municipal waste combustion unit constructed on or before August 30, 1999, and regulated under WAC 173-400-050(5) becomes subject to this chapter on July 1, 2002.

(iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) (Prevention of Accidental Releases) of the FCAA.

(iv) Any solid waste incineration units required to obtain permits under section 129 of the FCAA.

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

(v) Any "affected source" regulated under Title IV (Acid Deposition Control) of the FCAA.

(vi) Any source in a source category designated by the EPA pursuant to 40 C.F.R. Part 70, as amended through April 7, 1993.

(b) Any source that the permitting authority determines may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare under RCW 70.94.161(4) using the procedures in subsection (5) of this section.

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

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

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

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that: The administrator completes a rule making to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operating permits and ecology completes a rule making to adopt EPA's revised applicability criteria.

(b) Subsection (2)(a) of this section shall not apply to nonmajor sources subject to a standard or other requirement established under either section 111 or section 112 of the FCAA after July 21, 1992, if, during those rule makings, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt EPA's applicability criteria.

(c) Any source listed in (a) of this subsection exempt from the requirement to obtain a permit under this section may opt to apply for a permit under this chapter.

(d) The following source categories are exempt from the obligation to obtain permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

(3) Emissions units and chapter 401 sources.

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

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

(4) Fugitive emissions. Fugitive emissions from a chapter 401 source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(5) Process for determining threat to public health or welfare. The following criteria shall be used to identify sources that are covered pursuant to subsection (1)(b) of this section:

(a) The source may cause or contribute to air pollution in such quantity as to create a violation of any ambient air quality standard as demonstrated by a dispersion modeling analysis performed in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods; or

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

(c) Small business stationary sources otherwise covered under (a) and (b) of this subsection are exempt except when all of the following requirements are satisfied:

(i) The source is in an area that currently exceeds or has been projected by ecology to exceed within five years any federal or state air quality standard. Prior to determining that any area threatens to exceed a standard, ecology shall hold a public hearing or hearings within the threatened area.

(ii) Ecology provides justification that requiring a source to have a permit is necessary to meet or to prevent exceeding a federal or state air quality standard.

(6) Permitting authorities shall develop and maintain a list of names of chapter 401 sources within their jurisdictions. This list shall be made available to the public. A chapter 401 source inadvertently omitted from this list is not exempted from the requirement to obtain a permit under this chapter.

(7) Legally and practicably enforceable limits. Any source which is defined as a chapter 401 source solely because its potential to emit exceeds the annual tonnage thresholds defined in WAC 173-401-200 shall be exempt from the requirement to obtain an operating permit when legally and practicably enforceable conditions which limit that source's potential to emit to levels below the relevant tonnage thresholds have been established for that source.

(a) In applying for an exemption under this subsection, the owner or operator of the source shall demonstrate to the permitting authority that the source's potential to emit, taking into account any legally and practicably enforceable restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200. Such demonstrations shall be in accordance with WAC 173-401-520 and shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to support the source's emission calculations.

(b) Permitting authorities may use the following approaches to establish legally and practicably enforceable limitations:

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

(ii) Notice of construction approvals. The permitting authority may establish source-specific conditions in a notice of construction approval issued pursuant to state or local regulations; or

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW 70.94.161(11).

(c) A source receiving a legally and practicably enforceable limit on its potential to emit shall annually certify that its potential to emit is less than that which would require the source to obtain an operating permit. Such certifications shall contain the information specified in (a) of this subsection.

(d) Notice of issuance of any order or permit which limits a source's potential to emit shall be published in the permit register pursuant to WAC 173-401-805 (2)(e).

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-300, filed 2/3/16, effective 3/5/16. Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-300, filed 9/16/02, effective 10/17/02. 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), § 173-401-300, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-300, filed 10/4/93, effective 11/4/93.]

173-401-400

Program delegation.

(1) General. Ecology is authorized to submit the state operating permit program for approval under section 502 of the Federal Clean Air Act. Subject to federal approval, ecology may, in turn, delegate the federally approved state permit program to the local authority with jurisdiction in a given area. This section describes the procedures for delegating the federally approved state operating permit program to a local authority.

(2) Application. The board of any local air pollution control authority may apply to ecology for a delegation order authorizing that authority to administer the operating permit program for sources under that authority's jurisdiction pursuant to RCW 70.94.161 (2)(b).

(3) Delegation orders. Ecology will, by order, approve such delegation if ecology finds that the authority has the technical and financial resources needed to discharge the responsibilities of a permitting authority under the FCAA. Each delegation order shall specify the terms and conditions for program delegation and define the responsibilities of the permitting authority and ecology in implementing the statewide program. All delegation orders and supporting program documentation shall be submitted to EPA for review and approval.

(4) Required information. A delegation request from the authority shall include the information specified in 40 C.F.R. 70.4 (b)(3), (b)(7), (b)(8), and (b)(11). In addition, the request shall include a description of how the authority will meet the requirement that every proposed permit be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority and, with respect to the latter, signed, dated, and stamped by the supervising professional engineer.

(5) Effective date. Any delegation order issued under this section shall take effect ninety days after the EPA authorizes the local authority to issue operating permits under the FCAA.

(6) Public notice. Ecology shall publish in the State Register notice of proposed decisions on program delegation and substantial program revision. The notice shall summarize the proposal and provide at least a thirty-day public comment period. EPA review of these requests may occur concurrently with the state process. Notice of approval of program delegation and substantial program revision requests shall be published in the State Register. Notice of approval of minor program revisions may be given by a letter from ecology to the authority.

(7) Performance review. Reviews of the implementation of the operating permit program by ecology and delegated local authorities shall be conducted as provided in WAC 173-401-920.

(8) Program revisions. Revisions to the state program, EPA approval of those revisions, and delegation to local authorities shall be implemented using the procedures in subsections (1) through (6) of this section.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-400, filed 10/4/93, effective 11/4/93.]

173-401-500

Permit applications.

(1) Source identification. Within ninety days after the date that a permitting authority submits for EPA approval a permit program or partial permit program, the permitting authority shall notify each potential chapter 401 source within its jurisdiction that the source may be required to obtain a permit. Failure of the permitting authority to notify a source shall not relieve that source from the obligation to file a timely and complete application.

(2) Application distribution. No later than thirty days after EPA grants final or interim, full or partial, approval to the state program, the responsible permitting authority shall send an application to each potential chapter 401 source within its jurisdiction, and a notice stating a deadline by which an application must be filed. Failure of the permitting authority to distribute permit or renewal applications to an individual source shall not relieve that source from the obligation to file a timely and complete application. Renewal applications shall be sent to the source as specified in WAC 173-401-710.

(3) Duty to apply. For each chapter 401 source, the owner or operator shall submit a timely and complete permit application in accordance with this section. Whenever practicable, the applicant shall utilize methods provided by the permitting authority for electronic transmission of the completed application.

(a) Existing chapter 401 sources. Chapter 401 sources in existence on the date of EPA approval of the state permit program shall submit permit applications no later than one hundred eighty days after EPA approval of the state permitting program.

(b) Existing sources becoming chapter 401 sources due to future regulations. An existing source may become subject to the operating permit program as a result of regulations promulgated after EPA approval of the state permit program. For those sources, a complete application must be submitted within twelve months from the time that the source becomes subject to the permit program.

(c) New or modified sources. New or modified chapter 401 sources which commence operation after EPA approval of the state operating program shall file a complete application to obtain the chapter 401 permit or permit revision within twelve months after commencing operation. Where an existing chapter 401 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. The applicant may elect to integrate procedures for new source review and operating permit issuance as described in subsection (10) of this section.

(d) Permit renewal. For purposes of permit renewal, a timely application is one that is submitted at the time specified in WAC 173-401-710.

(e) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(4) Complete application. To be deemed complete, an application must provide all information required pursuant to WAC 173-401-510, except that applications for permit revision need supply such information only if it is related to the proposed change. Information submitted under WAC 173-401-510 must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with WAC 173-401-520. Unless the permitting authority determines in writing that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in WAC 173-401-700(6). Any notification of incompleteness shall specify the information needed to make the application complete and prescribe a reasonable time frame for response from the applicant. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of the supplemental information, the application shall be deemed complete. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in WAC 173-401-705(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(5) Confidential information. In the case where a source has submitted information to the permitting authority under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the administrator.

(6) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect

submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(7) Completeness criteria. An application is complete when it contains the following information:

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

(b) A compliance plan that meets the criteria of WAC 173-401-630; and

(c) Certification by a responsible official of the chapter 401 source of the truth, accuracy, and completeness of the application, as provided in WAC 173-401-520.

(8) EPA notification. The permitting authority shall provide EPA with a copy of all complete permit applications and compliance plans for chapter 401 sources unless EPA waives or modifies this requirement.

(9) Public notice. Ecology shall publish a notice of all applications received under this section in the permit register as required under WAC 173-401-805.

(10) Operating permits for new sources. At the time of filing a notice of construction application under RCW 70.94.152 for the construction of a new source or modification of an existing source, the owner or operator may elect in writing to integrate new source review and operating permit issuance. Procedures for integration of these two processes are as follows:

(a) Modification of existing source. The owner or operator of an existing permitted source applying to modify the source within the meaning of RCW 70.94.030(14) may select integrated review by so indicating on its notice of construction application. The permitting authority shall process the notice of construction application in accordance with the procedures set forth in WAC 173-401-700. The permitting authority shall process the two applications in parallel, and consolidate all required public hearings, comment periods and EPA review periods. A proposed order of approval for the modification shall be provided to EPA for review as provided in WAC 173-401-810, along with a proposed administrative permit amendment to the source's operating permit. The administrative permit amendment shall incorporate into the operating permit the requirements contained in the order of approval. The order of approval shall include compliance requirements for the new or modified emissions units that meet the requirements of WAC 173-401-600 through 173-401-650. The permitting authority shall issue the final permit amendment and order of approval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 C.F.R. 70.8.

(b) Construction of new source. Any person who proposes to construct a new source, within the meaning of RCW 70.94.030(16), may select integrated review by concurrently filing with the permitting authority a notice of construction application and an operating permit application. The permitting authority shall process both applications in accordance with the procedures set forth in WAC 173-401-700. The permitting authority shall process the two applications in parallel, and consolidate all required public hearings, comment periods, and EPA review periods. A proposed order of approval for the new source shall be provided to EPA for review as provided in WAC 173-401-810, along with the proposed operating permit. The permitting authority shall issue the final operating permit and order of approval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 C.F.R. 70.8.

[Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-500, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-500, filed 10/4/93, effective 11/4/93.]

173-401-510

Permit application form.

(1) Standard application form and required information. Ecology shall develop a standard application form or forms to be used by each permitting authority. The application shall include information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units or units not regulated under WAC 173-401-300 (3)(b). However, an application may not omit information needed to determine the applicability

of, or to impose, any applicable requirement, or to evaluate the fee amount required under the permitting authority's fee schedule.

(2) Required data elements for individual permit applications. The application forms developed under subsection (1) of this section shall contain the data elements specified below:

(a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, responsible official name and address, and telephone number and names of plant site manager/contact.

(b) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternative operating scenario identified by the source pursuant to WAC 173-401-650.

(c) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except emissions from insignificant emission units or activities as defined in WAC 173-401-530. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the permitting authority's fee schedule;

(ii) Identification and description of all points of emissions described in (c)(i) of this subsection in sufficient detail to establish the basis for fees and applicability of applicable requirements;

(iii) Emissions rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(iv) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules;

(v) Identification and description of all air pollution control equipment and compliance monitoring devices or activities;

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the chapter 401 source;

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the FCAA); and

(viii) Calculations on which the information in (c)(i) through (vii) of this subsection are based.

(d) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(e) Other specific information that may be necessary to implement and enforce other applicable requirements or this chapter or to determine the applicability of such requirements.

(f) An explanation of any proposed exemptions from otherwise applicable requirements.

(g) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to WAC 173-401-650(1) or to define permit terms and conditions implementing WAC 173-401-650(1) and 173-401-722.

(h) A compliance plan for all chapter 401 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements;

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis; and

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis;

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(iv) For those sources required to have a schedule of compliance to remedy a violation, a schedule for submission of certified progress reports every six months or at a more frequent period specified in an applicable requirement.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(i) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with WAC 173-401-520 and section 114 (a)(3) of the FCAA;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA.

(j) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(k) Requirements which the source believes are inapplicable pursuant to WAC 173-401-640(2) and a request to extend the permit shield to those requirements.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-510, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-11-105 (Order 93-30), § 173-401-510, filed 5/17/94, effective 6/17/94; WSR 93-20-075 (Order 91-68), § 173-401-510, filed 10/4/93, effective 11/4/93.]

173-401-520

Certification.

Any application form, report, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-520, filed 10/4/93, effective 11/4/93.]

173-401-530

Insignificant emission units.

(1) General. This section contains criteria for identifying insignificant emission units or activities for purposes of the operating permit program. Designation of an emission unit or activity as insignificant for purposes of this

chapter does not exempt the unit or activity from any applicable requirement. An emission unit or activity is insignificant based on one or more of the following approaches:

(a) Actual emissions of all regulated air pollutants from a unit or activity are less than the emission thresholds established in subsection (4) of this section. Such emission units and activities must be listed in the permit application;

(b) The emission unit or activity is listed in WAC 173-401-532 as categorically exempt. Such emission units or activities do not have to be listed in the permit application;

(c) The emission unit or activity is listed in WAC 173-401-533 and is considered insignificant if its size or production rate based on maximum rated capacity is below the specified level. These emission units or activities must be listed in the permit application.

(d) The emission unit or activity generates only fugitive emissions (as defined in WAC 173-400-030(31)), which are subject to no applicable requirement other than generally applicable requirements of the state implementation plan as defined in subsection (2) of this section. These units or activities must be listed on the permit application.

(2) Applicable requirements.

(a) Notwithstanding any other provision of this chapter, no emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity. For purposes of this section, generally applicable requirements of the state implementation plan are those federally enforceable requirements that apply universally to all emission units or activities without reference to specific types of emission units or activities.

(b) The application shall list and the permit shall contain all generally applicable requirements that apply to insignificant emission units or activities in the source.

(c) Testing, monitoring, recordkeeping and reporting are not required for insignificant emissions units and activities unless determined by the permitting authority to be necessary to assure compliance or unless it is otherwise required by a generally applicable requirement of the state implementation plan. This section does not affect the authority of ecology and local air authorities to establish case-by-case monitoring requirements as set forth in WAC 173-400-105 or other provisions of law.

(d) Where a permit does not require testing, monitoring, recordkeeping and reporting for insignificant emissions units or activities, the permittee may certify continuous compliance if there were no observed, documented, or known instances of noncompliance during the reporting period. Where a permit requires testing, monitoring, recordkeeping and reporting for insignificant emission units or activities, the permittee may certify continuous compliance when the testing, monitoring, recordkeeping required by the permit revealed no violations during the period, and there were no observed, documented, or known instances of noncompliance during the reporting period.

(3) Permit shield. The permit shield described in WAC 173-401-640 shall not apply to any insignificant emissions unit or activity designated under this section.

(4) Insignificant emission thresholds. An emission unit or activity shall be considered insignificant if it qualifies under subsection (1)(b), (c) or (d) of this section, or if its actual emissions, based on methods approved by the permitting authority, are below the practical quantification limit (PQL), or are less than or equal to all of the following threshold levels:

- (a) 5 tons per year of carbon monoxide;
- (b) 2 tons per year of nitrogen oxides;
- (c) 2 tons per year of sulfur oxides;
- (d) 2 tons per year of volatile organic compounds (VOC);
- (e) 0.75 tons per year of PM₁₀ (as defined in WAC 173-400-030);
- (f) 0.005 tons per year of lead;
- (g) 0.15 tons per year of fluorides;
- (h) 0.35 tons per year of sulfuric acid mist;
- (i) 0.5 tons per year of hydrogen sulfide;
- (j) 0.5 tons per year of total reduced sulfur (including hydrogen sulfide);
- (k) 0.00000175 tons per year of municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans);
- (m) 0.75 tons per year of municipal waste combustor metals (measured as PM);
- (n) 2.0 tons per year of municipal waste combustor acid gases (measured as SO₂ and hydrogen chloride);

(o) 2.0 tons per year of ozone depleting substances in aggregate (the sum of Class I and/or Class II substances as defined in Title VI and 40 C.F.R. Part 82);

(p) Thresholds levels for hazardous air pollutants as defined in WAC 173-401-531;

(q) 0.5 tons per year for any regulated air pollutant not listed above or in WAC 173-401-531.

(5) Documentation.

(a) Upon request from the permitting authority the applicant must provide sufficient documentation to enable the permitting authority to determine that the emission unit or activity has been appropriately listed as insignificant.

(b) Upon request from the permitting authority, at any time during the term of the permit, an applicant who lists an activity or emissions unit as insignificant under subsection (1)(a) of this section shall demonstrate to the permitting authority that the actual emissions of the unit or activity are below the emission thresholds listed in subsection (4) of this section.

(6) Permit revision.

If an emission unit or activity that qualifies as insignificant solely on the basis of subsection (1)(a) of this section exceeds one of the emissions thresholds specified in subsection (4) of this section prior to issuance of a permit, the applicant shall promptly amend its permit application to include the relevant activity or emissions unit in the permit, as provided in WAC 173-401-500(6). Once the permit is issued, an activity or emissions unit that qualifies as insignificant solely on the basis of subsection (1)(a) of this section shall not exceed the emissions thresholds specified in subsection (4) of this section, until the permit is modified pursuant to WAC 173-401-725 (Permit modifications).

(7) Local air authority discretion. Local air authorities may establish by rule other criteria for defining insignificant emissions units or activities. At a minimum, such criteria must be at least as stringent as the requirements in subsections (2) and (3) of this section. Insignificant emission units or activities defined by local air authority rule may not exceed threshold levels established under subsection (4) of this section.

[Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-530, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW. WSR 94-11-105 (Order 93-30), § 173-401-530, filed 5/17/94, effective 6/17/94.]

173-401-531

Thresholds for hazardous air pollutants.

General. The following tables provide thresholds for hazardous air pollutants:

(1) Carcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
189-55-9	1, 2, 7, 8-dibenzopyrene	0.005
107-06-2	1, 2-dichloroethane	0.4
78-87-5	1, 2-dichloropropane	0.5
540-73-8	1, 2-dimethylhydrazine	0.004
122-66-7	1, 2-diphenylhydrazine	0.045
106-99-0	1, 3-butadiene	0.035
1120-71-4	1, 3-propane sultone	0.003

CAS Number	Chemical Name	Threshold Levels (tons/year)
106-46-7	1, 4-dichlorobenzene (p)	0.5
123-91-1	1, 4-dioxane (1, 4-diethyleneoxide)	0.5
94-75-7	2, 4-d salts & esters	0.5
95-80-7	2, 4-toluene diamine	0.01
584-84-9	2, 4-toluene diisocyanate	0.05
53-96-3	2-acetylaminofluorene	0.0025
119-90-4	3, 3'-dimethoxybenzidine	0.5
119-93-7	3, 3-dimethyl benzidine	0.004
101-14-4	4, 4'-methylenebis (2-chloroaniline)	0.5
75-07-0	acetaldehyde	0.5
107-13-1	acrylonitrile	0.15
62-53-3	aniline	0.5
C7440-38-2	arsenic and inorganic arsenic compounds	0.002
1332-21-4	asbestos (fibers/ml)	0.00004
71-43-2	benzene	0.5
92-87-5	benzidine (and its salts)	0.00015
56-55-3	benzo(a)anthracene	0.005
50-32-8	benzo(a)pyrene	0.005
205-99-2	benzo(b)fluoranthene	0.005
7440-41-7	beryllium and compounds (except salts)	0.004
117-81-7	bis (2-ethylhexyl) phthalate	0.5
542-88-1	bis (chloromethyl) ether	0.00015
75-25-2	bromoform	0.5
7440-43-9	cadmium and compounds	0.005
56-23-5	carbon tetrachloride	0.5
57-74-9	chlordane	0.005
510-15-6	chlorobenzilate	0.2
67-66-3	chloroform	0.45

CAS Number	Chemical Name	Threshold Levels (tons/year)
107-30-2	chloromethyl methyl ether	0.1
126-99-8	chloroprene	0.5
C7440-47-3	chromium, hexavalent metal	0.001
218-01-9	chrysene	0.005
————	coke oven emissions	0.015
3547-04-4	DDE	0.005
53-70-3	dibenz(a, h)anthracene	0.005
132-64-9	dibenzofuran	0.5
111-44-4	dichloroethyl ether	0.03
75-09-2	dichloromethane	0.5
77-78-1	dimethyl sulfate	0.1
————	dioxins & furans (tcdd equivalent)	3e-07
106-89-8	epichlorohydrin	0.5
107-06-2	ethylene dichloride	0.4
106-93-4	ethylene dibromide (dibromomethane)	0.05
75-21-8	ethylene oxide	0.1
96-45-7	ethylene thiourea	0.3
76-44-8	heptachlor	0.01
118-74-1	hexachlorobenzene	0.005
58-89-9	hexachlorocyclohexane, gamma	0.005
302-01-2	hydrazine	0.002
193-39-5	indeno (1, 2, 3-cd) pyrene	0.005
————	lead & compounds (except those listed)	0.005
58-89-9	lindane	0.005
75-09-2	methylene chloride	0.5
62-75-9	n-nitrosodimethylamine	0.0005
C7440-02-0	nickel and compounds (except those listed)	0.02

CAS Number	Chemical Name	Threshold Levels (tons/year)
13463-39-3	nickel carbonyl	0.1
95-53-4	o-toluidine	0.5
87-86-5	pentachlorophenol	0.35
127-18-4	perchloroethylene	0.5
1336-36-3	polychlorinated biphenyls	0.0045
75-56-9	propylene oxide	0.5
8001-35-2	toxaphene	0.005
79-01-6	trichloroethylene	0.5
75-01-4	vinyl chloride	0.1
79-34-5	1, 1, 2, 2-tetrachloroethane	0.15
79-00-5	1, 1, 2-trichloroethane	0.5
57-14-7	1, 1-dimethyl hydrazine	0.004
96-12-8	1, 2-dibromo-3-chloropropane	0.004
79-06-1	acrylamide	0.01
98-07-7	benzotrichloride	0.003
62-73-7	dichlorvos	0.1
79-44-7	dimethyl carbamoyl chloride	0.5
140-88-5	ethyl acrylate	0.5
51-79-6	ethyl carbamate	0.5
151-56-4	ethylene imine	0.5
87-68-3	hexachlorobutadiene	0.5
67-72-1	hexachloroethane	0.5
60-34-4	methyl hydrazine	0.03
684-93-5	n-nitroso-n-methylurea	0.5
12035-72-2	nickel refinery dust	0.08
————	nickel subsulfide	0.02
82-68-8	pentachloronitrobenzene	0.15
91-22-5	quinoline	0.003
1582-09-8	trifluralin	0.5
593-60-2	vinyl bromide	0.5
75-35-4	vinylidene chloride	0.2

CAS Number	Chemical Name	Threshold Levels (tons/year)
189559	1, 2: 7, 8-dibenzopyrene	0.005
121142	2, 4-dinitrotoluene	0.01
88062	2, 4, 6-trichlorophenol	0.5
91941	3, 3-dichlorobenzidene	0.1
57596	7, 12-dimethylbenz(a)anthracene	0.005
50000	formaldehyde	0.5

(2) Noncarcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
75-34-3	ethylidene dichloride (1, 1-dichloroethane)	0.5
75-55-8	1, 2 propylenimine (2-methyl aziridine)	0.003
120-82-1	1, 2, 4-trichlorobenzene	0.5
106-88-7	1, 2-epoxybutane	0.5
542-75-6	1, 3-dichloropropene (dichloropropene)	0.5
51-28-5	2, 4-dinitrophenol	0.5
111-76-2	2-butoxyethanol	0.5
110-80-5	2-ethoxyethanol	0.5
109-86-4	2-methoxyethanol	0.5
92-93-3	4-nitrobiphenol	0.5
100-02-7	4-nitrophenol	0.5
75-05-8	acetonitrile	0.5
98-86-2	acetophenone	0.5
107-02-8	acrolein	0.04
79-10-7	acrylic acid	0.5
107-05-1	allyl chloride	0.5
C7440-36-0	antimony & compounds as sb	0.5
1309-64-4	antimony trioxide, as sb	0.5
7784-42-1	arsine	0.1
100-44-7	benzyl chloride	0.1
92-52-4	biphenyl	0.5
156-62-7	calcium cyanamide	0.5
105-60-2	caprolactam, dust	0.5
105-60-2	caprolactam, vapor	0.5
133-06-2	captan	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
63-25-2	carbaryl	0.5
75-15-0	carbon disulfide	0.5
463-58-1	carbonyl sulfide	0.5
120-80-9	catechol	0.5
7782-50-5	chlorine	0.1
79-11-8	chloroacetic acid	0.1
532-27-4	chloroacetophenone, alpha-	0.06
108-90-7	chlorobenzene	0.5
C7440-47-3	chromium (ii) compounds, as cr	0.5
C7440-47-3	chromium (iii) compounds, cr	0.5
10210-68-1	cobalt carbonyl, as co	0.1
7440-48-4	cobalt, as co metal dust, fume	0.1
1319-77-3	cresols/cresylic acid, (isomers and mixture)	0.5
95-48-7	o-cresol	0.5
108-39-4	m-cresol	0.5
106-44-5	p-cresol	0.5
98-82-8	cumene	0.5
51-12-5	cyanides, as cn	0.5
84-74-2	dibutyl phthalate	0.5
111-42-2	diethanolamine	0.5
60-11-7	dimethyl aminoazobenzene	0.5
121-69-7	dimethylaniline	0.5
68-12-2	dimethylformamide	0.5
131-11-3	dimethylphthalate	0.5
100-41-4	ethyl benzene	0.5
75-00-3	ethyl chloride	0.5
107-21-1	ethylene glycol	0.5
111-76-2	ethylene glycol monobutyl ether	0.5
—	glycol ethers (except for listed ones)	0.5
77-47-4	hexachlorocyclopentadiene	0.1
822-06-0	hexamethylene, 1, 6-diisocyanate	0.02

CAS Number	Chemical Name	Threshold Levels (tons/year)
110-54-3	hexane (n-hexane)	0.5
110-54-3	hexane, other isomers	0.5
7647-01-0	hydrogen chloride	0.5
7664-39-3	hydrogen fluoride, as f	0.1
123-31-9	hydroquinone	0.5
78-59-1	isophorone	0.5
108-31-6	maleic anhydride	0.5
C7439-96-5	manganese dust & compounds (except listed)	0.5
748-79-4	mercuric chloride	0.01
10045-94-0	mercuric nitrate	0.01
C7439-97-6	mercury, elemental	0.01
72-43-5	methoxychlor	0.5
67-56-1	methyl alcohol	0.5
74-83-9	methyl bromide	0.5
74-87-3	methyl chloride	0.5
71-55-6	methyl chloroform (1, 1, 1-trichloroethane)	0.5
78-93-3	methyl ethyl ketone (mek)	0.5
74-88-4	methyl iodide	0.06
108-10-1	methyl isobutyl ketone	0.5
624-83-9	methyl isocyanate	0.1
80-62-6	methyl methacrylate	0.5
1634-04-4	methyl tert-butyl ether	0.5
12108-13-3	methylcyclopentadienyl manganese tricarbonyl	0.1
101-68-8	methylene bisphenyl isocyanate	0.1
91-20-3	naphthalene	0.5
98-95-3	nitrobenzene	0.5
106-50-3	p-phenylenediamine	0.5
56-38-2	parathion	0.1
108-95-2	phenol	0.1
62-38-4	phenyl mercuric acetate	0.01
75-44-5	phosgene	0.1

CAS Number	Chemical Name	Threshold Levels (tons/year)
7803-51-2	phosphine	0.5
7723-14-0	phosphorus	0.1
85-44-9	phthalic anhydride	0.5
57-57-8	propiolactone, beta-	0.1
123-38-6	propionaldehyde	0.5
114-26-1	propoxur	0.5
106-51-4	quinone	0.5
C7782-49-2	selenium compounds, as se	0.5
7783-79-1	selenium hexafluoride, as se	0.5
7488-56-4	selenium sulfides (mono and di)	0.5
100-42-5	styrene monomer	0.5
78-00-2	tetraethyl lead, as pb	0.01
75-74-1	tetramethyl lead, as pb	0.01
7550-45-0	titanium tetrachloride	0.1
108-88-3	toluene	0.5
121-44-8	triethylamine	0.5
108-05-4	vinyl acetate	0.5
593-60-2	vinyl bromide	0.5
1330-20-7	xylenes (m-,o-,p-isomers)	0.5
79469	2-nitropropane	0.5
540841	2, 2, 4-trimethylpentane	0.5
95954	2, 4, 5-trichlorophenol	0.5
92671	4-aminobiphenyl	0.5
101779	4, 4'-methylenedianiline	0.5
534521	4, 6-dinitro-o-cresol and salts	0.1
60355	acetamide	0.5
1345046	antimony trisulfide	0.1
7783702	antimony pentafluoride	0.1
28300745	antimony potassium tartrate	0.5
133904	chloramben	0.5
—	chromium compounds, except hexavalent and trivalent	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
10025737	chromic chloride	0.1
334883	diazomethane	0.5
64675	diethyl sulfate	0.5
62207765	fluomine	0.1
680319	hexamethylphosphoramide	0.01
12108133	methylcyclopentadienyl manganese	0.1
101688	methylene diphenyl diisocyanate	0.1
69892	N-nitrosomorpholine	0.5
90040	o-anisidine	0.5
————	polycyclic organic matter	0.01
151508	potassium cyanide	0.1
14339	sodium cyanide	0.1
10102188	sodium selenite	0.1
13410010	sodium selenate	0.1
96093	styrene oxide	0.5

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-531, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-11-105 (Order 93-30), § 173-401-531, filed 5/17/94, effective 6/17/94.]

173-401-532

Categorically exempt insignificant emission units.

- (1) General. This section contains lists of units and activities that are categorically exempt from this chapter. The activities listed in this section may be omitted from the permit application.
- (2) Mobile transport tanks on vehicles, except for those containing asphalt.
- (3) Lubricating oil storage tanks.
- (4) Storage tanks, reservoirs and pumping and handling equipment of any size, limited to soaps, lubricants, hydraulic fluid, vegetable oil, grease, animal fat, aqueous salt solutions or other materials and processes using appropriate lids and covers where there is no generation of objectionable odor or airborne particulate matter.
- (5) Pressurized storage of oxygen, nitrogen, carbon dioxide, air, or inert gases.
- (6) Storage of solid material, dust-free handling.
- (7) Vehicle exhaust from auto maintenance and repair shops.
- (8) Vents from continuous emissions monitors and other analyzers.
- (9) Vents from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls and separate exhaust are provided.
- (10) Internal combustion engines for propelling or powering a vehicle.
- (11) Recreational fireplaces including the use of barbecues, campfires and ceremonial fires.
- (12) Brazing, soldering and welding equipment and oxygen-hydrogen cutting torches for use in cutting metal where in components of the metal do not generate HAPs or HAPs precursors.
- (13) Atmospheric generators used in connection with metal heat treating processes.
- (14) Metal finishing or cleaning using tumblers.

- (15) Metal casting molds and molten metal crucibles that do not contain potential HAPs.
- (16) Die casting.
- (17) Metal or glass heat-treating, in absence of molten materials, oils, or VOCs.
- (18) Drop hammers or hydraulic presses for forging or metalworking.
- (19) Electrolytic deposition, used to deposit brass, bronze, copper, iron, tin, zinc, precious and other metals not listed as the parents of HAPs.
- (20) Metal fume vapors from electrically heated foundry/forging operations wherein the components of the metal do not generate HAPs or HAP precursors. Electric arc furnaces are excluded from consideration for listing as insignificant.
- (21) Metal melting and molten metal holding equipment and operations wherein the components of the metal do not generate HAPs or HAP precursors. Electric arc furnaces are not considered for listing as insignificant.
- (22) Inspection equipment for metal products.
- (23) Plastic and resin curing equipment, excluding FRP.
- (24) Extrusion equipment, metals, minerals, plastics, grain or wood.
- (25) Presses and vacuum forming, for curing rubber and plastic products or for laminating plastics.
- (26) Roller mills and calendars, rubber and plastics.
- (27) Conveying and storage of plastic pellets.
- (28) Plastic compression, injection, and transfer molding and extrusion, rotocasting, pultrusion, blowmolding, excluding acrylics, PVC, polystyrene and related copolymers and the use of plasticizer. Only oxygen, carbon dioxide, nitrogen, air, or inert gas allowed as blowing agents.
- (29) Plastic pipe welding.
- (30) Nonmetallic mineral mines and screening plants except for crushing and associated activities that are not subject to 40 C.F.R. Part 60 Subpart 000. Quarrying of silica rock and associated activities are not considered for listing as insignificant.
- (31) Wet sand and gravel screening.
- (32) Wax application.
- (33) Plant upkeep including routine housekeeping, preparation for and painting of structures or equipment, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and paving or stripping parking lots.
- (34) Agricultural activities on a facility's property that are not subject to registration or new source review by the permitting authority.
- (35) Cleaning and sweeping of streets and paved surfaces.
- (36) Ultraviolet curing processes.
- (37) Hot melt adhesive application with no VOCs in the adhesive formulation.
- (38) Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents.
- (39) Steam cleaning operations.
- (40) Steam sterilizers.
- (41) Food preparing for human consumption including cafeterias, kitchen facilities and barbecues located at a source for providing food service on the premises.
- (42) Portable drums and totes.
- (43) Lawn and landscaping activities.
- (44) Flares used to indicate danger to the public.
- (45) General vehicle maintenance including vehicle exhaust from repair facilities.
- (46) Comfort air conditioning or air cooling systems, not used to remove air contaminants from specific equipment.
- (47) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks subject to size and service limitations expressed elsewhere in this section.
- (48) Natural and forced air vents and stacks for bathroom/toilet facilities.
- (49) Office activities.
- (50) Personal care activities.
- (51) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.
- (52) Firefighting and similar safety equipment and equipment used to train firefighters excluding fire drill pits.
- (53) Materials and equipment used by, and activity related to operation of infirmary; infirmary is not the source's business activity.

- (54) Fuel and exhaust emissions from vehicles in parking lots.
- (55) Carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, shot peening, sintering or polishing: Ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock or wood provided that:
 - (a) Activity is performed indoors;
 - (b) Particulate emission control in the immediate vicinity of the activity;
 - (c) Exhaust from the particulate control is within the building housing the activity;
 - (d) No fugitive particulate emissions enter the environment.
- (56) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment subject to other exemption limitation, e.g., internal and external combustion equipment.
- (57) Slaughterhouse equipment except rendering cookers.
- (58) Ozonation equipment.
- (59) Nonasbestos brake shoe bonding.
- (60) Batch loading and unloading of solid phase catalysts.
- (61) Demineralization and oxygen scavenging (deaeration) of water.
- (62) Pulse capacitors.
- (63) Laser trimmers, using dust collection to prevent fugitive emissions.
- (64) Plasma etcher, using dust collection to prevent fugitive emissions and using only oxygen, nitrogen, carbon dioxide, or inert gas.
- (65) Gas cabinets using only gasses that are not regulated air pollutants.
- (66) CO₂ lasers, used only on metals and other materials which do not emit HAPs in the process.
- (67) Structural changes not having air contaminant emissions.
- (68) Confection cooking equipment.
- (69) Mixing, packaging, storage and handling activities of any size, limited to soaps, lubricants, vegetable oil, grease, animal fat, aqueous salt solutions.
- (70) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy, e.g., blueprint activity, photocopiers, mimeograph, telefax, photographic developing, and microfiche.
- (71) Pharmaceutical and cosmetics packaging equipment.
- (72) Paper trimmers/binders.
- (73) Sample gathering, preparation and management.
- (74) Repair and maintenance activities, not involving installation of an emission unit and not increasing potential emissions of a regulated air pollutant.
- (75) Handling equipment and associated activities for glass and aluminum which is destined for recycling, not the re-refining process itself.
- (76) Hydraulic and hydrostatic testing equipment.
- (77) Batteries and battery charging.
- (78) Porcelain and vitreous enameling equipment.
- (79) Solid waste (as defined in the Washington Administrative Code) containers.
- (80) Salt baths using nonvolatile salts and not used in operations which result in air emissions.
- (81) Shock chambers.
- (82) Wire strippers.
- (83) Humidity chambers.
- (84) Solar simulators.
- (85) Environmental chambers not using hazardous air pollutant (HAPs) gasses.
- (86) Totally enclosed conveyors.
- (87) Steam vents and safety relief valves.
- (88) Air compressors, pneumatically operated equipment, systems and hand tools.
- (89) Steam leaks.
- (90) Recovery boiler blow-down tank.
- (91) Salt cake mix tanks.
- (92) Continuous digester chip feeders.
- (93) Weak liquor and filter tanks.
- (94) Process water and white water storage tanks.
- (95) Demineralizer tanks.

- (96) Clean condensate tanks.
- (97) Alum tanks.
- (98) Broke beaters, repulpers, pulp and repulping tanks, stock chests and pulp handling.
- (99) Lime mud filtrate tank.
- (100) Hydrogen peroxide tanks.
- (101) Lime mud water.
- (102) Lime mud filter.
- (103) Liquor clarifiers and storage tanks and associated pumping, piping and handling.
- (104) Lime grits washers, filters and handling.
- (105) Lime silos and feed bins.
- (106) Paper forming.
- (107) Dryers (Yankee, after dryer, curing systems and coolings systems).
- (108) Vacuum systems exhausts.
- (109) Starch cooking.
- (110) Stock cleaning and pressurized pulp washing.
- (111) Winders.
- (112) Chipping.
- (113) Debarking.
- (114) Sludge dewatering and handling.
- (115) Screw press vents.
- (116) Pond dredging.
- (117) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation.
- (118) NonPCB oil filled circuit breakers, oil filled transformers and other equipment that is analogous to, but not considered to be, a tank.
- (119) Electric or steam-heated drying ovens and autoclaves.
- (120) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems.
- (121) Water cooling towers processing exclusively noncontact cooling water.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-11-105 (Order 93-30), § 173-401-532, filed 5/17/94, effective 6/17/94.]

173-401-533

Units and activities defined as insignificant on the basis of size or production rate.

- (1) General. This section contains lists of units or activities that are exempt from this chapter on the basis of size or production rate. Units and activities listed in this section must be listed on the permit application.
- (2) The following units and activities are determined to be insignificant based on their size or production rate:
 - (a) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than two hundred sixty gallon capacity (35 cft), heated only to the minimum extent to avoid solidification if necessary.
 - (b) Operation, loading and unloading of storage tanks, not greater than one thousand one hundred gallon capacity, with lids or other appropriate closure, not for use with hazardous air pollutants (HAPs), maximum (max.) vp 550mm Hg.
 - (c) Operation, loading and unloading of VOC storage tanks (including gasoline storage tanks), ten thousand gallons capacity or less, with lids or other appropriate closure, vp not greater than 80mm Hg at 21°C.
 - (d) Operation, loading and unloading storage of butane, propane, or liquified petroleum gas (LPG), storage tanks, vessel capacity under forty thousand gallons.
 - (e) Combustion source less than five million Btu/hr. exclusively using natural gas, butane, propane and/or LPG.
 - (f) Combustion source, less than five hundred thousand Btu/hr., using any commercial fuel containing less than 0.4% by weight sulfur for coal or less than 1% by weight sulfur for other fuels.

- (g) Combustion source, of less than one million Btu/hr. if using kerosene, No. 1 or No. 2 fuel oil.
 - (h) Combustion source, not greater than five hundred thousand Btu/hr. if burning used oil and not greater than four hundred thousand Btu/hr. if burning waste wood or waste paper.
 - (i) Welding using not more than one ton per day of welding rod.
 - (j) Foundry sand molds, unheated and using binders with less than 0.25% free phenol by sand weight.
 - (k) "Parylene" coaters using less than five hundred gallons of coating per year.
 - (l) Printing and silkscreening, using less than two gallon/day of any combination of the following: Inks, coatings, adhesives, fountain solutions, thinners, retarders, or nonaqueous cleaning solutions.
 - (m) Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than ten thousand gpm, not in direct contact with gaseous or liquid process streams containing regulated air pollutants.
 - (n) Combustion turbines, of less than 500 HP.
 - (o) Batch solvent distillation, not greater than fifty-five gallons batch capacity.
 - (p) Municipal and industrial water chlorination facilities of not greater than twenty million gallons per day capacity. The exemption does not apply to waste water treatment.
 - (q) Surface coating, using less than two gallons per day.
 - (r) Space heaters and hot water heaters using natural gas, propane or kerosene and generating less than five million Btu/hr.
 - (s) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids excluding:
 - (i) 99% or greater H_2SO_4 or H_3PO_4
 - (ii) 70% or greater HNO_3
 - (iii) 30% or greater HCl
 - (iv) More than one liquid phase where the top phase is more than one percent VOCs.
 - (t) Equipment used exclusively to pump, load, unload or store high boiling organic material, material with initial boiling point (IBP) not less than 150°C . or vapor pressure (vp) not more than 5mm Hg at 21°C . with lids or other appropriate closure.
 - (u) Smokehouses under twenty square feet.
 - (v) Milling and grinding activities, using paste-form compounds with less than one percent VOCs.
 - (w) Rolling, forging, drawing, stamping, shearing, or spinning hot or cold metals.
 - (x) Dip-coating operations, using materials with less than one percent VOCs.
 - (y) Surface coating, aqueous solution or suspension containing less than one percent VOCs.
 - (z) Cleaning and stripping activities and equipment, using solutions having less than one percent VOCs by weight. On metallic substrates, acid solutions are not considered for listing as insignificant.
 - (aa) Storage and handling of water based lubricants for metal working where the organic content of the lubricant is less than ten percent.
 - (bb) Municipal and industrial waste water chlorination facilities of not greater than one million gallons per day capacity.
- (3) The following units or activities may be determined to be insignificant on a case-by-case basis by the permitting authority:
- (a) Pilot plants.
 - (b) Cold feed aggregate bins for asphalt and concrete production equipment.
 - (c) Chemical or physical analytical laboratory operations or equipment including fume hoods and vacuum pumps.
 - (d) NPDES permitted ponds and lagoons utilized solely for the purpose of settling suspended solids and skimming of oil and grease.
 - (e) Coffee roasters, under fifteen lbs./day of coffee.
 - (f) Tire buffing of less than six thousand six hundred tires per year.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-11-105 (Order 93-30), § 173-401-533, filed 5/17/94, effective 6/17/94.]

173-401-600

Permit content.

(1) Each permit shall contain terms and conditions that assure compliance with all applicable requirements at the time of permit issuance. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

- (a) The FCAA and rules implementing that act, including provisions of the approved state implementation plan;
- (b) Chapter 70.94 RCW and rules implementing that chapter. This includes requirements in regulatory orders issued by the permitting authority;
- (c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;
- (d) Chapter 70.98 RCW and rules adopted thereunder; and
- (e) Chapter 80.50 RCW and rules adopted thereunder.

(2) Legal authority. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(3) Acid rain. Where an applicable requirement of the FCAA is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

(4) Where an applicable requirement based on the FCAA and rules implementing that act (including the approved state implementation plan) is less stringent than an applicable requirement promulgated under state or local legal authority, both provisions shall be incorporated into the permit in accordance with WAC 173-401-625.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-600, filed 10/4/93, effective 11/4/93.]

173-401-605

Emission standards and limitations.

(1) General. Each permit shall contain emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(2) Alternative emission limits. If the Washington state implementation plan allows a determination of an alternative emission limit at a chapter 401 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, the permitting authority may elect to use such process. Any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(3) Reasonably available control technology (RACT). Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under section 8, chapter 252, Laws of 1993, shall be incorporated into an operating permit as provided in WAC 173-401-730.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-605, filed 10/4/93, effective 11/4/93.]

173-401-610

Permit duration.

The permitting authority shall issue permits for a fixed term of five years.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-610, filed 10/4/93, effective 11/4/93.]

173-401-615

Monitoring and related recordkeeping and reporting requirements.

(1) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

(a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114 (a)(3) of the FCAA;

(b) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection (3) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and

(c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(2) Recordkeeping. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses; and

(vi) The operating conditions existing at the time of sampling or measurement;

(b) A record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(c) Retention of records of all required monitoring data and support information for a period of five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(3) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(a) Submittal of reports of any required monitoring at least once every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with WAC 173-401-520.

(b) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in each individual permit in relation to the degree and type of deviation likely to occur and the applicable requirement. For deviations which represent a potential threat to human health or safety, "prompt" means as soon as possible, but in no case later than twelve hours after the deviation is discovered. The source shall maintain a contemporaneous record of all deviations. Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered.

(4) Compliance assurance monitoring. 40 C.F.R. Part 64, in effect on July 1, 2000, is adopted by reference.

[Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-615, filed 9/16/02, effective 10/17/02. 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), § 173-401-615, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter [70.94](#) RCW. WSR 93-20-075 (Order 91-68), § 173-401-615, filed 10/4/93, effective 11/4/93.]

173-401-620

Standard terms and conditions.

(1) Acid rain. Each permit for an affected source shall contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(2) Standard provisions. Each permit shall include the following standard provisions:

(a) Duty to comply. The permittee must comply with all conditions of this chapter 401 permit. Any permit noncompliance constitutes a violation of chapter [70.94](#) RCW and, for federally enforceable provisions, a violation of the FCAA. Such violations are grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) Permit actions. This permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(e) Duty to provide information. The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality. Permitting authorities shall maintain confidentiality of such information in accordance with RCW [70.94.205](#).

(f) Permit fees. The permittee shall pay fees as a condition of this permit in accordance with the permitting authority's fee schedule. Failure to pay fees in a timely fashion shall subject the permittee to civil and criminal penalties as prescribed in chapter [70.94](#) RCW.

(g) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in this permit.

(h) Severability. If any provision of this permit is held to be invalid, all unaffected provisions of the permit shall remain in effect and be enforceable.

(i) Permit appeals. This permit or any conditions in it may be appealed only by filing an appeal with the pollution control hearings board and serving it on the permitting authority within thirty days of receipt pursuant to RCW [43.21B.310](#). This provision for appeal in this section is separate from and additional to any federal rights to petition and review under § 505(b) of the FCAA.

(j) Permit continuation. This permit and all terms and conditions contained therein, including any permit shield provided under WAC [173-401-640](#), shall not expire until the renewal permit has been issued or denied if a timely and complete application has been submitted. An application shield granted pursuant to WAC [173-401-705\(2\)](#) shall remain in effect until the renewal permit has been issued or denied if a timely and complete application has been submitted.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-620, filed 10/4/93, effective 11/4/93.]

173-401-625

Federally enforceable requirements.

(1) Federal enforceability. All terms and conditions in a chapter 401 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the FCAA.

(2) Exceptions. Notwithstanding subsection (1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the FCAA any terms and conditions included in the permit that are not required under the FCAA or under any of its applicable requirements. Terms and conditions so designated are not subject to the EPA and affected states review requirements of WAC 173-401-700 through 173-401-820.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-625, filed 10/4/93, effective 11/4/93.]

173-401-630

Compliance requirements.

(1) General. Consistent with WAC 173-401-615, all chapter 401 permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a chapter 401 permit shall contain a certification by a responsible official that meets the requirements of WAC 173-401-520.

(2) Inspection and entry. Each permit shall contain inspection and entry requirements that require, that upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where a chapter 401 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by WAC 173-400-105 and the FCAA, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) Schedule of compliance. Each permit shall contain a schedule of compliance consistent with WAC 173-401-510 (2)(h)(iii).

(4) Progress reports. For those sources required to have a schedule of compliance, the permit shall require progress reports consistent with an applicable schedule of compliance and WAC 173-401-510 (2)(h) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Compliance certification. Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(a) A requirement that compliance certifications be submitted once per year. Permitting authorities may require that compliance certifications be submitted more frequently for those emission units not in compliance with

permit terms and conditions or where more frequent certification is specified in the applicable requirement;

(b) In accordance with WAC 173-401-615(1), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with WAC 173-401-615 (3)(a);

(v) If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with Section 113 (c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information; and

(vi) Such other facts as the authority may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the permitting authority; and

(e) Such additional requirements as may be specified pursuant to sections 114 (a)(3) and 504(b) of the FCAA.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-630, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-630, filed 10/4/93, effective 11/4/93.]

173-401-635

Temporary sources.

The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least ten days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions in WAC 173-401-600 through 173-401-650.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-635, filed 10/4/93, effective 11/4/93.]

173-401-640

Permit shield.

(1) Shield requirement. Each chapter 401 permit shall include a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that such applicable requirements are included and are specifically identified in the permit.

(2) Inapplicable requirements. Upon request, the permitting authority shall include in the permit or in a separate written finding issued with the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its application for such a determination the requirements as to which the determination is requested. If the determination is issued in a separate finding, that finding shall be summarized in the permit. The permit shall state that the permit shield applies to any requirements so identified. A request to extend the permit shield to requirements deemed inapplicable to the source may be made either in the original permit application or in an application for a permit modification.

(3) Omissions. A chapter 401 permit that does not expressly state that a permit shield extends to specific applicable requirements shall be presumed not to provide such a shield for those requirements.

(4) Exclusions. Nothing in this section or in any chapter 401 permit shall alter or affect the following:

(a) The provisions of section 303 of the FCAA (emergency orders), including the authority of the administrator under that section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408(a) of the FCAA;

(d) The ability of EPA to obtain information from a source pursuant to section 114 of the FCAA; or

(e) The ability of the permitting authority to establish or revise requirements for the use of reasonably available control technology (RACT) as provided in chapter 252, Laws of 1993.

(5) The agency may exclude all or a portion of a permit from the permit shield upon a finding that the shield would substantially impede implementation or enforcement of applicable requirements. Such a finding shall identify the portions of the permit excluded from the shield, the requirements that have led to the exclusion, and the reason for the exclusion.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-640, filed 10/4/93, effective 11/4/93.]

173-401-645

Emergency provision.

(1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of subsection (3) of this section are met.

(3) Criteria. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency or shorter periods of time specified in an applicable requirement. This notice fulfills the requirement of WAC 173-401-615 (3)(b) unless the excess emissions represent a potential threat to human health or safety. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) Relationship to other rules. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-645, filed 10/4/93, effective 11/4/93.]

173-401-650

Operational flexibility.

(1) Reasonably anticipated operating scenarios. Each permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield described in WAC 173-401-640 to all terms and conditions under each such operating scenario; and

(c) Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this chapter.

(2) Emissions trading. Each permit shall contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under WAC 173-401-600 through 173-401-630 to determine compliance;

(b) Shall extend the permit shield described in WAC 173-401-640 to all terms and conditions that allow such increases and decreases in emissions;

(c) Shall meet all applicable requirements and requirements of this chapter; and

(d) Shall require the source, contemporaneously with making a change, to record in a log at the permitted source the emission increases and decreases.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-650, filed 10/4/93, effective 11/4/93.]

173-401-700

Action on application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under WAC 173-401-750;

(b) The permit has been reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority and, in the latter case, signed, dated, and stamped by the supervising professional engineer;

(c) The permitting authority has complied with the requirements for public participation under WAC 173-401-800;

(d) The permitting authority has complied with the requirements for notifying and responding to affected states under WAC 173-401-820;

(e) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(f) The administrator has received a copy of the proposed permit and any notices required under WAC 173-401-810 and 173-401-820, and has not objected in writing to issuance of the permit within forty-five days of receipt of the proposed permit and all necessary supporting information; and

(g) Where EPA has objected to issuance of a permit or modification, the permittee has consented in writing to the changes required by the EPA.

(2) Deadlines. Except as provided in subsections (1)(g), (3), and (4) of this section or under regulations promulgated under Title IV or Title V of the FCAA for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within eighteen months of receiving a complete application.

(3) Transition plan. The permitting authority shall take final action on at least one-third of all operating permit applications received from chapter 401 sources in existence on the date on which EPA authorizes the permitting authority to issue operating permits within one year after EPA authorization. Final action shall be taken on at least one third of such applications annually over a period not to exceed three years after the effective date of EPA authorization.

(4) Early reduction submittals. The permitting authority shall take final action on a complete permit application containing an early reduction demonstration under section 112 (i)(5) of the FCAA within nine months of receiving the complete application.

(5) Notice of construction applications. Except as provided in WAC 173-401-500(10) processing of notice of construction applications received under RCW 70.94.152 shall take priority over processing of operating permit applications.

(6) Completeness. The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in WAC 173-401-725 (2)(a) and (3), the permitting authority does not have to provide a completeness determination.

(7) Draft permit. Within one hundred eighty days of the date upon which an application is deemed to be complete, the permitting authority should generally issue either a draft permit or a notice of intent to deny the permit application. Notice of issuance of a draft permit shall be published and provided to affected states in accordance with the procedures in WAC 173-401-800 through 173-401-820. The deadline provided in this subsection shall not apply to the initial round of permit applications filed pursuant to subsection (3) of this section.

(8) Statement of basis. At the time the draft permit is issued, the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA, the applicant, and to any other person who requests it.

(9) Proposed permit. Upon completion of the public comment period provided in WAC 173-401-800, the permitting authority shall issue a proposed permit, along with a response to any comments received during the comment period. The permitting authority shall transmit the proposed permit and its response to any comments to the applicant and to EPA for review, as provided in WAC 173-401-810.

(10) Preconstruction approval. The submittal of a complete application shall not affect any requirement of a source to have a preconstruction permit under Title I of the FCAA or a notice of construction approval under RCW 70.94.152.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-700, filed 10/4/93, effective 11/4/93.]

173-401-705

Requirement for a permit.

(1) Requirement for a permit. Except as provided in subsection (2) of this section, WAC 173-401-722 and 173-401-725, no chapter 401 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under this chapter.

(2) Application shield. If a chapter 401 source submits a complete application for permit issuance (including for renewal) within twelve months of the time the source becomes subject to the permit program, operation of the source without a chapter 401 permit is not a violation of this chapter until the permitting authority takes final action on the permit application, except as noted in this section. Chapter 401 sources in existence on the date of EPA approval of the state permit program shall become subject to the program on the effective date of EPA approval. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to WAC 173-401-700(6), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-705, filed 10/4/93, effective 11/4/93.]

173-401-710

Permit renewal, revocation and expiration.

(1) Renewal application. The source shall submit a complete permit renewal application to the permitting authority no later than the date established in the permit. This date shall be no less than six months prior to the expiration of the permit. The permitting authority may require that a permit renewal application must be submitted earlier. The permitting agency must mail this written notice to the source at least one year before the new application deadline to ensure that the terms of the permit will not lapse before the permit is renewed. In no event shall the application due date be earlier than eighteen months prior to the expiration of the permit. The permitting authority shall send a permit application to each source at least six months before a complete application is due.

(2) Permit issuance. Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance.

(3) Expired permits. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subsection (1) of this section and WAC 173-401-500. All terms and conditions of the permit shall remain in effect after the permit itself expires if a timely and complete permit application has been submitted.

(4) Revocation of permits. The permitting authority may revoke a permit only upon the request of the permittee or for cause. The permitting authority shall provide at least thirty days written notice to the holder of a current operating permit prior to revocation of the permit or denial of a permit renewal application. Such notice shall include an explanation of the basis for the proposed action and afford the permittee/applicant an opportunity to meet with the permitting authority prior to the authority's final decision. A revocation issued under this section may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date. Nothing in this subsection shall limit the permitting authority's authority to issue emergency orders.

[Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-710, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-710, filed 10/4/93, effective 11/4/93.]

173-401-720

Administrative permit amendments.

(1) Definition. An "administrative permit amendment" is a permit revision that:

- (a) Corrects typographical errors;
- (b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (c) Requires more frequent monitoring or reporting by the permittee;
- (d) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(e) Incorporates into the chapter 401 permit the terms, conditions, and provisions from orders approving notice of construction applications processed under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of WAC 173-401-700, 173-401-725, and 173-401-800 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in WAC 173-401-600 through 173-401-650.

(2) Acid rain provisions. Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the permitting authority consistent with the following:

(a) The permitting authority shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(b) The permitting authority shall submit a copy of the revised permit to the administrator.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) Permit shield. The permitting authority shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in WAC 173-401-640 for administrative permit amendments made pursuant to subsection (1)(e) of this section.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-720, filed 10/4/93, effective 11/4/93.]

173-401-722

Changes not requiring permit revisions.

(1) General.

(a) A chapter 401 source is authorized to make the changes described in this section without a permit revision, providing the following conditions are met:

(i) The proposed changes are not Title I modifications;

(ii) The proposed changes do not result in emissions which exceed those allowable under the permit, whether expressed as a rate of emissions, or in total emissions;

(iii) The proposed changes do not alter permit terms that are necessary to enforce limitations on emissions from units covered by the permit; and

(iv) The facility provides the administrator and the permitting authority with written notification at least seven days prior to making the proposed changes except that written notification of a change made in response to an emergency shall be provided as soon as possible after the event.

(b) Permit attachments. The source and permitting authority shall attach each notice to their copy of the relevant permit.

(2) Section 502 (b)(10) changes. Pursuant to the conditions in subsection (1) of this section, a chapter 401 source is authorized to make section 502 (b)(10) changes (as defined in WAC 173-401-200) without a permit revision.

(a) For each such change, the written notification required under subsection (1)(a)(iv) of this section shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(b) The permit shield authorized under WAC 173-401-640 shall not apply to any change made pursuant to this paragraph.

(3) SIP authorized emissions trading. Pursuant to the conditions in subsection (1) of this section, a chapter 401 source is authorized to trade increases and decreases in emissions in the permitted facility, where the Washington state implementation plan provides for such emissions trades without requiring a permit revision. This provision is available in those cases where the permit does not already provide for such emissions trading.

(a) Under this subsection (3), the written notification required under subsection (1)(a)(iv) of this section shall include such information as may be required by the provision in the Washington state implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Washington state implementation plan, and the pollutants emitted subject to

the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(b) The permit shield described in WAC 173-401-640 shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(4) Emission caps. Upon the request of the permit applicant, the permitting authority shall issue permits that contain terms and conditions, including all terms required under WAC 173-401-600 through 173-401-630 to determine compliance, allowing for the trading of emissions increases and decreases in the chapter 401 source solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The emissions trading provisions shall not be applied to any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(a) Under this paragraph, the written notification required under subsection (1)(a)(iv) of this section shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(b) The permit shield described in WAC 173-401-640 shall extend to terms and conditions that allow such increases and decreases in emissions.

(5) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

[Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-722, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-722, filed 10/4/93, effective 11/4/93.]

173-401-724

Off-permit changes.

(1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.

(2) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under WAC 173-401-530. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(4) The change shall not qualify for the permit shield under WAC 173-401-640.

(5) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(6) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-724, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-724, filed 10/4/93, effective 11/4/93.]

173-401-725

Permit modification.

(1) Definition. A permit modification is any revision to a chapter 401 permit that cannot be accomplished under provisions for administrative permit amendments under WAC 173-401-720. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(2) Minor permit modification procedures.

(a) Criteria.

(i) Minor permit modification procedures shall be used for those permit modifications that:

(A) Do not violate any applicable requirement;

(B) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the FCAA; and

(II) An alternative emissions limit approved pursuant to regulations promulgated under section 112 (i)(5) of the FCAA;

(E) Are not modifications under any provision of Title I of the FCAA;

(ii) Notwithstanding (a)(i) of this subsection, and subsection (3)(a) of this section, the permitting authority may allow the use of minor permit modification procedures for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that the use of such minor permit modification procedures are explicitly provided for in the Washington state implementation plan or in applicable requirements promulgated by EPA and in effect on April 7, 1993.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of WAC 173-401-510 and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with WAC 173-401-520, of the truth, accuracy, and completeness of the application and that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(iv) Completed forms for the permitting authority to use to notify the administrator and affected states as required under WAC 173-401-810 and 173-401-820.

(c) EPA and affected state notification. Within five working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under WAC 173-401-810 and 173-401-820 to notify the administrator and affected states of the requested permit modification. The permitting authority promptly shall send any notice required under WAC 173-401-820(2) to the administrator.

(d) Notice requirements. Concurrent with the notice to the administrator and affected states, the permitting authority shall submit to the permit register notice of each proposed minor permit modification. Publication in the next available issue of the permit register will signal the beginning of a public comment period of twenty-one days. Each notice must describe the proposed revisions and specify the deadline to file comments with the permitting authority on the proposed modification.

(e) Timetable for issuance. The permitting authority may not issue a final permit modification until after the public comment period ends. The permitting authority may not issue a final permit modification until after EPA's forty-five day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within ninety days of the permitting authority's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five day review period under WAC 173-401-810, whichever is later, the permitting authority shall:

- (i) Issue the permit modification as proposed;
- (ii) Deny the permit modification application;
- (iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- (iv) Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by WAC 173-401-810.

(f) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files such application provided that those changes requiring the submissions of a notice of construction application have been reviewed and approved by the permitting authority. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in (d) of this subsection, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under WAC 173-401-640 shall not extend to minor permit modifications.

(3) Group processing of minor permit modifications. Consistent with this subsection, the permitting authority may process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

- (i) That meet the criteria for minor permit modification procedures under subsection (2)(a) of this section; and
- (ii) That collectively are below ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in WAC 173-401-200, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of WAC 173-401-510 and shall include the following:

- (i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- (ii) The source's suggested draft permit;
- (iii) Certification by a responsible official, consistent with WAC 173-401-520, of the truth, accuracy, and completeness of the application and that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;
- (iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under (a)(ii) of this subsection;
- (v) Certification, consistent with WAC 173-401-520, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification; and
- (vi) Completed forms for the permitting authority to use to notify the administrator and affected states as required under WAC 173-401-810 and 173-401-820.

(c) EPA and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (a)(ii) of this subsection, whichever is earlier, the permitting authority promptly shall meet its obligation under paragraphs WAC 173-401-810 and 173-401-820 to notify the administrator and affected states of the requested permit modifications. The permitting authority shall send any notice required under WAC 173-401-820(2) to the administrator.

(d) Notice of requirements. Concurrent with the notice to the administrator and affected states, the permitting authority shall submit to the permit register notice of group processing of minor permit modifications. Publication in the next available issue of the permit register will signal the beginning of a public comment period of at least twenty-one days. Each notice must describe the proposed revisions and specify the deadline to file comments with the permitting authority on the proposed modification.

(e) Timetable for issuance. The provisions of subsection (2)(e) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in subsection (2)(e) of this section within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five day review period, whichever is later.

(f) Source's ability to make change. The provisions of subsection (2)(f) of this section shall apply to modifications eligible for group processing.

(g) Permit shield. The permit shield under WAC 173-401-640 shall not extend to minor permit modifications eligible for group processing.

(4) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative permit amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-725, filed 10/4/93, effective 11/4/93.]

173-401-730

Reopening for cause.

(1) Standard provisions. Each issued permit shall include provisions stating that the permit shall be reopened and revised under any of the following circumstances:

(a) Additional applicable requirements become applicable to a major chapter 401 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to WAC 173-401-620 (2)(j);

(b) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(c) The permitting authority or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(d) The administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Procedures. Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Notice. Reopenings under this section shall not be initiated before a notice of such intent is provided to the chapter 401 source by the permitting authority at least thirty days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-730, filed 10/4/93, effective 11/4/93.]

173-401-735

Permit appeals.

(1) A decision to issue or to deny a final permit, or the terms or conditions of such a permit, may be appealed to the pollution control hearings board under chapter 43.21B RCW and RCW 70.94.161(9). Any appealable decision or determination shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed by filing an appeal with the pollution control hearings board and serving the appeal on the permitting authority within thirty days of receipt, pursuant to RCW 43.21B.310. The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the FCAA, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(2) Appealing parties. Parties that may file the appeal referenced in subsection (1) of this section include any person who participated in the public participation process pursuant to WAC 173-401-800.

(3) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that a permitting authority fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

[Statutory Authority: RCW 70.94.161 (2)(a). WSR 97-08-084 (Order 97-01), § 173-401-735, filed 4/2/97, effective 5/3/97. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-735, filed 10/4/93, effective 11/4/93.]

173-401-750

General permits.

(1) Permit issuance. The permitting authority may, after notice and opportunity for public participation provided under WAC 173-401-800, issue a general permit covering numerous similar sources or emissions units. Any general permit shall comply with all requirements applicable to other chapter 401 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of WAC 173-401-640, the source shall be subject to enforcement action for operation without a chapter 401 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program.

(2) Applications. Chapter 401 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a chapter 401 permit consistent with WAC 173-401-500. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of WAC 173-401-510, provided that such applications meet the requirements of this chapter, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under WAC 173-401-800, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(3) Renewal. General permits being renewed are subject to the same procedural requirements, including public participation, that apply to initial permit issuance. If the general permit is renewed without change, sources covered by the general permit do not need to submit new applications to operate under the authority of the general permit.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-750, filed 10/4/93, effective 11/4/93.]

173-401-800

Public involvement.

(1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public

of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

(a) The permitting authority shall provide public notice for the following actions:

(i) Issuance of a draft permit or permit renewal;

(ii) Intended denial of a permit application;

(iii) Issuance of a draft permit modification;

(iv) Issuance of a draft general permit;

(v) Scheduling of a public hearing under subsection (4) of this section; and

(vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) Public notice shall be provided by the permitting authority by prominent advertisement in the area affected by the facility applying for a permit. Publication in Ecology's Operating Permit Register does not satisfy this requirement. Prominent advertisement may be by publication in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the Ecology Permit Register. The permitting authority shall send information on any action requiring publication in the Permit Register to ecology within three days of the action.

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive such notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

(i) Name and address of the permitting authority;

(ii) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;

(iii) A brief description of the business conducted at the facility and activity involved in the permit action;

(iv) Name, address, and telephone number of a person from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

(v) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and

(vi) A description of the emission change involved in any permit modification.

(e) The permitting authority must make available for public inspection, in at least one location near the chapter 401 source, all nonproprietary information contained in the permit application, draft permit and supporting materials. Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section. This comment period begins on the date of publication of notice in the Permit Register or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later. No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

(5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-800, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075

(Order 91-68), § 173-401-800, filed 10/4/93, effective 11/4/93.]

173-401-805

Permit register.

(1) Permit register. Ecology shall regularly publish and maintain a Permit Register that will be distributed to all interested parties that request to be on the mailing list. All permitting authorities will work to ensure the information published in the register is timely.

(2) Content. Besides the actions listed in WAC 173-401-800(2), the register will give notice of the following, as pertains to sources covered under this rule:

- (a) Public meetings or hearings on a draft operating permit;
- (b) Receipt of complete permit applications;
- (c) Permit appeals to the pollution control hearings board;
- (d) Issuance or denial of final permit, permit modifications, or renewals;
- (e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit.
- (f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

(3) Mailing list. Ecology shall periodically notify the public of the opportunity to be put on the mailing list for the permit register.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-805, filed 10/4/93, effective 11/4/93.]

173-401-810

EPA review.

(1) Information transfer. The permitting authority shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final chapter 401 permit. The applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the administrator. Upon agreement with the administrator, the permitting authority may submit to the administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) Records. Each permitting authority shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the state program complies with the requirements of the FCAA or of 40 C.F.R. part 70.

[Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-810, filed 10/4/93, effective 11/4/93.]

173-401-820

Review by affected states.

(1) Notice. The permitting authority shall give notice of each draft permit, permit revision, or permit renewal to any affected state on or before the time that the permitting authority provides this or permit revision notice to the

public under WAC 173-401-800 and 173-401-805, except to the extent WAC 173-401-725 (2) or (3) requires the timing of the notice to be different.

(2) Response. The permitting authority, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under WAC 173-401-725 (2) and (3)), shall notify the administrator and any affected state in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this chapter.

(3) British Columbia notification. The permitting authority shall notify British Columbia of draft permits, permit revisions, or permit renewals at sources located within 100 kilometers of the Washington-British Columbia border. Such notice shall be concurrent with notification of EPA and affected states.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-820, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-820, filed 10/4/93, effective 11/4/93.]

173-401-900

Fee determination—Ecology.

(1) Fee determination. Ecology shall develop a fee schedule, consistent with the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover ecology's permit administration costs and its share of ecology's development and oversight costs. The fee schedule shall also indicate the shares of ecology's development and oversight costs that are to be collected by each delegated local authority. Opportunities for public participation shall be afforded throughout the fee determination process, as provided in WAC 173-401-920(1).

(2) Fee eligible activities. The costs of the permit administration and development and oversight activities are fee eligible.

(a) Permit administration. Permit administration costs are those incurred by each permitting authority, including ecology, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Permit administration costs are those enumerated in WAC 173-401-940(1).

(b) Development and oversight. Development and oversight costs are those incurred by ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are those enumerated in WAC 173-401-940(2).

(3) Workload analysis. Ecology shall conduct a workload analysis projecting resource requirements, organized by categories of fee-eligible activities, for the purpose of preparing the budget. Ecology shall, for the two-year period corresponding to each biennium, identify the permit administration and development and oversight activities that it will perform during that biennium. The workload analysis shall include resource requirements for both the direct and indirect costs of the permit administration activities enumerated in WAC 173-401-940(1) and the development and oversight activities enumerated in WAC 173-401-940(2). Ecology shall publish a draft workload analysis together with the draft budget for the following biennium on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). Ecology shall publish a final workload analysis together with the final budget for the following biennium on or before June 30 of each even-numbered year.

(4) Budget development. Ecology shall, for the two-year period corresponding to each biennium, prepare an operating permit program budget for that biennium. The budget shall be based on the resource requirements identified in the workload analysis for the biennium and shall take into account the projected operating permit program account balance at the start of the biennium. Ecology shall publish a draft budget for the following biennium together with the draft workload analysis on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). The draft budget shall include data on unit costs (e.g., salary schedules and the indirect cost rate) used in preparing budget

projections. Ecology shall publish a final budget together with the final workload analysis for the following biennium on or before June 30 of each even-numbered year.

(5) Allocation methodology.

(a) Development and oversight costs. Ecology shall allocate its development and oversight costs among all permitting authorities, including ecology, based upon the number of permit program sources under the jurisdiction of each permitting authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed by that authority.

(b) Permit administration costs and ecology's share of development and oversight costs.

(i) Fee allocation. Ecology shall allocate its permit administration costs and its share of ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered structure based upon:

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available.

(c) WAC 173-401-300(7) Sources. Ecology shall allocate to permit program sources that qualify for an exemption pursuant to WAC 173-401-300(7) after the effective date of the date of the state operating permit program the portion of ecology's permit administration costs and ecology's share of its development and oversight costs that results from including such sources in the first tier of the allocation structure described in (b)(i) of this subsection. After legally and practicably enforceable limits have been established and for so long as a source continues to meet the requirements for exemption under WAC 173-401-300(7), that source shall pay registration program fees pursuant to RCW 70.94.015(2) in lieu of paying operating permit program fees.

(6) Fee schedule. Ecology shall issue annually a fee schedule reflecting the permit administration fee and the share of the development and oversight fee to be paid by each permit program source under its jurisdiction and reflecting the development and oversight assessment to be paid by each permitting authority. The fee schedule shall be based on the information contained in the final source data statements, as provided in WAC 173-401-925(3), for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with WAC 173-401-925. Ecology shall publish the fee schedule for the following year on or before October 31 of each year.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-900, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-900, filed 12/30/93, effective 1/30/94.]

173-401-905**Fee determination—Delegated local authorities.**

Each delegated local authority shall establish a process for developing, assessing, and collecting fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover its permit administration costs and its share of ecology's development and oversight costs. The fee determination process shall provide opportunity for public participation.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-905, filed 12/30/93, effective 1/30/94.]

173-401-910**General permit fee determination.**

Reserved.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-910, filed 12/30/93, effective 1/30/94.]

173-401-915**Fee collection—Ecology and delegated local authorities.**

(1) Collection from sources. Ecology and each delegated local authority shall collect fees sufficient to cover the costs of their respective permit administration activities and their share of ecology's development and oversight activities from the permit program sources under their respective jurisdictions.

(2) Dedicated account. All receipts from fees collected by or on behalf of ecology from permit program sources pursuant to RCW 70.94.162 shall be deposited in the air operating permit account created under RCW 70.94.015. All receipts from fees collected by delegated local authorities from permit program sources pursuant to RCW 70.94.162 shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-915, filed 12/30/93, effective 1/30/94.]

173-401-920**Accountability—Ecology and delegated local authorities.**

(1) Public participation during fee determination process. Ecology shall provide for public participation in the fee determination process described under WAC 173-401-900, which provision shall include, but not be limited to, the following:

(a) Ecology shall provide opportunity for public review of and comment on each biennial workload analysis and budget.

(b) Ecology shall publish in the Permit Register notice of issuance of its draft biennial workload analysis and draft biennial budget and issuance of its annual fee schedule.

(c) Ecology shall make available for public review, on or before February 28 of each even-numbered year, copies of its draft biennial workload analysis and draft biennial budget. Ecology shall make available for public review, on or before October 31 of each year, copies of its annual fee schedule, including information on

availability of the data used for the determination. Ecology shall maintain a mailing list of persons requesting opportunity for review under this subsection or under WAC 173-401-925(1). Ecology may, from time to time, inform the public of the opportunity to be placed on the mailing list and may delete from the list persons who fail to respond to an inquiry regarding continued interest in receiving materials.

(d) Ecology shall provide at least sixty days for public comment on the draft biennial workload analysis and draft biennial budget. Such sixty-day period for comment shall run from the date ecology mails the draft workload analysis and draft budget as provided in (c) of this subsection.

(2) Tracking of revenues, time and expenditures.

(a) Revenues. Ecology shall track revenues on a source-specific basis.

(b) Time and expenditures. Ecology shall track time and expenditures on the basis of source categories and functional categories, except that, as part of a demonstration project undertaken pursuant to RCW 70.94.162, ecology will track time and expenditures on a source-specific basis for at least three but no more than five sources.

(i) Sources will be grouped into five categories, as follows:

(A) Kraft pulping mills;

(B) Sulfite pulping mills;

(C) Metal processing and related industries;

(D) Sources located on the Hanford Reservation; and

(E) Other sources, including those sources under the jurisdiction of ecology's central and eastern regional offices.

(ii) Functions will be grouped into several categories and subcategories, as follows:

(A) Program management and support;

(B) Program development;

(C) Permit processing;

(I) Application assistance and review;

(II) Preparing draft and final permits;

(D) Permit management and compliance activities;

(E) Technical assistance; and

(F) Outreach and education.

(c) Use of information obtained from tracking revenues, time and expenditures.

(i) Ecology shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during the biennial review provided for under WAC 173-401-900.

(ii) The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(3) Fiscal audits and reports.

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

(b) Fiscal audits shall address the following:

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

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

(iii) Determine whether the fees were computed correctly.

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

(v) Determine whether billed fees were collected.

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

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

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

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

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

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

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

(b) Intensive performance audit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Recommendations from the committee members.

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

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

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

(a) Ecology shall establish the committee.

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

(c) The committee shall meet at least once every three years and begin the first overview performance audit no later than January 2017.

(d) Ecology shall appoint committee members.

(e) Committee membership shall include, at a minimum:

(i) Representation from ecology.

(ii) Representation from the regulated community.

(iii) Representation from a delegated local authority.

(iv) The following representation is desirable:

(A) Environmental group(s).

(B) General public.

(f) The committee shall:

(i) Develop a timeline for the schedule of agency reviews, collecting reports, reviewing reports, and submitting recommendations to ecology.

(ii) Every three years, review data reports prepared by the agencies.

(iii) Submit to ecology:

(A) Recommendations for evaluating and improving program performance statewide.

(B) Observations from the data review, including trends analysis (identifying trends).

(C) Recommendations for intensive audit content if an intensive audit is recommended.

(g) Public process. The committee meetings shall be open to the public. Ecology shall announce the public meeting and opportunity to comment on performance audit recommendations.

(6) Conducting intensive performance audits.

(a) If ecology determines that an intensive performance audit is needed, ecology shall establish the intensive audit schedule.

(b) Ecology shall audit the delegated local authorities. A delegated local authority shall audit ecology. An independent contractor may be used to conduct a required intensive audit.

(c) Performance audit contractor requirements.

(i) If an independent contractor is used to conduct an intensive performance audit, the contractor must have experience with the operating permit program.

(ii) To the extent possible, the contractor shall be free of any conflicts of interest. A contractor applying to conduct the audits shall disclose any potential conflicts of interest in its application.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-920, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-920, filed 12/30/93, effective 1/30/94.]

173-401-925

Source data statements and petition for review of statements—Ecology and delegated local authorities.

(1) Preliminary source data statements. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-401-920 (1)(c), or to those requesting receipt of source data statements under this subsection a preliminary statement of emissions and other data from that source upon which ecology intends to base its allocation determination under WAC 173-401-900(5) as well as a preliminary statement of emissions and other data from each of the permit program sources under ecology's jurisdiction upon which ecology intends to base its allocation determination. Such preliminary statement shall be provided to the permit program sources and to other persons on the mailing list on or before July 31 of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under subsection (2) of this section regarding the accuracy of the data contained therein.

(2) Petition for review of statement. A permit program source or other individual may petition ecology to review for accuracy the data contained in any preliminary source data statement provided for under subsection (1) of this section. Such petition shall be lodged on or before August 31 of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom ecology may direct inquiries regarding the request. Upon receipt of such a petition, ecology must issue its written response to the petitioner and any other affected party on or before September 30 of each year. Such response shall state the observations of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by ecology's response.

(3) Final source data statement. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-491-920 (1)(c), or to those requesting receipt of source data statements under this subsection a final statement of emissions and other data from that source upon which ecology will base its allocation determination under WAC 173-401-900 on or before October 31 of each year. In addition, the final source data statements shall include a final statement of emissions and other data upon which ecology intends to base its allocation determination from each of the permit program sources under its jurisdiction. The final source data statement will be accompanied by a fee schedule reflecting the fee to be paid by each source. Ecology may include with the fee schedule an invoice, or a notice stating that fees listed in the fee schedule must be paid by February 28th of the following year.

(4) Delegated local authorities. Delegated local authorities shall establish procedures for administrative dispute resolution for disputes pertaining to fees.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-925, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-925, filed 12/30/93, effective 1/30/94.]

173-401-930

Fee payment and penalties—Ecology.

(1) Fee payment. Each permit program source under ecology's jurisdiction shall pay a fee in the amount reflected in the fee schedule or invoice issued under WAC 173-401-925(3). Such fee shall be due on or before February 28 of each year.

(2) Failure to pay fees. Ecology shall charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee after ninety days past the due date for fee payment. Ecology may charge such penalty in an amount up to three times the source's total original assessed fee.

(3) Other penalties. The penalties authorized in subsection (2) of this section are additional to and in no way prejudice ecology's or a local air authority's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

(4) Facility closure. Sources that permanently cease operations will be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant fiscal year at the time the source ceases operations by the total of three hundred sixty-five calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant fiscal year, had it not ceased operations.

[Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-930, filed 12/30/93, effective 1/30/94.]

173-401-935

Development and oversight remittance by local authorities—Ecology and delegated local authorities.

(1) Collection. On or before October 31 of each year, ecology shall provide to each delegated local authority a statement of the share of ecology's development and oversight costs for which the authority is responsible for collecting from sources under its jurisdiction.

(2) Remittance. Each delegated local authority shall remit to ecology the share of ecology's development and oversight costs for which the delegated local authority is responsible for collecting from sources under its jurisdiction on or before March 31.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-935, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-935, filed 12/30/93, effective 1/30/94.]

173-401-940

Fee eligible activities—Ecology and delegated local authorities.

(1) Permit administration activities shall include:

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

- (b) Source inspections, testing and other data-gathering activities necessary for the development or a permit, permit revision, or renewal;
 - (c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;
 - (d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;
 - (e) Modeling necessary to establish permit limits or to determine compliance with permit limits;
 - (f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;
 - (g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;
 - (h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;
 - (i) The share attributable to permitted sources of the development and maintenance of emissions inventories;
 - (j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;
 - (k) Training for permit administration and enforcement;
 - (l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;
 - (m) Required fiscal audits, periodic performance audits, and reporting activities;
 - (n) Tracking of time, revenues and expenditures, and accounting activities;
 - (o) Administering the permit program including the costs of clerical support, supervision, and management;
 - (p) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act; and
 - (q) Provision of assistance to small business consistent with RCW 70.94.162.
- (2) Development and oversight activities shall include:
- (a) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;
 - (b) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;
 - (c) Administering enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;
 - (d) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;
 - (e) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;
 - (f) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
 - (g) State codification of federal rules or standards for inclusion in operating permits;
 - (h) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States Environmental Protection Agency for approval, including ongoing coordination activities;
 - (i) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;
 - (j) Required fiscal audits and periodic performance audits of the department, and reporting activities;
 - (k) Tracking of time, revenues and expenditures, and accounting activities;
 - (l) Public education and outreach related to the operating permit program, including the maintenance of a permit register;
 - (m) The share attributable to permitted sources of compiling and maintaining emissions inventories;

- (n) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;
- (o) Provision of assistance to small business as required under Section 507 of the Federal Clean Air Act as it exists on the effective date of this act or its later enactment as adopted by reference by the director by rule;
- (p) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;
- (q) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and
- (r) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-940, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 94-02-041 (Order 93-19), § 173-401-940, filed 12/30/93, effective 1/30/94.]