From: Arra, Sarah
Location: R5Metcalfe-ConfRm-R1815B/R5-Metcalfe---18th-Floor
Importance: Normal
Subject: DEQ / EPA Bi-Monthly Call
Start Date/Time: Wed 1/18/2017 3:00:00 PM
End Date/Time: Wed 1/18/2017 4:00:00 PM
MDEQ January 2017 Agenda.docx

Conference Line: 866-299-3188 Code: Ex. 6 - Personal Privacy

From: Arra, Sarah
Location: R5Metcalfe-ConfRm-R1813A/R5-Metcalfe---18th-Floor
Importance: Normal
Subject: DEQ/ EPA Monthly SIP Call
Start Date/Time: Tue 9/27/2016 3:00:00 PM
End Date/Time: Tue 9/27/2016 4:00:00 PM
MDEQ September 2016 Agenda.docx

Conference Line: 866-299-3188 Code: Ex. 6 - Personal Privacy

From: Arra, Sarah
Location: R5Metcalfe-ConfRm-R1815B/R5-Metcalfe---18th-Floor
Importance: Normal
Subject: DEQ / EPA Bi-Monthly Meeting
Start Date/Time: Wed 7/20/2016 3:00:00 PM
End Date/Time: Wed 7/20/2016 4:00:00 PM
MDEQ July 2016 Agenda.docx

From: Arra, Sarah
Location: R5Metcalfe-ConfRm-R1815B/R5-Metcalfe---18th-Floor
Importance: Normal
Subject: Air Quality Planning Breakout Session for EPA and DEQ
Start Date/Time: Tue 5/17/2016 2:00:00 PM
End Date/Time: Tue 5/17/2016 3:00:00 PM
MDEQ May 2016 Breakout Agenda.docx

Conference Line: 866-299-3188 Code: Ex. 6 - Personal Privacy

OHIO CONFERENCE CALL AGENDA
March 8, 2017 - 10:00 Eastern / 9:00 Central
Please call 866-299-3188
Code Ex. 6 - Personal Privacy

1. Designations and Redesignations (Joint Lead)
2. VOC rules – RACT (Joint Lead)
3. Low RVP (Region 5 Lead)
4. Particulate Matter (Joint Lead)
5. Lead (Joint Lead)
6. SO_2 (Joint Lead)
7. Transport Rules (Joint Lead)
8. Infrastructure SIPs (Region 5 Lead)
9. Start-up/Shutdown/Malfunction SIP Call (Ohio Lead)
10. Conformity (Joint Lead)
11. Submittal Contents
12. Rulemaking actions published since last call

    Proposed Removal of Low RVP

NEXT CALL: Wednesday, April 5, 2017 - 10:00 Eastern / 9:00 Central

Eleven SIPs (including redesignations/maintenance plans) are in Active Inventory:

1. NSR/Title V Revisions (-31 and -77, 2/4/08) – Awaiting national decision on petition for reconsideration on ethanol rules
2. GHG permitting rules (3/30/11) – EPA is deferring action until it decides how to address 6/23/14 Supreme Court decision
3. Ohio SO_2 nonattainment plan (4/3/15, 10/13/15) – Found complete. Some issues to be addressed in Ohio rule revisions
4. VOC RACT Rules (11/18/15) – Notice nearing signature for publication after freeze
5. Regional Haze 5-year Review (3/11/16) – Awaiting OGC consistency review
6. VOC Rule (-21-07) Revision (4/29/16) - Under review
7. Cuyahoga County 2008 Lead Redesignation (6/29/16) – Awaiting review
8. Revised Cincinnati 1997 PM2.5 (annual) redesignation (7/22/16) – Only supportive comments received – final notice in signature
9. Cleveland PM2.5 nonattainment plan (10/14/16) – Drafting clean data determination
10. Regional Haze/CSAPR replacing CAIR (11/30/16) – Awaiting substantive revision to CSAPR (re Texas)
11. Termination of Low RVP (12/19/16) – Proposal published 2/15/17 (!) Comments due 3/17/17.

Indiana and EPA SIP/Rules Call
February 16, 2017
10:00 – 11:00 am (Indianapolis)
9:00 – 10:00 am (Chicago)
OAQ Conference Room A
(877) 226-9607, code Ex. 6 - Personal Privacy

Participants
EPA:

IDEM:

Updates

SO_2 Implementation and Data Requirements Rule -

Dearborn County (Lawrenceburg Township) $PM_{2.5}$ -

2012 $PM_{2.5}$ Transport SIP -

Delaware County (Muncie, IN) Lead -

Dearborn County (Lawrenceburg Township) Ozone -

Lake and Porter Counties Ozone (Section 172 and 182 Submittal) -

2015 Ozone Designations -

Morgan County SO_2 Nonattainment Area -

Monitoring -

40 CFR 52.770 SIP Updates -

Next Call (date and time)
March 16, 2017, 9 am (Chicago), 10 am (Indianapolis)

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Agenda for the Rules Portion of the Rule and SIP Call
February 16, 2017

Status of Rule SIP Submittals

Ethanol Plant Clarification (11-99)
Submitted: 9/19/11
Staff: Pedersen
Status: 1/19/17: No change since 9/22/11.
9/22/11: Received, but on hold until EPA reconsiders the ethanol source definition policy.

SO_2 Emission Limits (11-356)
Submitted: 10/2/15
Staff: Bem, Summerhays
Status: 1/19/17: No change since 11/23/15.
11/23/15: Assigned to John Summerhays.
10/22/15: Submittal received. Rule is part of attainment demonstration.

Startup, Shutdown and Malfunctions (15-326)
Submitted: 1/31/17
Staff: Harmon, Persoon
Status: 1/31/17: Final submittal sent.
1/19/17: The draft approval is going to OGC and OAQPS for review.
12/15/16: The approval is being drafted.
11/17/16: Submitted parallel processing request on 11/14/16.

Emission Reporting for Lawrenceburg Township, Dearborn County (16-162)
Submitted: 11/18/16
Staff: Walsh, Svingen
Status: 1/19/17: Final approval will be published at the same time as the redesignation request.
12/27/16: Proposed approval published.
12/15/16: Signed as a separate action from the redesignation request.
11/18/16: SIP submittal sent to EPA.
6/1/16: OAQ staff submitted Section 8 Notice and requested parallel processing.

2015 CFR Update (16-208)
Submitted: 12/13/16
Staff: Walsh, Hatten
Status: 1/19/17: Review has been assigned to Charles Hatten.
12/15/16: Submittal received electronically.
12/13/16: SIP submittal sent to EPA.

Indiana Rules in Process

Asbestos (09-363)
Staff: Pedersen
Status: 1/19/17: Rule on hold.

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6/23/09: First Notice posted 6/3/09.

Stone Crushing SSOA (10-571)
Staff: Harmon
Status: 1/19/17: No change since 10/22/15.
10/22/15: Jack Harmon working with program staff. Draft will be submitted to EPA for comment.
9/30/10: First Notice published on 9/15/10.

Source Specific Operating Agreements (11-315)
Staff: Pedersen
Status: 1/19/17: Rule on hold.
6/23/11: First Notice published 6/1/11.

Permit By Rule (11-316)
Staff: Pedersen
Status: 1/19/17: Rule on hold.
6/23/11: First Notice published 6/1/11.

NOx Emissions from Large Affected Units (15-414)
Staff: Harmon
Status: 1/19/17: A revised draft was sent to Sarah Arra for review.
12/15/16: Finalizing response to comments.
11/17/16: No change since 9/15/16.
9/15/16: Clarifying draft language.
8/18/16: Will send draft rule language to Doug Aburano within 2 to 3 weeks for review.
7/21/16: Draft Second Notice being reviewed by program staff.
6/16/16: No change.
4/21/16: Internal meetings; Second Notice being drafted.
3/17/16: No change since 1/25/16.
1/25/16: Comments received, drafting Second Notice.
12/17/15: First Notice published 12/9/15. Copy will be sent to Doug Aburano.
11/23/15: Approved by OMB. First Notice should publish soon.

Volatile Organic Liquid Storage Tanks (15-427)
Staff: Harmon
Status: 1/19/17: The Second Notice will be sent to Steve Rosenthal when ready.
12/15/16: No change since 9/15/16.
9/15/16: In internal review.
8/18/16: Draft should be ready for Steve Rosenthal review in a few weeks.
7/21/16: Second Notice being drafted with help of Betsy Zlatos. Send copy of Second Notice to Steve Rosenthal after internal review.
6/16/16: No change since 2/18/16.
2/18/16: Second Notice still being drafted. The draft will be sent to EPA for review when ready.
1/25/16: No comments; Second Notice being drafted. Copy to Steve Rosenthal after internal review.
12/17/15: First Notice published 12/16/15.
11/23/15: Waiting for OMB approval to proceed with First Notice.

Cross State Air Pollution Rule (CSAPR) (16-209)
Staff: Aguilar

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Status: 1/19/17: Second Notice was published and comment period will be over next week. Second Notice sent to Sarah Arra and Eric Svingen on 12/29/16.
12/15/16: Second Notice approved and submitted for publication. Lauren Aguilar will send copy of the draft notice to Sarah Arra and Eric Svingen.
11/17/16: CSAPR Update rule published 10/26/16. Draft Second Notice in review.
10/20/16: CSAPR Update rule released, but not published. Continuing work on Second Notice.
9/15/16: Second Notice tentatively to be ready in November.
8/18/16: No changes.
7/21/16: Second Notice should be drafted by October or November.
6/16/16: Meeting with affected sources in mid-July.
5/19/16: First Notice to publish 6/1/16.
5/16/16: OMB approval to proceed.

Short-Term Backup Units (16-309)
Staff: Harmon
Status: 1/19/17: No change since 9/15/16.
9/15/16: Starting to draft rule language.
8/18/16: Comment period ends 8/19/16. One supporting comment received.
7/21/16: First Notice published on 7/20/16.
6/16/16: First Notice send to OMB today.
5/19/16: Internal discussions. Michael Langman will be contact.
4/21/16: Work beginning on First Notice draft.

Outdoor Hydronic Heaters (16-332)
Staff: Walsh
Status: 1/19/17: No change since 10/20/16.
10/20/16: Drafting Second Notice.
9/15/16: No comments received to date.
8/18/16: First Notice published 8/17/16 for comment.
7/21/16: Submitted to OMB on 6/29/16.
6/16/16: No change.
5/19/16: First Notice being drafted.
4/21/16: Approved to start rule to address 3/16/15 NSPS and existing rule amendments.

2015 Ozone Standard (16-529)
Staff: Walsh
Status: 1/19/17: Comment period ended and rule will be ready for next board meeting.
12/15/16: Section 8 Notice published and in comment period.
11/17/16: No change since 8/18/16.
8/18/16: At OMB for approval.
7/21/16: Draft Section 8 Notice in review.
6/16/16: Drafting Section 8 Notice.

Commercial and Industrial Solid Waste Incineration (CISWI) (xx-xxx)
Staff: Harmon
Status: 1/19/17: The proposed FIP was published which may impact how IDEM proceeds with rule.
12/15/16: No change since 8/18/16.
8/18/16: Making revisions.
7/21/16: No change since 5/19/16.
5/19/16: Incorporated EPA comments. Waiting on publication of new EPA rule.

4/21/16: Section 8 Notice drafted. Waiting to see if EPA makes additional changes by end of April.
3/17/16: With program staff for review.
2/18/16: No change.
1/25/16: Drafting notice and holding internal meeting.

NIPSCO Consent Decree Requirements (xx-xxx)
Staff: Reiss
Status: 1/19/17: No change since 9/15/16.
9/15/16: Meeting with EPA and NIPSCO on force majeure language.
8/18/16: No change.
7/21/16: NIPSCO wants to meet with EPA and IDEM about issues, including force majeure language.
6/16/16: Three more issues to finalize before notice can be reviewed and go to OMB.
5/19/16: No change.
4/21/16: Revised draft sent back to NIPSCO attorney.
3/17/16: Reviewing comments from source attorney.
2/18/16: NIPSCO attorney to provide comments by end of February.
1/25/16: Comments from NIPSCO due by end of January.
12/17/15: No change.
11/23/15: Preparing OMB submittal.

Permit Legal Notices (xx-xxx)
Staff: Walsh
Status: 1/19/17: Drafting First Notice.

U.S. Steel SO2 Revisions (xx-xxx)
Staff: Stevens
Status: 1/19/17: Drafting Section 8 Notice.

State Plan Submittals

Lead NESHAP Delegation
Submitted: 1/8/14
Staff: Bem
Status:

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Non-Rule SIP Submittals

Pollutant	Activity	Status
CO	Nothing to report.	
Lead	Redesignation of Muncie-area, Delaware County, nonattainment area.	Redesignation petition and maintenance plan submitted April 14, 2016.
Nitrogen Dioxide	Nothing to report.	
Ozone	Redesignations	
	Lake/Porter Counties	Redesignation petition and maintenance plan submitted June 15, 2016. Based on partial/preliminary ozone monitoring data for 2016, the three year design value (2014-2016) for the Chiwaukee, WI monitor is above the 2008 standard. Attainment demonstration and technical support document completed and is out for public comment. No public hearing request was received. The public hearing has been cancelled. Public comment period ends February 17, 2017. Section 182(f) NOx exemption request letter submitted to EPA for review on February 10, 2017.
	Lawrenceburg Township (Dearborn County)	Redesignation petition and maintenance plan submitted February 23, 2016. Supplement to recharacterize 2014 emissions inventory to include actual EGU and non-point emissions of point source category submitted May 4, 2016. Final rulemaking for revision to Emissions Reporting Rule, LSA Document #16-162, published in the Indiana Register on November 17, 2016. Letter requesting approval of the revisions to the rule submitted to EPA November 18, 2016. EPA's proposed approval of the revisions to Emissions Reporting Rule and redesignation petition and maintenance plan published in the *Federal Register (FR)* on December 27, 2016 (81 FR 95080) and (81 FR 95081). Public comment periods for these rulemakings ended on January 26, 2017.
	2015 Standard Infrastructure SIP	Due to EPA on or before October 1, 2018.
	2015 Standard Designation Recommendations	Designation recommendations submitted September 16, 2016.
Sulfur Dioxide	Round 1 Nonattainment Areas	Attainment demonstration submitted October 2, 2015; completeness letter received from EPA on February 25, 2016. Technical addendum for revisions to Indiana's State Implementation Plan for SO2 and attainment demonstration to incorporate changes to Rolls Royce within the Marion County nonattainment area submitted May 2, 2016.
	Round 2 Designations (consent decree) Gibson, Rockport, Michigan City, Clifty Creek, and A.B. Brown generating stations	EPA designated Gibson, Jefferson (partial), LaPorte, Posey (partial), and Spencer (partial) counties as unclassifiable/attainment for the 2010 primary 1-hour SO2 standard as published in the *Federal Register (FR)* on July 12, 2016 (81 FR 45039).
	Redesignation of Clay and Washington Townships (Morgan County), nonattainment area.	Further discussions needed to address EPA's comments/concerns regarding the preliminary redesignation petition and maintenance plan.
	Rounds 3 and 4 Designations (Data Requirements Rule) Carmeuse Lime, Inc. and SABIC Innovative Plastics	Indiana's modeling and monitoring protocol submitted June 30, 2016. Modeling analyses or federally permanent/enforceable emission limits and compliance due by January 13, 2017. Commissioner's Orders to establish permanent and enforceable SO2 emission limits for SABIC Innovative Plastic and Carmeuse Lime, Inc. in order to ensure continued attainment of the 1-hour SO2 standard submitted for review and approval on December 5, 2016 and December 27, 2016, respectively. Preliminary recommendations concerning Round 3 designations submitted January 13, 2017.
Particulates	Lawrenceburg Township (part of Cincinnati NA area) Redesignations	EPA approved the RACM/RACT analysis for Lawrenceburg Township as published in the *Federal Register (FR)* on October 24, 2016 (81 FR 58402). Revised draft redesignation petition and maintenance plan completed. Public comment ended August 15, 2016. No public comments were received. Redesignation petition and maintenance plan submitted August 19, 2016.
	2012 Standard Infrastructure SIP	Infrastructure SIP submitted June 10, 2016. Weight of evidence analysis supporting Indiana's fulfillment of Section 110(a)(2)(D)(i)(I) (Prong 1 and 2) and (ii) (Prong 4) requirements submitted December 28, 2016.
Regional Haze	Five-Year Progress Report	Five-year progress report submitted March 30, 2016.

cc: Lauren Aguilar, Keith Baugues, Susan Bem, Jean Boling, Brian Callahan, Scott Deloney, Mark Derf, Gale Ferris, Jack Harmon, Nancy King, Bruno Pigott, Jessica Reiss, Shawn Seals, Valerie Tachtiris, Doug Wagner, Keelyn Walsh, Betsy Zlatos, Doug Aburano (EPA Region V), Pam Blakley (EPA Region V), Louise Gross (EPA Region V), Chris Panos (EPA Region V), Steve Rosenthal (EPA Region V)

ED_001360_00006260

To: AMANDA PAIGE DEROUEN POLITO (Amanda.Polito@LA.GOV)[Amanda.Polito@LA.GOV]
From: Shar, Alan
Sent: Tue 3/15/2016 3:34:13 PM
Subject: FW: SSM SIP Call
RIRA_1507.A & B Repeal.doc
1507.A & B Repeal.doc
RIRA_1107.A Repeal.doc
1107.A Repeal.doc
RIRA_2153.B.1.i Repeal.doc
2153.B.1.i Repeal.doc
RIRA_2307.C Repeal.doc
2307.C Repeal.doc
RIRA_2201 SU_SD Work Practices.doc
2201 SU_SD Work Practices.doc

Her they are. We do not need the form that says "*REQUEST TO INITIATE RULEMAKING ACTIVITY*".

For example; we need the entire text of "Chapter 15 Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 15. Emission Standards for Sulfur Dioxide" **from start to the very end that also shows the proposed changes.**

From: Bryan Johnston [mailto:Bryan.Johnston@LA.GOV]
Sent: Wednesday, March 09, 2016 4:58 PM
To: Shar, Alan <shar.alan@epa.gov>
Subject: SSM SIP Call

Alan:

LDEQ will propose five (5) rulemakings in response to EPA's SSM SIP call. I've attached the draft documents for your review (two for each rulemaking).

Please call or e-mail with any questions or concerns.

Thanks,

Bryan D. Johnston

LDEQ/Air Permits

P: 225.219.3450

F: 225.219.3309

E: bryan.johnston@la.gov

To: AMANDA PAIGE DEROUEN POLITO (Amanda.Polito@LA.GOV)[Amanda.Polito@LA.GOV]; nguyen.dan@LA.GOV[nguyen.dan@LA.GOV]; Zhang.Qingming@LA.gov[Zhang.Qingming@LA.gov]
From: Shar, Alan
Sent: Tue 3/15/2016 3:11:54 PM
Subject: FW: SSM SIP Call - LDEQ 5 rule revisions

All – Since Bryan is out, I am forwarding this request to you regarding the proposed five rulemakings in response to EPA's SSM SIP call.

What Bryan sent me is only the streamlined affected section changes in each chapter.

For review, we need the entire text of each affected Chapter (i.e., entire text of Chapters 11, 15, 22, 21, and 23 from the start to the end) with the proposed changes. Thanks for your help.

Alan Shar, P.E.

From: Shar, Alan
Sent: Tuesday, March 15, 2016 10:00 AM
To: Bryan D. Johnston (bryan.johnston@la.gov) <bryan.johnston@la.gov>
Subject: RE: SSM SIP Call

Bryan – I left you a voice message yesterday. Perhaps you are busy with the SO2 designation project in your State.

Regarding the SSM: Would you please send me the ***entire*** text of each affected Chapter (i.e., Chapters 11, 15, 22, 21, and 23 from the start to the end) with the proposed changes.

To provide comments to the State I will need to share these proposals with EPA people outside the Region that are not familiar with LA rules, and need to review the proposals within the context of entire Chapter not just the streamlined affected provisions. If you have questions, I can be reached at 214 665 6691. Thanks.

Alan

From: Shar, Alan
Sent: Thursday, March 10, 2016 7:48 AM

To: 'Bryan Johnston' <Bryan.Johnston@LA.GOV>
Subject: RE: SSM SIP Call

Bryan - Thanks, we will review and get back to you.

Alan

From: Bryan Johnston [mailto:Bryan.Johnston@LA.GOV]
Sent: Wednesday, March 09, 2016 4:58 PM
To: Shar, Alan <shar.alan@epa.gov>
Subject: SSM SIP Call

Alan:

LDEQ will propose five (5) rulemakings in response to EPA's SSM SIP call. I've attached the draft documents for your review (two for each rulemaking).

Please call or e-mail with any questions or concerns.

Thanks,

Bryan D. Johnston

LDEQ/Air Permits

P: 225.219.3450

F: 225.219.3309

E: bryan.johnston@la.gov

To: Hall, Kristin[Hall.Kristin@epa.gov]; Turner, Thomas E (DEC)[tom.turner@alaska.gov]
Cc: Suzuki, Debra[Suzuki.Debra@epa.gov]; Bray, Dave[Bray.Dave@epa.gov]
From: Smith, Rebecca T (DEC)
Sent: Mon 5/2/2016 6:57:39 PM
Subject: RE: Alaska rule - 18 AAC 50.240

;;;;
Kristin,

Thank you. We'll take a look at this and the Oregon and Idaho examples you sent us (thank you) and figure out where we're going.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) ; Turner, Thomas E (DEC)
Cc: Suzuki, Debra ; Bray, Dave
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision – with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

Some explanations and caveats about the markup are important:

First, we made an assumption that you would want to retain your current reporting requirements, but we did remove the specific provision regarding immediate notice for excess emissions which the source believes were unavoidable, which isn't needed and doesn't work without changes for a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

Second, we also assumed that you might want to retain your current sections on startup and shutdown, scheduled maintenance, and upsets with their separate and different factors that ADEC would consider. EPA's SSM guidance includes factors that the State can consider when exercising its enforcement discretion but it doesn't have separate provisions for startup, shutdown and malfunction (upsets).

EPA notes that the current criteria in your rule don't include all of the elements of the five criteria in EPA's SSM guidance. We encourage you to consider adding some of those additional elements (e.g. using off-shift labor and overtime work to expedite repairs), but states have more discretion with a true enforcement discretion approach because it is a list of factors for the state to consider, and a source is not automatically entitled to an exemption from penalties if all the criteria are met.

Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

To: Hall, Kristin[Hall.Kristin@epa.gov]
From: Smith, Rebecca T (DEC)
Sent: Thur 6/23/2016 5:22:47 PM
Subject: RE: Alaska rule - 18 AAC 50.240

.....
,,,,,,,
Thanks. Yup, it's the 2016 updates.

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Thursday, June 23, 2016 9:10 AM
To: Smith, Rebecca T (DEC)
Subject: RE: Alaska rule - 18 AAC 50.240

If you can wait until July 11, I can review your draft cover letter then. I'm assuming that's for the 2016 IBR update SIP?

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, June 23, 2016 9:35 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Thanks. Have a great vacation!

I should be able to send a draft SIP submittal letter soon (gotta get done with the SSM SIP call stuff first) to make sure I've caught everything. Should I wait till you get back or send it to someone else? Our regs still aren't done at DOL yet though, so it'll be a bit before they're ready to go to you as a final package, so we should have time.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Thursday, June 23, 2016 8:32 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Happy to help! I should let you know that I'll be out of the office for two weeks on vacation – if questions come up over the next two weeks, Dave Bray and Debra Suzuki will be available.

Thanks again for your hard work on this.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, June 23, 2016 9:28 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Ah, I must have skipped right over those sections when I was reading the proposal! Thanks.

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Thursday, June 23, 2016 8:27 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Yes – they are. Here is an excerpt from the EPA's SIP Call proposal that discusses specific Idaho and Oregon provisions:

2. Idaho

a. Petitioner's Analysis

The Petitioner objected to a provision in the Idaho SIP that appears to grant enforcement discretion to the state as to whether to impose penalties for excess emissions during certain SSM events (Idaho Admin. Code r. 58.01.01.131). [196] The provision provides that "[t]he Department shall consider the sufficiency of the information submitted and the following criteria to determine if an enforcement action to impose penalties is warranted * * *." The Petitioner argued that this provision could be interpreted to give the Department authority to decide that enforcement is not warranted by anyone, thereby precluding action by the EPA and citizens for civil penalties or injunctive relief.

b. The EPA's Evaluation

The EPA's SSM Policy interprets the CAA to allow states to elect to have appropriately drawn SIP provisions addressing the exercise of enforcement discretion by state personnel. As the Petitioner recognized, Idaho Admin. Code r. 58.01.01.131 appears to be a statement of enforcement discretion, and it delineates factors that will be considered by the Department in determining whether to pursue enforcement for violations due to excess emissions. Subsection 101.03 of the provision clearly states that "[a]ny decision by the Department * * * shall not excuse the owner or operator from compliance with the relevant emission standard." There is no language suggesting that the Department's determination to forgo state enforcement against a source would in any way preclude the EPA or the public from demonstrating that violations occurred or from taking enforcement action. Consequently, the EPA

believes the provision is consistent with the requirements of the CAA.

c. The EPA's Proposal

The EPA proposes to deny the Petition with respect to Idaho Admin. Code r. 58.01.01.131. The EPA interprets this provision to allow both the EPA and the public to seek civil penalties or injunctive relief, regardless of how the state chooses to exercise its enforcement discretion. The EPA solicits comments on this issue, in particular from the State of Idaho, to assure that there is no misunderstanding with respect to the correct interpretation of Idaho Admin. Code r. 58.01.01.131.

3. Oregon

a. Petitioner's Analysis

The Petitioner objected to a provision in the Oregon SIP that grants enforcement discretion to the state to pursue violations for excess emissions during certain SSM events (Or. Admin. R. 340-028-1450). [(197)] The provision provides that "[i]n determining if a period of excess emissions is avoidable, and whether enforcement action is warranted, the Department, based upon information submitted by the owner and or operator, shall consider whether the following criteria are met * * *." The Petitioner argued that this provision could be interpreted to give the Department authority to decide that enforcement is not warranted by anyone, thereby precluding action by the EPA and citizens for civil penalties or injunctive relief.

b. The EPA's Evaluation

After the Petition was filed, the provision of the Oregon SIP cited by the Petitioner was recodified and revised by the state and was submitted to the EPA as part of a SIP revision. The EPA approved the SIP revision on December 27, 2011. [(198)] The provision has been recodified and revised at Or. Admin. R. 340-214-0350. The provision as recodified provides that "[i]n determining whether to take enforcement action for excess emissions, the Department considers, based upon information submitted by the owner or operator," a list of factors.

The EPA's SSM Policy interprets the CAA to allow states to elect to have SIP provisions that pertain to the exercise of enforcement discretion by state personnel. As revised by Oregon and approved by the EPA into the SIP, Or. Admin. R. 340-214-0350 is plainly a statement of enforcement discretion, and it delineates factors that will be considered by the Department in determining whether to pursue state enforcement for violations of the applicable SIP emission limitations due to excess emissions. There is no language in this provision suggesting that the Department's determination to forgo enforcement against a source would in any way preclude the EPA or the public from demonstrating that violations occurred and taking enforcement action. Consequently, the EPA believes the current SIP provision is consistent with the requirements of the CAA.

c. The EPA's Proposal

The EPA proposes to deny the Petition with respect to Or. Admin. R. 340-028-1450. This provision has since been recodified and approved by the EPA at Or. Admin. R. 340-214-0350. The EPA interprets the recodified provision to allow both the EPA and the public to seek civil penalties or injunctive relief, regardless of how the state chooses to exercise its enforcement discretion. The EPA solicits comments on this issue, in particular from the State of Oregon, to assure that there is no misunderstanding with respect to the correct interpretation of Or. Admin. R. 340-214-0350.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, June 22, 2016 5:21 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

One other question. Have both Idaho and Oregon's changed excess emissions regulations been approved into their SIPs already?

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Wednesday, June 22, 2016 10:51 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Hi Rebecca –

Check out **Section XI. Statement of the EPA's SSM SIP Policy as of 2015** (at page 139 of the pdf). It discusses alternative emission limits (at D. page 142), enforcement discretion (at E. page 142-143), and affirmative defense provisions (at F. page 143).

Section X. Implementation Aspects of EPA's SSM SIP Policy (at page 138 of the pdf) also talks a lot about the alternative emission limits option.

Hope this helps.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, June 22, 2016 10:52 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Kristin,

We're working on the SSM SIP Call stuff, and I'm wondering if you can direct me to the pages of the June 12, 2015, Federal Register publication where the info I highlighted below can be found? I'm having difficulty pinpointing which info that is. Thank you.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision – with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

Some explanations and caveats about the markup are important:

First, we made an assumption that you would want to retain your current reporting requirements, but we did remove the specific provision regarding immediate notice for excess emissions which the source believes were unavoidable, which isn't needed and doesn't work without changes for a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

Second, we also assumed that you might want to retain your current sections on startup and shutdown, scheduled maintenance, and upsets with their separate and different factors that ADEC would consider. EPA's SSM guidance includes factors that the State can consider when exercising its enforcement discretion but it doesn't have separate provisions for startup, shutdown and malfunction (upsets).

EPA notes that the current criteria in your rule don't include all of the elements of the five criteria in EPA's SSM guidance. We encourage you to consider adding some of those additional elements (e.g. using off-shift labor and overtime work to expedite repairs), but states have more discretion with a true enforcement discretion approach because it is a list of factors for the state to consider, and a source is not automatically entitled to an exemption from penalties if all the criteria are met.

Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

To: Hall, Kristin[Hall.Kristin@epa.gov]
Cc: Turner, Thomas E (DEC)[tom.turner@alaska.gov]
From: Smith, Rebecca T (DEC)
Sent: Tue 7/12/2016 4:58:17 PM
Subject: FW: SSM SIP Call 18 AAC 50.240 draft revision
18 AAC 50.240 DEC.docx

;;;;
;;;;
And John's just recommended a change to the beginning of (b) to have it say "In determining whether to assess penalties for excess" rather than "…take enforcement action".

Rebecca

From: Smith, Rebecca T (DEC)
Sent: Tuesday, July 12, 2016 8:54 AM
To: Hall, Kristin
Cc: Turner, Thomas E (DEC)
Subject: FW: SSM SIP Call 18 AAC 50.240 draft revision

Kristin,

I haven't heard back from Dave and figured he might be on vacation or really busy. I thought I'd send this by you to see what you think. We have added "upsets or" into 240(b)(4), because our Compliance folks wanted to keep upsets as part of our regs.

Rebecca

From: Smith, Rebecca T (DEC)
Sent: Wednesday, July 06, 2016 9:24 AM
To: Bray, Dave <bray.dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: SSM SIP Call 18 AAC 50.240 draft revision

Dave,

Attached please find our current draft of the revised 18 AAC 50.240 regulations to address the SSM SIP call issues. We worked with the suggestions you, Julie, and Kristin sent and then expanded on them, particularly in the malfunctions section to include the other criteria from the SSM SIP Policy we hadn't previously listed.

We're having a meeting with our Compliance managers today to make sure they will work for them, but would you please review the regs and let us know if they would be approvable as written?

Thank you,

Rebecca

To: Hall, Kristin[Hall.Kristin@epa.gov]
From: Smith, Rebecca T (DEC)
Sent: Tue 7/12/2016 6:33:42 PM
Subject: FW: Alaska rule - 18 AAC 50.240
18 AAC 50 240.docx

;;;;;
Also, this question.

From: Smith, Rebecca T (DEC)
Sent: Wednesday, July 06, 2016 9:16 AM
To: Bray, Dave
Subject: FW: Alaska rule - 18 AAC 50.240

Dave,

We're working on this now, and I am having difficulty extracting from the final rule why it is that there is no longer a de facto definition of "unavoidable" so I can finish my briefing document. Do you have any clarity to offer?

Thanks,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision – with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

Some explanations and caveats about the markup are important:

First, we made an assumption that you would want to retain your current reporting requirements, but we did remove the specific provision regarding immediate notice for excess emissions which the source believes were unavoidable, which isn't needed and doesn't work without changes for a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

Second, we also assumed that you might want to retain your current sections on startup and

shutdown, scheduled maintenance, and upsets with their separate and different factors that ADEC would consider. EPA's SSM guidance includes factors that the State can consider when exercising its enforcement discretion but it doesn't have separate provisions for startup, shutdown and malfunction (upsets).

EPA notes that the current criteria in your rule don't include all of the elements of the five criteria in EPA's SSM guidance. We encourage you to consider adding some of those additional elements (e.g. using off-shift labor and overtime work to expedite repairs), but states have more discretion with a true enforcement discretion approach because it is a list of factors for the state to consider, and a source is not automatically entitled to an exemption from penalties if all the criteria are met.

Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

To: Bray, Dave[Bray.Dave@epa.gov]
Cc: Turner, Thomas E (DEC)[tom.turner@alaska.gov]; Hall, Kristin[Hall.Kristin@epa.gov]
From: Smith, Rebecca T (DEC)
Sent: Thur 7/21/2016 10:10:57 PM
Subject: RE: Alaska rule - 18 AAC 50.240

;;;;;
Thank you for the update.

Rebecca

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Thursday, July 21, 2016 12:57 PM
To: Smith, Rebecca T (DEC)
Cc: Turner, Thomas E (DEC) ; Hall, Kristin
Subject: RE: Alaska rule - 18 AAC 50.240

No news yet. One of the two HQ persons is out this week (like Tom) and one is super swamped but hoped to get to this by the end of the week.

Looks like it might be Monday before we get any feedback from them.

Dave

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, July 21, 2016 10:39 AM
To: Bray, Dave <Bray.Dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>; Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Dave,

Any news or update on this? Tom's off fishing but just called and was wondering.

Rebecca

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Wednesday, July 13, 2016 2:09 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>; Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Hi Rebecca,

I think that is an approach that can work but let us check it out. I know that EPA has responded to a number of other States about that approach and we need to see if there are any issues with it or any specific situations where it wouldn't work.

One general concern that I'm aware of is if a State has such a broad (or poorly worded) provision that it effectively limits a State's ability to take enforcement actions, then it would run afoul of the general section 110 requirement to have adequate enforcement authority. We don't see that as an issue with your current rule, but just want to make sure there isn't anything else we would need to consider if you kept your current rule as a State-only provision and ask EPA to remove it from the federally-approved SIP.

I'll get back to you shortly on when we will be ready to chat.

Dave

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, July 13, 2016 12:48 PM
To: Bray, Dave <Bray.Dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Thank you.

We had a briefing with John and Denise yesterday, and it sounds like the best approach for us may be to request that EPA, Reg. 10 remove 18 AAC 50.240 from our approved SIP and we would keep the existing regulations for state purposes. The regulations as written work for our purposes, and John thinks it would be better for us to keep them as is.

Would you and Kristin be available to talk about this with Tom and me sometime this afternoon or tomorrow?

Thank you,

Rebecca

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Wednesday, July 13, 2016 10:47 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Hi Rebecca.

An affirmative defense approach requires a source to make the case that the excess emissions were the result of an emergency or some other condition that was unavoidable and hence not an enforceable violation. So defining what is considered to be an emergency or unavoidable is a necessary element of an affirmative defense approach.

However, an enforcement discretion approach doesn't need a definition of unavoidable because the agency has the discretion to decide whether or not to enforce based on a lot of factors, and

can chose to not enforce even if a particular period of excess emissions could have been avoided.

However, that said, if an agency wants to specify the types of things it will consider when determining whether or not to take an enforcement action, one of those things could be whether or not the excess emissions were unavoidable. However, the rule cannot include language that would prevent the agency from taking an enforcement action if the source showed that the excess emissions were unavoidable (that would then be an affirmative defense).

Hope this helps.

Dave

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, July 06, 2016 10:16 AM
To: Bray, Dave <Bray.Dave@epa.gov>
Subject: FW: Alaska rule - 18 AAC 50.240

Dave,

We're working on this now, and I am having difficulty extracting from the final rule why it is that there is no longer a de facto definition of "unavoidable" so I can finish my briefing document. Do you have any clarity to offer?

Thanks,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision – with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

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a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

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Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Environmental Conservation

OFFICE OF THE COMMISSIONER

P.O. Box 111800
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99811-1800
Main: 907-465-5066
Fax: 907-465-5070
www.dec.alaska.gov

January 5, 2017

Mr. Dennis J. McLerran
U.S. EPA Region 10
Regional Administrator's Office, RA-210
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Subject: SIP Submittal of adoption updates in 18 AAC 50

Dear Mr. McLerran:

This letter provides amendments to 18 AAC 50, Air Quality Control regulations, with an effective date of December 29, 2016. Specific provisions are submitted for removal from the EPA approved State Implementation Plan (SIP). The language of the provisions is included, for informational purposes, to show a complete record of the rulemaking.

On November 29, 2016, the Lt. Governor signed and filed the following changes to the Alaska Department of Environmental Conservation's (ADEC) regulations in 18 AAC 50:

- amend 18 AAC 50.030 to adopt the current effective date of the *State Air Quality Control Plan*.
- amend 18 AAC 50.240(b) to address changes in requirements for excess emissions.

ADEC requests EPA removal of the following section from the SIP:

- 18 AAC 50.240

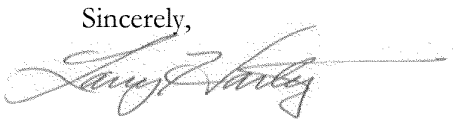
We will submit the following documents via the EPA's eSIPS system. If requested, we can provide one paper copy and one electronic version of the following documents to Kristin Hall of your staff. (Note that the electronic version would be an exact duplicate of the paper copy.)

- Lt. Governor's certified Filing Certificate for Permanent Regulations, including Signed Adoption Order and Memorandum of Filed Permanent Regulations, signed on November 29, 2016, with an effective date of regulations of December 29, 2016, and Limited Delegation of the Commissioner's Authority;
- Notice of Public Comment Period, signed September 7, 2016;
- Affidavit of Notice of Proposed Adoption of Regulations and Furnishing of Additional Information, signed October 20, 2016;

- Affidavit of Publication for the Public Notice, Alaska Dispatch News, signed September 12, 2016;
- Notice of Cancellation of Oral Hearing, dated October 6, 2016;
- Affidavit of Cancellation of Oral Hearing, signed October 20, 2016;
- Public Review Draft of 18 AAC 50 regulations which shows the changes made to the regulations, with bold lettering as new language and bracketed language as old language, dated September 7, 2016;
- Responsiveness Summary, October 20, 2016;
- Affidavit of Agency Record of Public Comment, signed October 20, 2016;
- Adoption Draft of 18 AAC 50 regulations, dated October 20, 2016;
- A copy of the tracked regulation amendments prepared by the Department of Law for transmittal to the Lt. Governor for certification and filing, with Register 220, January 2017, handwritten;
- Description of the Proposed Changes to 18 AAC 50, September 2016; and
- IV.B State Air Quality Control Plan.

Denise Koch is available to your staff to respond to questions or to otherwise assist. She can be phoned at (907) 465-5109. As always, I would be pleased to discuss any of this with you.

Sincerely,



Larry Hartig
Commissioner

cc: Timothy Hamlin, Director, Office of Air and Waste, EPA Region 10
Kristin Hall, Office of Air and Waste, EPA Region 10
Randall Ruddick, Office of Air and Waste, EPA Region 10
Alice Edwards, Deputy Commissioner, DEC
Denise Koch, Director, Division of Air Quality
John Kuterbach, Program Manager, APP Program, DEC

To: Hall, Kristin[Hall.Kristin@epa.gov]
From: Smith, Rebecca T (DEC)
Sent: Thur 12/1/2016 11:14:37 PM
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Thanks.

I may need to wait till Gary is back in the office in a week and a half to finish submitting everything, because he usually finalizes the courtesy copy of the regulations that we'll need to include in the SIP Section IV submission document. I'll let you know. In addition, we need to get the letter signed, and I think both the Commissioner and Deputy Commissioner are out of the office.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Thursday, December 01, 2016 2:11 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Great news! Congratulations on moving that package so quickly through the process!

I don't know that anyone here feels too strongly about the cc list. I think what you propose – ccing me and Tim – should be just fine.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, December 01, 2016 12:37 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLcttcrDRAFT.11-22-16.docx

So, same question about the SSM SIP Call regs letter. Are you and Tim Hamlin the only EPA people who should be cced on the letter to Dennis McLerran or should there be other people on that list?

Asking today, because I just got notification that the regs were signed on Nov. 29 and will be effective on Dec. 29!

Thanks,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, November 28, 2016 10:34 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca – to minimize copies, you could consider replacing my name with Randall's…

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Monday, November 28, 2016 10:10 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Thank you. Ah, right, I knew you had a new director and couldn't remember who it was. So does Randall replace any of the rest of you on the list, or is he an addition?

Hope you had a great Thanksgiving.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, November 28, 2016 9:09 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Ruddick, Randall <ruddick.randall@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca,

Thanks for the message. If you submit a letter, please note that Randall Ruddick is the staff lead. Also, our new director is Tim Hamlin. His title is Director, Office of Air and Waste.

Hope that helps.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Friday, November 25, 2016 5:12 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

I'm working on a "thank you for approving SIP revisions" letter, and I'm not sure who all at EPA should be on the cc list. Can you let me know when you have a chance? Last time we had Jan Hastings (she was acting OAWT director at the time), Debra, and you.

Thank you,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, November 22, 2016 4:01 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Great!

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, November 22, 2016 4:44 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Kristin,

Thanks. Hopefully we'll hear soon that it's been signed and filed. I think we can submit everything to you as soon as that happens and we get the letter signed.

Good news about the fee SIP. I'll be in the office Friday, so I'll look for it in my daily EPA FR e-mail.

Happy Thanksgiving!

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, November 22, 2016 3:42 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca –

Thanks for the message. This draft letter looks good to me.

Also, our direct final action to approve the Alaska fee revision SIP is scheduled to publish on Friday.

Have a Happy Thanksgiving weekend ☺

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, November 22, 2016 4:01 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Kristin,

Here is my draft of the SIP submittal letter for the SSM SIP Call regs for your review to make sure I've hit all the right points.

We're still waiting for them to be signed and filed by the Lt. Governor (I think they've gone over from the DOL to the Lt. Gov's office), but I have all the documents ready and will load them onto eSIP this week.

Thank you,

Rebecca

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Mon 11/28/2016 7:33:38 PM
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca – to minimize copies, you could consider replacing my name with Randall's…

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Monday, November 28, 2016 10:10 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

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Rebecca

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Sent: Monday, November 28, 2016 9:09 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Ruddick, Randall <ruddick.randall@epa.gov>

Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca,

Thanks for the message. If you submit a letter, please note that Randall Ruddick is the staff lead. Also, our new director is Tim Hamlin. His title is Director, Office of Air and Waste.

Hope that helps.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Friday, November 25, 2016 5:12 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

I'm working on a "thank you for approving SIP revisions" letter, and I'm not sure who all at EPA should be on the cc list. Can you let me know when you have a chance? Last time we had Jan Hastings (she was acting OAWT director at the time), Debra, and you.

Thank you,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, November 22, 2016 4:01 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Great!

Kristin Hall

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From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
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Good news about the fee SIP. I'll be in the office Friday, so I'll look for it in my daily EPA FR e-

mail.

Happy Thanksgiving!

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, November 22, 2016 3:42 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
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Thank you,

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To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
Cc: Ruddick, Randall[ruddick.randall@epa.gov]
From: Hall, Kristin
Sent: Mon 11/28/2016 6:08:39 PM
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca,

Thanks for the message. If you submit a letter, please note that Randall Ruddick is the staff lead. Also, our new director is Tim Hamlin. His title is Director, Office of Air and Waste.

Hope that helps.

Kristin Hall

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To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Wed 11/23/2016 1:00:48 AM
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

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To: Spencer, Gail (ECY)[gspe461@ECY.WA.GOV]; Adler, David (ECY)[DADL461@ECY.WA.GOV]; Alberich, Jason (ECY)[jalb461@ECY.WA.GOV]; alfredoa@pscleanair.org[alfredoa@pscleanair.org]; Bauder, Lilyann (ECY)[liba461@ECY.WA.GOV]; Billings, Susan M. (ECY)[SBIL461@ECY.WA.GOV]; JasonB@nwcleanairwa.gov[JasonB@nwcleanairwa.gov]; Brown, Dan[Brown.Dan@epa.gov]; MarkB@nwcleanairwa.gov[MarkB@nwcleanairwa.gov]; bethc@pscleanair.org[bethc@pscleanair.org]; Carruthers, Robert (ECY)[roca461@ECY.WA.GOV]; acau461@ecy.wa.gov[acau461@ecy.wa.gov]; ncau461@ecy.wa.gov[ncau461@ecy.wa.gov]; carolec@pscleanair.org[carolec@pscleanair.org]; christosc@nwcleanairwa.gov[christosc@nwcleanairwa.gov]; jcle461@ecy.wa.gov[jcle461@ecy.wa.gov]; jconklin@spokanecleanair.org[jconklin@spokanecleanair.org]; sarac@pscleanair.org[sarac@pscleanair.org]; maggiec@pscleanair.org[maggiec@pscleanair.org]; Crooks, Marc (ECY)[mcro461@ECY.WA.GOV]; Cunningham, Roylene[Cunningham.Roylene@epa.gov]; ketsiri@yrcaa.org[ketsiri@yrcaa.org]; jennifer.demay@orcaa.org[jennifer.demay@orcaa.org]; Dererie, Debebe (ECY)[derd461@ECY.WA.GOV]; Dhammapala, Ranil (ECY)[rdha461@ecy.wa.gov]; Dirkx, Mark (ECY)[mdir461@ECY.WA.GOV]; Ekrem, Joanna (ECY)[jekr461@ECY.WA.GOV]; Filipy, Jenny (ECY)[JFIL461@ECY.WA.GOV]; Gent, Philip (ECY)[pgen461@ECY.WA.GOV]; Ghidey, Tesfamichael (ECY)[tghi461@ECY.WA.GOV]; Glass, Geoffrey[GLASS.GEOFFREY@EPA.GOV]; mark.goodin@orcaa.org[mark.goodin@orcaa.org]; Greaves, Natasha[Greaves.Natasha@epa.gov]; Hall, Kristin[Hall.Kristin@epa.gov]; Haller, Lynnette A. (ECY)[LHUL461@ECY.WA.GOV]; Hanlon-Meyer, Christopher (ECY)[chrh461@ECY.WA.GOV]; Hardesty, Doug[Hardesty.Doug@epa.gov]; Hedgpeth, Zach[Hedgpeth.Zach@epa.gov]; Heuston, Daniel (ECY)[DHEU461@ECY.WA.GOV]; Holtrop, Bryan[Holtrop.Bryan@epa.gov]; Huitsing, Gary (ECY)[ghui461@ECY.WA.GOV]; Hulse-Moyer, Laurie (ECY)[lahu461@ECY.WA.GOV]; Hunt, Jeff[Hunt.Jeff@epa.gov]; keith@yrcaa.org[keith@yrcaa.org]; Jacobsen, Lisa[Jacobsen.Lisa@epa.gov]; Johnson, Jolaine (ECY)[JOLA461@ECY.WA.GOV]; RobynJ@nwcleanairwa.gov[RobynJ@nwcleanairwa.gov]; mkad461@ecy.wa.gov[mkad461@ecy.wa.gov]; Keenan, John[keenan.john@epa.gov]; Koster, Robert (ECY)[RKOS461@ECY.WA.GOV]; LaSpina, Jim (UTC)[jlaspina@utc.wa.gov]; Clint@swcleanair.org[Clint@swcleanair.org]; Lim, MengChiu (ECY)[mlim461@ECY.WA.GOV]; McAlpine.Jerrold@epa.gov[McAlpine.Jerrold@epa.gov]; Vannessa@swcleanair.org[Vannessa@swcleanair.org]; AgataM@nwcleanairwa.gov[AgataM@nwcleanairwa.gov]; DanM@nwcleanairwa.gov[DanM@nwcleanairwa.gov]; TobyM@nwcleanairwa.gov[TobyM@nwcleanairwa.gov]; paul@swcleanair.org[paul@swcleanair.org]; aaron.manley@orcaa.org[aaron.manley@orcaa.org]; Meyer, Dan[Meyer.Dan@epa.gov]; robert.moody@orcaa.org[robert.moody@orcaa.org]; ralphm@pscleanair.org[ralphm@pscleanair.org]; Narvaez, Madonna[Narvaez.Madonna@epa.gov]; Nguyen, Liem (ECY)[LNgu461@ECY.WA.GOV]; Newman, Alan (ECY)[anew461@ECY.WA.GOV]; Nolph, Shawn (ECY)[snol461@ECY.WA.GOV]; Ogle, Stephanie (ECY)[stog461@ECY.WA.GOV]; Otterson, Sally (ECY)[sott461@ECY.WA.GOV]; Owens, Katharine[Owens.Katharine@epa.gov]; gerryp@pscleanair.org[gerryp@pscleanair.org]; gpal461@ecy.wa.gov[gpal461@ecy.wa.gov]; Uri@swcleanair.org[Uri@swcleanair.org]; Pepple, Karl[Pepple.Karl@epa.gov]; robin.priddy@bentoncleanair.org[robin.priddy@bentoncleanair.org]; Pritchett, Nancy (ECY)[npri461@ECY.WA.GOV]; Ragan, Mike (ECY)[MRAG461@ECY.WA.GOV]; crystalr@nwcleanairwa.gov[crystalr@nwcleanairwa.gov]; brianr@pscleanair.org[brianr@pscleanair.org]; Rob.Rodger@bentoncleanair.org[Rob.Rodger@bentoncleanair.org]; brud461@ecy.wa.gov[brud461@ecy.wa.gov]; Ruddick, Randall[ruddick.randall@epa.gov]; John@swcleanair.org[John@swcleanair.org]; Wess@swcleanair.org[Wess@swcleanair.org]; Sandlin, Gail (ECY)[gasa461@ECY.WA.GOV]; Schleif, Stephanie (ECY)[ssch461@ECY.WA.GOV]; Schmidt, John W (DOH)[John.Schmidt@DOH.WA.GOV]; Schwieters, Judith (ECY)[jsch461@ECY.WA.GOV]; Smits, Brenda (ECY)[BREN461@ECY.WA.GOV]; jsouthwell@spokanecleanair.org[jsouthwell@spokanecleanair.org]; Sun, Caroline (ECY)[casu461@ECY.WA.GOV]; Suzuki, Debra[Suzuki.Debra@epa.gov]; hasan@yrcaa.org[hasan@yrcaa.org]; Thompson, Margo (ECY)[MATH461@ECY.WA.GOV]; LynT@nwcleanairwa.gov[LynT@nwcleanairwa.gov]; Tran, Ha (ECY)[HTRA461@ECY.WA.GOV]; Utley, Randell J (DOH)[Randell.Utley@DOH.WA.GOV]; stevev@pscleanair.org[stevev@pscleanair.org]; Vicente, Ryan (ECY)[rvic461@ECY.WA.GOV]; awestby@spokanecleanair.org[awestby@spokanecleanair.org];

lauren.whybrew@orcaa.org[lauren.whybrew@orcaa.org]; Wigfield, Kim (ECY)[kand461@ECY.WA.GOV]; Wilson, Sam (ECY)[samw461@ECY.WA.GOV]; Wood, Karen K. (ECY)[KWOO461@ECY.WA.GOV]; Yamazaki, Shingo (ECY)[syam461@ECY.WA.GOV]
From: Guilfoil, Elena (ECY)
Sent: Thur 3/16/2017 3:17:13 PM
Subject: RE: Permit Writers Meeting - MARCH 2017
SSM Draft-3_20_2017.docx

This attachment includes actual content.

Elena Guilfoil / Air Quality Program / Department of Ecology / elena.guilfoil@ecy.wa.gov / (360)407-6855

From: Guilfoil, Elena (ECY)
Sent: Wednesday, March 15, 2017 4:58 PM
To: Spencer, Gail (ECY) <gspe461@ECY.WA.GOV>; Adler, David (ECY) <DADL461@ECY.WA.GOV>; Alberich, Jason (ECY) <jalb461@ECY.WA.GOV>; alfredoa@pscleanair.org; Bauder, Lilyann (ECY) <liba461@ECY.WA.GOV>; Billings, Susan M. (ECY) <SBIL461@ECY.WA.GOV>; JasonB@nwcleanairwa.gov; Brown.Dan@epamail.epa.gov; MarkB@nwcleanairwa.gov; Bethc@pscleanair.org; Carruthers, Robert (ECY) <roca461@ECY.WA.GOV>; Caudill, Anya (ECY) <ACAU461@ECY.WA.GOV>; Caudill, Neil (ECY) <ncau461@ECY.WA.GOV>; carolec@pscleanair.org; ChristosC@nwcleanairwa.gov; Cleary, John P. (ECY) <jcle461@ECY.WA.GOV>; jconklin@spokanecleanair.org; sarac@pscleanair.org; maggiec@pscleanair.org; Crooks, Marc (ECY) <mcro461@ECY.WA.GOV>; cunningham.roylene@epa.gov; ketsiri@yrcaa.org; jennifer.demay@orcaa.org; Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>; Dhammapala, Ranil (ECY) <rdha461@ecy.wa.gov>; Dirkx, Mark (ECY) <mdir461@ECY.WA.GOV>; Ekrem, Joanna (ECY) <jekr461@ECY.WA.GOV>; Filipy, Jenny (ECY) <JFIL461@ECY.WA.GOV>; Gent, Philip (ECY) <pgen461@ecy.wa.gov>; Ghidey, Tesfamichael (ECY) <tghi461@ECY.WA.GOV>; glass.geoffrey@epa.gov; mark.goodin@orcaa.org; Greaves.natasha@Epamail.epa.gov; Hall.Kristin@epa.gov; Haller, Lynnette A. (ECY) <LHUL461@ECY.WA.GOV>; Hanlon-Meyer, Christopher (ECY) <chrh461@ECY.WA.GOV>; Hardesty.Doug@epamail.epa.gov; Hedgpeth.Zach@epamail.epa.gov; Heuston, Daniel (ECY) <dheu461@ecy.wa.gov>; Holtrop.Bryan@epamail.epa.gov; Huitsing, Gary (ECY) <ghui461@ECY.WA.GOV>; Hulse-Moyer, Laurie (ECY) <lahu461@ECY.WA.GOV>; Hunt.Jeff@epa.gov; keith@yrcaa.org; jacobsen.lisa@epa.gov; Johnson, Jolaine (ECY) <JOLA461@ECY.WA.GOV>; RobynJ@nwcleanairwa.gov; Kadlec, Matthew (ECY) <MKAD461@ECY.WA.GOV>; Keenan.John@epamail.epa.gov; Koster, Robert (ECY) <RKOS461@ECY.WA.GOV>; LaSpina, Jim (UTC) <JLaSpina@utc.wa.gov>; Clint@swcleanair.org; Lim, MengChiu (ECY) <mlim461@ECY.WA.GOV>; McAlpine.Jerrold@epa.gov; Vannessa@swcleanair.org; AgataM@nwcleanairwa.gov; DanM@nwcleanairwa.gov; TobyM@nwcleanairwa.gov; paul@swcleanair.org; aaron.manley@orcaa.org; Meyer.Dan@epamail.epa.gov; robert.moody@orcaa.org; ralphm@pscleanair.org; Narvaez.Madonna@epamail.epa.gov;

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Subject: RE: Permit Writers Meeting - MARCH 2017

Greetings

I am the first person on the agenda for Thursday's conference call. Attached is the most current version of the draft for the startup-shutdown-malfunction rulemaking I am working on. I will be talking about this briefly first thing tomorrow.

To focus your review:

- I want feedback on the process to issue a regulatory order in Section 082. (pg 16)

- Alternate opacity for

  - startup of hog fuel/wood fired boiler (pg 9)

  - soot blowing or grate cleaning (pg 9)

  - furnace refractory (pg 10)

- New opacity emission limit from refractory baking is at RISK of being pulled

because we have NO documentation on which to base a decision. See page 10. There will be issues for some facilities. You may be asked to issue a regulatory order from a facility that blows the 20% opacity limit.

•□□□□□□□ Sulfur dioxide limits reflects data we had, but still under discussion. (pg 12)

•□□□□□□□ Public notice: all agencies agreed to post on web site but LOOK at changes.

•□□□□□□□ Sunset date for excess emissions section 107 would be when EPA removes it from SIP. This date is uncertain.

Part Two

Here is a sample opacity data set. Under Section 082, a source can request a specific limit that is higher than 20%.

Where would you set that number? The purpose of this discussion is to talk about this variability and consider the statewide impacts of an agency decision. How do we want to proceed?

Date	Peak	SSM Duration above 40% opacity in minutes
5/19/2011	100	54
10/31/2011	100	48
5/27/2012	99	48
5/13/2013	54	12
11/3/2013	77	42
6/11/2014	43	15
10/7/2014	51	12
5/12/2015	70	24
8/31/2015	87	24
10/12/2015	77	18
5/23/2016	99	108
10/10/2016	72	42

I look forward to a great conversation Thursday morning.

Rulemaking schedule

Propose rule: May 24

Hearing: June 27

Adopt rule: Mid- November

Elena

Elena Guilfoil / Air Quality Program / Department of Ecology / elena.guilfoil@ecy.wa.gov / (360)407-6855

DRAFT Rulemaking Changes to Chapters 173-400 and 173-401 WAC

March 20, 2017 version

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Chapter 173-400 WAC

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WAC 173-400-025 Adoption of federal rules.

(1) Federal rules mentioned in this rule are adopted as they exist on DATE, 2017. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

ED_001360A_00000057

WAC 173-400-030 Definitions. [The section defines 95 defined terms.]

"**Alternate emission limit**" means an emissions limit that applies during some but not all periods of normal operation (e.g., applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limit is a component of a continuously applicable emission limit. An alternative emission limit may be a numerical limit or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

"**Electronic means**" means email, fax or other electronic method.

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

(30) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard.

"Hog fuel" means an unrefined mix of wood or wood waste.

"Hog fuel boiler" means device, furnace, or boiler using wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer.

"Industrial furnace" means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 CFR 260.10.

"**Mode of operation**" means a short-term operating condition of an emission unit with a specific beginning and end.

"Shutdown" means, generally, the cessation of operation of a stationary source for any reason.

"Startup" means, generally, the setting in operation of a stationary source or emissions unit for any reason.

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

"**Wigwam or silo burner"** means a cone-shaped or cylindrical structure that burns wood waste for disposal.

"**Wood-fired boiler**" means device, furnace, or boiler that burns wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer.

"**Wood-waste burner**" means a device that burns wood.

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

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; *trans*-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2- Tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane;and perfluorocarbon compounds that fall into these classes:

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

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

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

(d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limits or VOC content requirements: Tertiary-butyl acetate.

WAC 173-400-035 Nonroad engines.

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

(a) Any nonroad engine that is:
(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function; or
(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

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

(c) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work

center, garage, or engine pool. Such engines may be operated at these facilities only for the purpose of engine maintenance, testing, and repair.

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

(2) **Nonroad engines are not subject to:**
- (a) New source review.
- (b) Control technology determinations.
- (c) Emission limits set by the SIP.
- (d) Chapter 173-460 WAC.

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

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

(a) Notification of intent to operate is required before operations begin. The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:
- (i) Name and address of owner or operator;
- (ii) Site address or location;
- (iii) Date of equipment arrival at the site;
- (iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. For each site, the owner or operator must record the following information for each nonroad engine:
- (i) Site address or location;
- (ii) Date of equipment arrival at the site;
- (iii) Date of equipment departure from the site;
- (iv) Engine function or purpose;
- (v) Identification of each component as follows:
  - (A) Equipment manufacturer, model number and its unique serial number;
  - (B) Engine model year;
- (vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep the records of

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

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

(a) Notification of intent to operate.

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

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

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

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

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

(6) Requirements specific to projects on a Department of Defense and Department of Energy facility.

(a) A Department of Defense and Department of Energy facility over 50 acres in size may exclude engines below 50 brake horsepower to determine cumulative maximum engine horsepower.

(b) Ecology may establish specific criteria to assist it and the Departments of Defense and Energy to determine when a particular nonroad engine becomes a stationary engine. This criteria shall not conflict with the definition of "nonroad" engine.

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

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

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

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

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

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

WAC 173-400-040 General standards for maximum emissions.

(1) General requirements.

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limits of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the

installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity.: The following are exceptions from this standard:

(a) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

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

(c) When an alternate opacity limit has been established per:

(i) RCW 70.94.331(2)(c); or

(ii) WAC 173-400-082(3).

(d) When emissions occur due to startup of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity when the owner or operator complies with (i) and (ii) of this subsection.

(i) Comply with all of the following mandatory requirements:

(A) This subsection applies to a combustion unit with dry particulate matter controls. This subsection does not apply to a combustion unit with wet particulate matter controls.

(B) For purposes of this subsection:

(I) Startup begins when fuel is ignited in the boiler fire box; and

(II) Startup ends at the earlier of the following;

(III) If applicable, the dry electrostatic precipitator or baghouse controlling emissions from the boiler has met its minimum operating temperature. The control must be operated at this time; or

(IV) Within four hours of the start of supplying useful thermal energy.

(C) Maintain records sufficient to demonstrate compliance.

(ii) Comply with one of the following requirements:

(A) Visible emissions shall not exceed 40 percent opacity for three minutes in an hour during startup; or

(B) Engage all air pollution control devices once you start firing fuels; or

(C) The boiler shall:

(I) Use clean fuel identified in 5.b. in Table 3 to Subpart DDDDD of 40 C.F.R. Part 63 to the extent practicable during the startup;

(II) Minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator shall use the recommended startup procedure for a unit of a similar design;

(III) Engage all the air pollution control devices as required in (d)(i)(B)(III) of this subsection, if applicable; and

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

(e) When emissions occur due to soot blowing or grate cleaning of a hog fuel or wood fired boiler, visible emissions may not exceed 40 percent opacity for more than fifteen minutes in any eight consecutive hours. For this provision to apply, the owner or operator must meet all of the following requirements:

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

(ii) Notify the permitting authority in writing of the schedule in (i) of this subsection in advance of the occurrence of visible emission exceeding 20 percent opacity due to soot blowing and/or grate cleaning; and

(iii) Maintain records sufficient to demonstrate compliance.

(f) When emissions occur during curing of furnace refractory in an existing lime kiln, industrial furnace, or boiler, visible emissions may not exceed 40 percent opacity. For this provision to apply, the owner or operator must meet the following requirements:

(i) The total duration of refractory curing does not exceed 36 hours, unless provided for in an order issued in compliance with WAC 173-400-081(4) or WAC 173-400-082(4); and

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

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

(iv) The emission controls are engaged as soon as possible during the curing process; and

(v) The owner or operator notifies the permitting authority at least one working day prior to the start of the refractory curing process.

(g) Visible emissions reader certification testing.
When testing and certifying visible emission readers, visible emissions from the "smoke generator" are exempt from the 20 percent opacity limit. Testing must follow testing and certification requirements in 40 C.F.R. Part 60, Appendix A, Reference Method 9 (in effect on the date in WAC 173-400-025) and ecology methods 9A and 9B (Ecology *Source Test Manual*).

(h) Military training exercises.
When holding military obscurant training exercises, visible emissions are exempt from the twenty percent opacity limit when the following requirements are met:

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

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

(i) Firefighter training.
When training firefighters, visible emissions from fixed and mobile firefighting training facilities are exempt from the 20 percent opacity limit. Compliance with chapter 173-425 WAC is required.

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

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

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

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.**

(a) No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes. Exceptions are listed in (b) and (c) of this subsection.

(b) Sulfur recovery unit alternate emission standard. During shutdown of a sulfur recovery unit regulated by 40 C.F.R. 63.1579 (in effect on the date in WAC 173-400-025), the owner or operator shall:

(i) Follow the facility's written startup or shutdown procedures;

(ii) Limit emissions to less than 100 pounds per event ;

(iii) Limit to [time limit]; and

(iv) Maintain records sufficient to demonstrate compliance.

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

(9) **Fugitive dust.**

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

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

WAC 173-400-050 Emission standards for combustion and incineration units.

(7) **Sewage sludge incineration units** constructed on or before October 14, 2010. Sewage sludge incineration units constructed on or before October 14, 2010, must comply with 40 C.F.R. Part 62, Subpart LLL (in effect on the date in WAC 173-400-025).

WAC 173-400-070 Emission standards for certain source categories.

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

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

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

(b) All wigwam and silo burners must use RACT. All emissions units shall be

operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

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

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

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

(ii) A requirement to apply BACT.

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

(2) **Hog fuel boilers.**

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

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

(3) **Orchard heating.**

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

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

(4) **Grain elevators.**

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

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

(a) Wood waste burners shall meet all applicable provisions of:

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

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

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

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

(6) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991

WAC 173-400-081 Emission limits during startup and shutdown.

(1) In promulgating technology-based emission standards and establishing emission limits when making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

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

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

(4) An emission limit or other parameter adopted under this rule which increases allowable emissions during a startup or shutdown period over levels authorized in Washington's SIP shall not take effect until the requirements and procedures in WAC 173-400-082(4) are complied with..

WAC 173-400-082 Alternate emission limit that exceeds a standard in the SIP.

(1) Applicability.

(a) The owner or operator of a source or stationary source may request an alternative emission limit that applies to a specific emission unit(s) during a clearly defined mode of operation. The alternative emission limit established under this section becomes a sourcespecific SIP emission standard.

(b) Should we include info about process: request goes from facility to air agency to Ecology to EPA?

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

(a) Opacity emission standard in:
- (i) WAC 173-400-040 (2);
- (ii) WAC 173-405-040(6);
- (iii) WAC 173-415-030(3) and(3)(a); and
- (iv) WAC 1730434-130(4).

(b) Sulfur dioxide emission standard in:
- (i) WAC 173-400-040 (7);
- (ii) WAC 173-405-040 (11);
- (iii) WAC 173-410-040 (1);
- (iv) WAC 173-415-030(5); and
- (v) WAC 173-434-130(3).

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

(d) Emission standards contained in a local air pollution control authority rule that has been approved into the SIP in 40 CFR 52.2470.

(3) Requirements to request an alternative emission limit.

(a) The owner or operator may request an alternative emission limit applicable to a specific mode of operation that exceeds a standard in the SIP. A mode of operation for an emission unit may include periods of startup, shutdown, maintenance, or other transient (short-term) operation.

(b) A request for an alternative emission limit must be submitted to the permitting

authority in writing. The permitting authority shall determine the adequacy of the information.

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

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

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

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

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

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

(vi) Minimize the frequency and duration of the specific mode of operation to the shortest practicable amount of time;

(vii) Minimize the quantity and impact of the emissions resulting from the specific operating scenario; and

(viii) Not exceed an emission standard applicable to the emission unit in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption for a specific operating mode in an applicable rule does not apply.

(4) Process a request for a regulatory order.

(a) Completeness determination.

(i) Within sixty days of receiving an application, the permitting authority must notify the applicant that a request for an alternate emission limit is complete or incomplete.

(ii) The permitting authority must include the reasons they find the request incomplete.

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

(b) Denial. The permitting authority may deny a request for an alternative emission limit. The denial must include the basis for the denial.

(c) Final determination. Within ninety days of receipt of a complete application, the permitting authority must either:

(i) Initiate notice and public comment for a mandatory action as required by WAC 173-400-171 followed as promptly as possibly by a final decision; or

(ii) Coordinate review and public comment consistent with (d) of this subsection.

(iii) Extend the determination period due to the complexity of the request.

(d) Coordinated review process. An applicant may request coordinated review of a request between the permitting authority and Ecology.

(i) Once the permitting authority has prepared a draft order, the permitting authority must send these documents electronically to Ecology for review:

(A) Request for an order;

(B) Draft order in a format specified by Ecology; and

(C) Permitting authority analysis of the request.

(ii) Within 60 days of receiving a draft order from the permitting authority, Ecology must inform the permitting authority of its approval or denial of the draft order. Ecology must include the reasons for a denial.

(iii) Once Ecology has approved a draft order, the permitting authority must initiate notice and public comment for a mandatory action as required by WAC 173-400-171 followed as quickly as as promptly as possibly by a final decision.

(5) Standard review process.
Local air agency must

- Send Ecology materials in advance of the public comment period
- hold hearing/comment period

- Send draft final order/materials to Ecology

Ecology must
- review and if disagree, return order with comments
- review and if agree, hold public comment period
- send SIP request to EPA

(6) The regulatory order must include:

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

(b) A clearly defined specific mode of operation that includes criteria [parameters?] for determining:

(i) The start and stop point for a mode of operation; and
(ii) When the alternative emission limit applies.

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

(d) A requirement that the applicable emission unit(s) are operated in a manner consistent with good operating practices for minimizing emissions during the time the alternative emission limit is in effect;

(e) A statement that the alternative emission limit authorized by the regulatory order is not in effect until the effective date of EPA's incorporation of the alternative emission limit in the SIP; and

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

(7) The pemitting authority can not issue a final order under this section until:

(a) Ecology is satisfied that the proposed alternative emission limit is consistent with the purposes of chapter 70.94 RCW as required by RCW 70.94.380; and

(b) The effective date of EPA's approval of the order as a SIP amendment.

(8) Ecology requirements. Ecology must:

(a) Inform the permitting authority and the applicant of its acceptance or denial of the draft order within 60 days of receipt of the request.

(b) Approve an order when satisfied that the proposed alternative emission limit is consistent with the purposes of chapter 70.94 RCW as required by RCW 70.94.380.

(c) Hold a public comment period consistent with WAC 173-400-171(12) to submit

the regulatory order to EPA as a SIP amendment, if the process has not gone through the coordinated review process in (4)(d).

(d) Notify the permitting authority and the applicant of the reasons for denial of a draft order.

(9) Fees. A permitting authority may assess and collect fees according to its fee schedule.

WAC 173-400-107 Excess emissions.

This section is in effect until the effective date of EPA's removal of the September 20, 1993 version of this section from the SIP. This section is not effective starting on that date.

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

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

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

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

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

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

(a) The event was not caused by poor or inadequate design, operation, maintenance,

or any other reasonably preventable condition;

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

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

WAC 173-400-108 Excess emissions reporting. [State-only requirement not federally enforceable]

(1)

Notify the permitting authority.

(i) The owner or operator must notify its permitting authority when excess emissions represent a potential threat to human health or safety as soon as possible, but not later than **twelve hours** after the excess emissions were discovered.

(ii) For all other excess emissions, the owner or operator must notify its permitting authority within 30 days after the end of the month during which the excess emissions event occurred.

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

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

(ii) Chapter 173-401 WAC source: As provided in WAC 173-401-615(3).

(iii) All other sources:

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

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

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

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

(b) Known causes;
(c) For exceedances of emission limits other than opacity, an estimate of the quantity of excess emissions;
(d) The corrective actions taken;
(e) The preventive measures taken or planned to minimize the chance of recurrence; and
(f) Information in (4) of this section to claim an excess emission event is unavoidable.
(g) Exemption. A chapter 147-401 source must report equivalent information under WAC 173-401-615 so it is exempt from (a) through (e) of this subsection. Subsection (f) continues to apply.

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

(a) Contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

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

(c) All additional information required under WAC 173-400-109 (2), (3), (4), (5) or (6) supporting the claim that the excess emissions were unavoidable.

WAC 173-400-109 Unavoidable excess emissions. [State-only requirement not federally enforceable]

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

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source.

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

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

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

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

(2) The owner or operator of a source shall have the burden of proving to the permitting

authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4) of this section.

(3) ~~(c)~~ This section does not apply to an exceedance of an emission standard in 40 C.F.R. Parts 60, 61, 62, 63, and 72 (in effect on the date in WAC 173-400-025), or a permitting authority's adoption by reference of these federal standards.

(4) ~~(d)~~ This section does not apply to an exceedance of an emission limit and standard in a PSD permit issued solely by EPA.

(5) ~~(f)~~ Excess emissions that occur due to upsets or malfunctions during startup or shutdown are treated as upsets or malfunctions under subsection (6) of this section.

(6) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and demonstrates to the permitting authority that:

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

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

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

(d) If the emitting equipment had to continue operation during the malfunction for safety reasons to prevent the loss of life, prevent personal injury, or to minimize overall emissions, repairs were made in an expeditious fashion;

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

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

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

WAC 173-400-171 Public notice and opportunity for public comment.

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

(1) Applicability to prevention of significant deterioration, and relocation of portable sources.

This section does not apply to:

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

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

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

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

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

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

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

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

(3) **Actions subject to a mandatory public comment period.**

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is

requested in compliance with subsection (2) of this section.

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

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

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

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

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

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

(g) An order to authorize a bubble; or

(h) An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) A notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) An order issued under WAC 173-400-091 that establishes limits on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(m) An extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) An application or other action for which the permitting authority determines that there is significant public interest; or

(o) An order issued under WAC 173-400-082 that establishes an emission limit that exceeds a SIP standard.

(4) **Advertising the mandatory public comment period.**

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must posted on the permitting authority web site for the duration of the public comment period. Duration does not require uninterrupted web site access.

(i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. ..

(ii) A permitting authority must publish a legal notice of the public comment period in a newspaper of general circulation in the area of the proposed action until July 1, 2018. It is recommended that a permitting authority continue publishing a legal notice for a project with high interest.

(b) This public notice can be posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

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

(d) The applicant or other initiator of the action must pay the publishing cost of providing public notice in a newspaper if the permitting authority determines supplemental noticing is required.

(5) **Information available for public review.**

(a) Administrative record. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection. A permitting authority may comply with this requirement by making these materials available on their web site or in at least one physical location near the proposed project.

(b) The permitting authority must post the following information on their web site for the duration of the public comment period:

(A) Public notice complying with subsection (6) of this section;

(B) Draft permit, order, or action; and

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

(D) Duration does not require uninterrupted web site access.

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

(6) **Public notice components.** Public notice must be posted at least by the start date of the public comment period.

(a) The notice must include:
- (i) The date the public notice is posted;
- (ii) The name and address of the owner or operator and the facility;
- (iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;
- (iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;
- (v) The location where those documents made available for public inspection may be reviewed;
- (vi) Start date and end date for a thirty-day public comment period. If a holiday falls within this period, that is not considered one of the thirty-days.;
- (vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;
- (viii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

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

(7) **Length of the public comment period.**
- (a) The public comment period must extend at least thirty days prior to any hearing.
- (b) If a public hearing is held, the public comment period must extend through the hearing date.
- (c) The final decision cannot be issued until the public comment period has ended

and any comments received during the public comment period have been considered.

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

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

(10) **Notice of public hearing.**

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

(i) Post the public hearing notice on the permitting authority web site as directed by (4) of this section;

(ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community. and

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

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

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

(11) **Notifying the EPA.**

The permitting authority must distribute by electronic means or postal service a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

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

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

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

unclassifiable or attainment area to nonattainment;

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

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

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

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

WAC 173-400-740 Permitting public involvement requirements.

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

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

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

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

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

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

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

(i) Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post online on a web site but may be made available as part of the permit record either as hardcopy or on a data storage device.

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

(b) Notify the public by:

(i) Posting the following information on ecology's web site for the duration of the public comment period:

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

(B) PSD draft permit;

(C) PSD technical support document; and

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

(E) Duration does not require uninterrupted web site access.

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

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

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

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

subsection.

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

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

(c) Distribute by electronic means or postal service a copy of the public notice to:
- (i) Any Indian governing body whose lands may be affected by emissions from the project;
- (ii) The chief executive of the city where the project is located;
- (iii) The chief executive of the county where the project is located;
- (iv) Individuals or organizations that requested notification of the specific project proposal;
- (v) Other individuals who requested notification of PSD permits;
- (vi) Any state within 100 km of the proposed project.

(d) Distribute by electronic means or postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:
- (i) The applicant;
- (ii) The affected federal land manager;
- (iii) EPA Region 10;
- (iv) The permitting authority with authority over the source under chapter 173-401 WAC; and
- (v) Individuals or organizations who request a copy.

(3) **Public notice content.** The public notice shall contain at least the following information:
- (a) The date the public notice is posted;
- (b) The name and address of the applicant;
- (c) The location of the proposed project;
- (d) A brief description of the project proposal;
- (e) The preliminary determination to approve or disapprove the application;
- (f) How much increment is expected to be consumed by this project;
- (g) The name, address, and telephone number of the person to contact for further information;
- (h) A brief explanation of how to comment on the project;
- (i) An explanation on how to request a public hearing;
- (j) The location of the draft permit and information on how to access the administrative record;
- (k) The start date and end date for a thirty-day public comment period starting from the date of posting notice on the web site. If a holiday falls within this period, that is not considered one of the thirty-days. ;
- (l) A statement that a public hearing may be held if ecology determines within a

thirty-day period that significant public interest exists;

(m) The length of the public comment period in the event of a public hearing; and

(n) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

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

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

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

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

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

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

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

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

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

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

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

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

(d) Ecology shall distribute by electronic means or postal service a copy of the final determination shallto:
- (i) The applicant;
- (ii) U.S. Department of the Interior - National Park Service;
- (iii) U.S. Department of Agriculture - Forest Service;
- (iv) EPA Region 10;
- (v) The permitting authority with authority over the source under chapter 173-401 WAC; and
- (vi) Any person who commented on the preliminary determination.

WAC 173-401-645 Emergency provision.

Starting January 1, 2018 this section is no longer effective. A permitting authority must remove this provision from an individual operating permit during the first possible periodic permit renewal, permit modification, or permit reopening after this date.

(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 limit 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 limits 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 limits 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.

WAC 173-401-724 Off-permit changes.

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

WAC 173-401-800 Public involvement.

(1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a 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) Notice shall be given by the following methods:

(i) Permitting authority web site. A permitting authoriy must post notice on their web site for the duration of the public comment period. Duration does not require uninterrupted web site access:

(ii) A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newspaper of general circulation in the area of the permittee.

(iii) *Permit Register*.

(A) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805.

(B) 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 this 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. The mailing list may be electronic or hardcopy, or both. 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 (or an email or web site address) 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) Availability for public inspection.

(i) The permitting authority must post the draft permit and technical support document on their web site. Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post on a web site but may be made available as part of the administrative record either as hardcopy or on a data storage device.

(ii) Administrative record. The permitting authority must make the administrative record available for public inspection for the duration of the public comment period. The administrative record must:

(A) Be available in at least one location near the chapter 401 source. This may be at a physical location and/or posted on the permitting authority web site; and

(B) Include all nonproprietary information contained in the permit application and supporting materials.

(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.

(a) This comment period begins on the date of posting notice on their web site;

(b) 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.

To: Adler, David (ECY)[DADL461@ECY.WA.GOV]; Alberich, Jason (ECY)[jalb461@ECY.WA.GOV]; alfredoa@pscleanair.org[alfredoa@pscleanair.org]; Bauder, Lilyann (ECY)[liba461@ECY.WA.GOV]; Billings, Susan M. (ECY)[SBIL461@ECY.WA.GOV]; JasonB@nwcleanairwa.gov[JasonB@nwcleanairwa.gov]; Brown, Dan[Brown.Dan@epa.gov]; MarkB@nwcleanairwa.gov[MarkB@nwcleanairwa.gov]; bethc@pscleanair.org[bethc@pscleanair.org]; Carruthers, Robert (ECY)[roca461@ECY.WA.GOV]; acau461@ecy.wa.gov[acau461@ecy.wa.gov]; ncau461@ecy.wa.gov[ncau461@ecy.wa.gov]; carolec@pscleanair.org[carolec@pscleanair.org]; christosc@nwcleanairwa.gov[christosc@nwcleanairwa.gov]; jcle461@ecy.wa.gov[jcle461@ecy.wa.gov]; jconklin@spokanecleanair.org[jconklin@spokanecleanair.org]; sarac@pscleanair.org[sarac@pscleanair.org]; maggiec@pscleanair.org[maggiec@pscleanair.org]; Crooks, Marc (ECY)[mcro461@ECY.WA.GOV]; Cunningham, Roylene[Cunningham.Roylene@epa.gov]; jennifer.demay@orcaa.org[jennifer.demay@orcaa.org]; Dererie, Debebe (ECY)[derd461@ECY.WA.GOV]; Dhammapala, Ranil (ECY)[rdha461@ecy.wa.gov]; Dirkx, Mark (ECY)[mdir461@ECY.WA.GOV]; Ekrem, Joanna (ECY)[jekr461@ECY.WA.GOV]; Filipy, Jenny (ECY)[JFIL461@ECY.WA.GOV]; Gent, Philip (ECY)[pgen461@ECY.WA.GOV]; Glass, Geoffrey[GLASS.GEOFFREY@EPA.GOV]; mark.goodin@orcaa.org[mark.goodin@orcaa.org]; Greaves, Natasha[Greaves.Natasha@epa.gov]; Guilfoil, Elena (ECY)[egui461@ECY.WA.GOV]; Hall, Kristin[Hall.Kristin@epa.gov]; Haller, Lynnette A. (ECY)[LHUL461@ECY.WA.GOV]; Hanlon-Meyer, Christopher (ECY)[chrh461@ECY.WA.GOV]; Hardesty, Doug[Hardesty.Doug@epa.gov]; Hedgpeth, Zach[Hedgpeth.Zach@epa.gov]; Heuston, Daniel (ECY)[DHEU461@ECY.WA.GOV]; Holtrop, Bryan[Holtrop.Bryan@epa.gov]; Huitsing, Gary (ECY)[ghui461@ECY.WA.GOV]; Hulse-Moyer, Laurie (ECY)[lahu461@ECY.WA.GOV]; keith@yrcaa.org[keith@yrcaa.org]; Jacobsen, Lisa[Jacobsen.Lisa@epa.gov]; Johnson, Jolaine (ECY)[JOLA461@ECY.WA.GOV]; RobynJ@nwcleanairwa.gov[RobynJ@nwcleanairwa.gov]; mkad461@ecy.wa.gov[mkad461@ecy.wa.gov]; Keenan, John[keenan.john@epa.gov]; Koster, Robert (ECY)[RKOS461@ECY.WA.GOV]; LaSpina, Jim (UTC)[jlaspina@utc.wa.gov]; ketsiri@yrcaa.org[ketsiri@yrcaa.org]; Lim, MengChiu (ECY)[mlim461@ECY.WA.GOV]; McAlpine.Jerrold@epa.gov[McAlpine.Jerrold@epa.gov]; AgataM@nwcleanairwa.gov[AgataM@nwcleanairwa.gov]; DanM@nwcleanairwa.gov[DanM@nwcleanairwa.gov]; TobyM@nwcleanairwa.gov[TobyM@nwcleanairwa.gov]; paul@swcleanair.org[paul@swcleanair.org]; aaron.manley@orcaa.org[aaron.manley@orcaa.org]; Meyer, Dan[Meyer.Dan@epa.gov]; robert.moody@orcaa.org[robert.moody@orcaa.org]; ralphm@pscleanair.org[ralphm@pscleanair.org]; Narvaez, Madonna[Narvaez.Madonna@epa.gov]; Nguyen, Liem (ECY)[LNgu461@ECY.WA.GOV]; Newman, Alan (ECY)[anew461@ECY.WA.GOV]; Nolph, Shawn (ECY)[snol461@ECY.WA.GOV]; Ogle, Stephanie (ECY)[stog461@ECY.WA.GOV]; Otterson, Sally (ECY)[sott461@ECY.WA.GOV]; Owens, Katharine[Owens.Katharine@epa.gov]; gerryp@pscleanair.org[gerryp@pscleanair.org]; gpal461@ecy.wa.gov[gpal461@ecy.wa.gov]; Uri@swcleanair.org[Uri@swcleanair.org]; Pepple, Karl[Pepple.Karl@epa.gov]; robin.priddy@bentoncleanair.org[robin.priddy@bentoncleanair.org]; Pritchett, Nancy (ECY)[npri461@ECY.WA.GOV]; Ragan, Mike (ECY)[MRAG461@ECY.WA.GOV]; crystalr@nwcleanairwa.gov[crystalr@nwcleanairwa.gov]; brianr@pscleanair.org[brianr@pscleanair.org]; Rob.Rodger@bentoncleanair.org[Rob.Rodger@bentoncleanair.org]; brud461@ecy.wa.gov[brud461@ecy.wa.gov]; Ruddick, Randall[ruddick.randall@epa.gov]; Sandlin, Gail (ECY)[gasa461@ECY.WA.GOV]; Schleif, Stephanie (ECY)[ssch461@ECY.WA.GOV]; Schmidt, John W (DOH)[John.Schmidt@DOH.WA.GOV]; Schwieters, Judith (ECY)[jsch461@ECY.WA.GOV]; Smits, Brenda (ECY)[BREN461@ECY.WA.GOV]; jsouthwell@spokanecleanair.org[jsouthwell@spokanecleanair.org]; Spencer, Gail (ECY)[gspe461@ECY.WA.GOV]; Sun, Caroline (ECY)[casu461@ECY.WA.GOV]; Suzuki, Debra[Suzuki.Debra@epa.gov]; hasan@yrcaa.org[hasan@yrcaa.org]; Thompson, Margo (ECY)[MATH461@ECY.WA.GOV]; LynT@nwcleanairwa.gov[LynT@nwcleanairwa.gov]; Tran, Ha (ECY)[HTRA461@ECY.WA.GOV]; Utley, Randell J (DOH)[Randell.Utley@DOH.WA.GOV]; stevev@pscleanair.org[stevev@pscleanair.org]; Vicente, Ryan (ECY)[rvic461@ECY.WA.GOV]; awestby@spokanecleanair.org[awestby@spokanecleanair.org]; lauren.whybrew@orcaa.org[lauren.whybrew@orcaa.org]; Wigfield, Kim (ECY)[kand461@ECY.WA.GOV]; Wilson, Sam (ECY)[samw461@ECY.WA.GOV]; Wood, Karen K. (ECY)[KWOO461@ECY.WA.GOV]; Yamazaki, Shingo (ECY)[syam461@ECY.WA.GOV]

From: Spencer, Gail (ECY)
Sent: Tue 12/13/2016 8:03:03 PM
Subject: Permit Writers Meeting
Dec. 2016.pdf

I apologize for the multiple emails. I had to revise the agenda to accommodate a presenter who has another meeting to attend. So, the attached agenda is the latest one. I also omitted the following info:

Dial in number: 641-715-0710 / access code: 491326

Lacey Building – Room R3A-19

ERO – Rm. 1-SW-11

CRO – Rm. 136

Richland - #30 Mt. Adams Rm.

NWRO – 2A Mt. Baker Rm.

BFO – Zeppo (Ecology only)

Gail Spencer|Air Quality Program|Washington State Ecology|300 Desmond Dr., SE|Lacey, WA 98503|Ph. 360.407.7530

Please note: This E-mail is considered a public document and may be subject to the Public Records Disclosure Act (RCW 42.56)

November 30, 2016

To: Air Permit Writers
EPA, Ecology & Local Air Authorities

From: Gail Spencer, AOP Coordinator
Department of Ecology
gail.spencer@ecy.wa.gov
Ph. 360-407-7530

Subject: Quarterly Permit Writers Meeting

The Air Permit Writer's meeting will be held on Thursday, December 15, 2016, 8:30 a.m. to 2:30 p.m., via video conference. The agenda is as follows:

- WAC 173-400-036 – Shawn Nolph
- Recommendations for enforcement when issuing NOV's and / or penalties – Judy Schwieters
- Follow up: Ecology's evaluation of emission factors for cattle feedlots – Brenda Smits

BREAK 10:20 – 10:30

- E-notices vs. newspaper posting for Air Operating Permits – Elena Guilfoil
- Rulemaking on startup, shutdown and malfunction (SSM) – Elena Guilfoil
- Dividing up one Title V Permit to cover multiple facilities – Stephanie Ogle/Shingo Yamazaki

LUNCH 12 p.m. – 1:15 p.m.

- Federal review of WAC 173-401 – Geoffrey Glass
- Calculating emissions on uncontrolled releases – Judy Schwieters
- Third round of Title V program evaluations – Geoffrey Glass
- Challenges for users of continuous opacity monitoring (COM) – Ha Tran

Roundtable – 2:00 p.m. – 2:30 p.m.

- 2017 meeting dates:
  March 16, 2017 - video conference
  June 22, 2017 - NWRO (WESTAR training class on June 15th)
  September 21, 2017 - NWRO
  December 7, 2017 – video conference
- Skype

ADJOURN

To: Hall, Kristin[Hall.Kristin@epa.gov]
Cc: Suzuki, Debra[Suzuki.Debra@epa.gov]
From: Smith, Rebecca T (DEC)
Sent: Thur 10/20/2016 11:12:42 PM
Subject: RE: letter of acknowledgement from the EPA

Thanks. We just got the regulation adoption order signed by Alice, so it should be off to the Dept. of Law this afternoon. With any luck we may have it signed and filed (though not in effect) by the Nov. 22 deadline!

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Thursday, October 20, 2016 3:10 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>
Subject: letter of acknowledgement from the EPA

Hi Rebecca,

We just put this letter in the mail. Thank you again for all your work on the excess emissions SIP call.

Take care,

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
Cc: Turner, Thomas E (DEC)[tom.turner@alaska.gov]; Hall, Kristin[Hall.Kristin@epa.gov]
From: Bray, Dave
Sent: Thur 7/21/2016 8:56:37 PM
Subject: RE: Alaska rule - 18 AAC 50.240

No news yet. One of the two HQ persons is out this week (like Tom) and one is super swamped but hoped to get to this by the end of the week.

Looks like it might be Monday before we get any feedback from them.

Dave

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, July 21, 2016 10:39 AM
To: Bray, Dave <Bray.Dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>; Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Dave,

Any news or update on this? Tom's off fishing but just called and was wondering.

Rebecca

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Wednesday, July 13, 2016 2:09 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>; Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Hi Rebecca,

I think that is an approach that can work but let us check it out. I know that EPA has responded to a number of other States about that approach and we need to see if there are any issues with it or any specific situations where it wouldn't work.

One general concern that I'm aware of is if a State has such a broad (or poorly worded) provision that it effectively limits a State's ability to take enforcement actions, then it would run afoul of the general section 110 requirement to have adequate enforcement authority. We don't see that as an issue with your current rule, but just want to make sure there isn't anything else we would need to consider if you kept your current rule as a State-only provision and ask EPA to remove it from the federally-approved SIP.

I'll get back to you shortly on when we will be ready to chat.

Dave

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, July 13, 2016 12:48 PM
To: Bray, Dave <Bray.Dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Thank you.

We had a briefing with John and Denise yesterday, and it sounds like the best approach for us may be to request that EPA, Reg. 10 remove 18 AAC 50.240 from our approved SIP and we would keep the existing regulations for state purposes. The regulations as written work for our purposes, and John thinks it would be better for us to keep them as is.

Would you and Kristin be available to talk about this with Tom and me sometime this afternoon or tomorrow?

Thank you,

Rebecca

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Wednesday, July 13, 2016 10:47 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Hi Rebecca.

An affirmative defense approach requires a source to make the case that the excess emissions were the result of an emergency or some other condition that was unavoidable and hence not an enforceable violation. So defining what is considered to be an emergency or unavoidable is a necessary element of an affirmative defense approach.

However, an enforcement discretion approach doesn't need a definition of unavoidable because the agency has the discretion to decide whether or not to enforce based on a lot of factors, and can chose to not enforce even if a particular period of excess emissions could have been avoided.

However, that said, if an agency wants to specify the types of things it will consider when determining whether or not to take an enforcement action, one of those things could be whether or not the excess emissions were unavoidable. However, the rule cannot include language that would prevent the agency from taking an enforcement action if the source showed that the excess emissions were unavoidable (that would then be an affirmative defense).

Hope this helps.

Dave

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, July 06, 2016 10:16 AM
To: Bray, Dave <Bray.Dave@epa.gov>
Subject: FW: Alaska rule - 18 AAC 50.240

Dave,

We're working on this now, and I am having difficulty extracting from the final rule why it is that there is no longer a de facto definition of "unavoidable" so I can finish my briefing document. Do you have any clarity to offer?

Thanks,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision –

with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

Some explanations and caveats about the markup are important:

First, we made an assumption that you would want to retain your current reporting requirements, but we did remove the specific provision regarding immediate notice for excess emissions which the source believes were unavoidable, which isn't needed and doesn't work without changes for a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

Second, we also assumed that you might want to retain your current sections on startup and shutdown, scheduled maintenance, and upsets with their separate and different factors that ADEC would consider. EPA's SSM guidance includes factors that the State can consider when exercising its enforcement discretion but it doesn't have separate provisions for startup, shutdown and malfunction (upsets).

EPA notes that the current criteria in your rule don't include all of the elements of the five criteria in EPA's SSM guidance. We encourage you to consider adding some of those additional elements (e.g. using off-shift labor and overtime work to expedite repairs), but states have more discretion with a true enforcement discretion approach because it is a list of factors for the state to consider, and a source is not automatically entitled to an exemption from penalties if all the criteria are met.

-

Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

To: Bray, Dave[Bray.Dave@epa.gov]; Vergeront, Julie[Vergeront.Julie@epa.gov]; Suzuki, Debra[Suzuki.Debra@epa.gov]; Hall, Kristin[Hall.Kristin@epa.gov]
Cc: Newman, Alan (ECY)[anew461@ECY.WA.GOV]; "Pritchett, Nancy (ECY)" <npri461@ECY.WA.GOV>[npri461@ECY.WA.GOV]; Guilfoil, Elena (ECY)[egui461@ECY.WA.GOV]; Dererie, Debebe (ECY)[derd461@ECY.WA.GOV]; Hunt, Jeff[Hunt.Jeff@epa.gov]
From: Hunt, Jeff
Sent: Fri 3/18/2016 4:41:31 PM
Subject: RE: SSM

Thank you all for the quick replies and your flexibility. We have critical mass for Tuesday, March 22, 1-2pm. I cancelled the 10-11 option and added a call in number to the 1-2pm invitation to make things a bit easier.

I will be out on vacation starting Ex. 6 - Personal Privacy So please make sure to resolve all things SSM related before I get back (ha, ha) …. jh

From: Hunt, Jeff
Sent: Wednesday, March 16, 2016 11:16 AM
To: Bray, Dave <Bray.Dave@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Suzuki, Debra <Suzuki.Debra@epa.gov>; Hall, Kristin <Hall.Kristin@epa.gov>
Cc: Newman, Alan (ECY) <anew461@ECY.WA.GOV>; "Pritchett, Nancy (ECY)" <npri461@ECY.WA.GOV> <npri461@ECY.WA.GOV>; Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; 'Dererie, Debebe (ECY)' <derd461@ECY.WA.GOV>
Subject: SSM

Hello all,

Elena and I were just chatting. Ecology would like to have a preliminary discussion with us on SSM options before they meet with local clean air agency staff on April 6 and the first meeting with stakeholders on April 27. I noticed that (miraculously) Dave, Julie, and Debra all seem to have Tuesday, March 22, at 10am and 1pm open on their electronic calendars. So I am going to send out calendar invites to this group for both time slots. Whichever timeslot appears to have critical mass I will keep and delete the other. If neither of those work, I will keep trying. Sound like a plan? …. Jh

Ps. I will be away Ex. 6 - Personal Privacy so I will not be part of the conversation. But I am sure Dave, Julie, and Debra will fill me in on the details.

Jeff Hunt

Air Quality Planner (or as my 7-year old daughter says "My daddy is an air janitor. He cleans the air.")

EPA Region 10

Office of Air, Waste and Toxics

(206) 553-0256

To: Dererie, Debebe (ECY)[derd461@ECY.WA.GOV]
Cc: Suzuki, Debra[Suzuki.Debra@epa.gov]; Vergeront, Julie[Vergeront.Julie@epa.gov]; Bray, Dave[Bray.Dave@epa.gov]; Hall, Kristin[Hall.Kristin@epa.gov]
From: Hunt, Jeff
Sent: Thur 3/10/2016 8:03:53 PM
Subject: RE: Request for your perspective

Wonderful. We are looking forward to getting SSM restarted and fixed. Dave Bray (cc'ed) is the contact for the substantive content of the SSM rule changes. However Dave, Julie, and I typically tag team with me handling the administrative/SIP side of things. So yes, I would love to talk to you on Monday to discuss logistics. I will be generally free all day from 10am to 4pm except for 1-2pm. Just pick a time and send me a calendar invite. Thanks …. jh

From: Dererie, Debebe (ECY) [mailto:derd461@ECY.WA.GOV]
Sent: Thursday, March 10, 2016 11:43 AM
To: Hunt, Jeff <Hunt.Jeff@epa.gov>
Subject: Request for your perspective

Hi Jeff,

The effort to comply with the SSM requirement have re-started, . I will be working on the SIP. I will count on your closer guidance, given my limited experience in SIP. In this regards, the following are the key time-frame set based on some key contributors for the rule making.

- Final rule language for commenting – June 22
- Final Rule: August 3
- Hearing: September 6/7
- Comment period closing: Sep 14
- Final rule language: October 19
- Rule adoption: Nov 11

I would like to get your perspective on this. I would also appreciate any guidance or experience benchmark. I have a plan to call you on Monday, which time would you be available?

Thank you

Debebe Dererie,

Air Quality Planner, EP3,

Program Development Section,

Air Quality Program

360-407-7558 debebe.dererie@ECY.WA.GOV

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Thur 12/1/2016 11:10:40 PM
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Great news! Congratulations on moving that package so quickly through the process!

I don't know that anyone here feels too strongly about the cc list. I think what you propose – ccing me and Tim – should be just fine.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, December 01, 2016 12:37 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

So, same question about the SSM SIP Call regs letter. Are you and Tim Hamlin the only EPA people who should be cced on the letter to Dennis McLerran or should there be other people on that list?

Asking today, because I just got notification that the regs were signed on Nov. 29 and will be effective on Dec. 29!

Thanks,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, November 28, 2016 10:34 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca – to minimize copies, you could consider replacing my name with Randall's…

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Monday, November 28, 2016 10:10 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Thank you. Ah, right, I knew you had a new director and couldn't remember who it was. So does Randall replace any of the rest of you on the list, or is he an addition?

Hope you had a great Thanksgiving.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, November 28, 2016 9:09 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Ruddick, Randall <ruddick.randall@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca,

Thanks for the message. If you submit a letter, please note that Randall Ruddick is the staff lead. Also, our new director is Tim Hamlin. His title is Director, Office of Air and Waste.

Hope that helps.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Friday, November 25, 2016 5:12 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

I'm working on a "thank you for approving SIP revisions" letter, and I'm not sure who all at EPA should be on the cc list. Can you let me know when you have a chance? Last time we had

Jan Hastings (she was acting OAWT director at the time), Debra, and you.

Thank you,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, November 22, 2016 4:01 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Great!

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, November 22, 2016 4:44 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Kristin,

Thanks. Hopefully we'll hear soon that it's been signed and filed. I think we can submit everything to you as soon as that happens and we get the letter signed.

Good news about the fee SIP. I'll be in the office Friday, so I'll look for it in my daily EPA FR e-mail.

Happy Thanksgiving!

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, November 22, 2016 3:42 PM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Hi Rebecca –

Thanks for the message. This draft letter looks good to me.

Also, our direct final action to approve the Alaska fee revision SIP is scheduled to publish on Friday.

Have a Happy Thanksgiving weekend ☺

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, November 22, 2016 4:01 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: SSMSIP.SIPLetterDRAFT.11-22-16.docx

Kristin,

Here is my draft of the SIP submittal letter for the SSM SIP Call regs for your review to make sure I've hit all the right points.

We're still waiting for them to be signed and filed by the Lt. Governor (I think they've gone over from the DOL to the Lt. Gov's office), but I have all the documents ready and will load them onto eSIP this week.

Thank you,

Rebecca

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Environmental Conservation

OFFICE OF THE COMMISSIONER

P.O. Box 111800
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99811-1800
Main: 907-465-5066
Fax: 907-465-5070
www.dec.alaska.gov

XX xx, 2016

Mr. Dennis J. McLerran
U.S. EPA Region 10
Regional Administrator's Office, RA-210
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Subject: SIP Submittal of adoption updates in 18 AAC 50

Dear Mr. McLerran:

This letter provides amendments to 18 AAC 50, Air Quality Control regulations, with an effective date of XX xx, 2016. Specific provisions are submitted for removal from the EPA approved State Implementation Plan (SIP), and the language of the provisions is included for informational purposes only, to show a complete record of the rulemaking.

On XX xx, 2016, the Lt. Governor signed and filed the following changes to the Alaska Department of Environmental Conservation's (ADEC) regulations in 18 AAC 50:

- amend 18 AAC 50.030 to adopt the current effective date of the *State Air Quality Control Plan*.
- amend 18 AAC 50.240(b) to address changes in requirements for excess emissions.

ADEC requests EPA removal of the following section from the SIP:

- 18 AAC 50.240

The revision to the language of 18 AAC 50.240(b) is being provided for informational purposes only, to show a complete record of the rulemaking package.

We will submit the following documents via the EPA's eSIPS system. If requested, we can provide one paper copy and one electronic version of the following documents to Kristin Hall of your staff (note that the electronic version would be an exact duplicate of the paper copy):

- Lt. Governor's certified Filing Certificate for Permanent Regulations,

including Signed Adoption Order and Memorandum of Filed Permanent Regulations, signed on XX xx, 2016, with an effective date of regulations of August 20, 2016, and Delegation of the Lieutenant Governor's Authority;
- Notice of Public Comment Period, signed September 7, 2016;
- Affidavit of Notice of Proposed Adoption of Regulations and Furnishing of Additional Information, signed October 10, 2016;
- Affidavit of Publication for the Public Notice, Alaska Dispatch News, signed September 12, 2016;
- Notice of Cancellation of Oral Hearing;
- Affidavit of Cancellation of Oral Hearing, signed October 10, 2016;
- Public Review Draft of 18 AAC 50 regulations which shows the changes made to the regulations, with bold lettering as new language and bracketed language as old language, dated September 7, 2016;
- Responsiveness Summary, October 10, 2016;
- Affidavit of Agency Record of Public Comment, signed October 10, 2016;
- Adoption Draft of 18 AAC 50 regulations, dated October 10, 2016;
- A copy of the tracked regulation amendments prepared by the Department of Law for transmittal to the Lt. Governor for certification and filing, with Register xxx, XX 2016, handwritten;
- Explanation of Changes, August 2016; and
- IV.B State Air Quality Control Plan.

Denise Koch is available to your staff to respond to questions or to otherwise assist. She can be phoned at (907) 465-5109. As always, I would be pleased to discuss any of this with you.

Sincerely,

Larry Hartig, Commissioner

Cc: Timothy Hamlin, Director, Office of Air and Waste, EPA Region 10
Kristin Hall, Office of Air and Waste, EPA Region 10
Alice Edwards, Deputy Commissioner, DEC
Denise Koch, Director, Division of Air Quality
John Kuterbach, Program Manager, APP Program, DEC

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Tue 7/12/2016 6:49:00 PM
Subject: RE: SSM SIP Call 18 AAC 50.240 draft revision

Hi Rebecca,

In the SIP call there is a great deal of discussion about the federal district court's jurisdiction under the CAA:

Section 113(b)

provides courts with explicit

jurisdiction to determine liability and to

impose remedies of various kinds,

including injunctive relief, compliance

orders and monetary penalties, in

judicial enforcement proceedings. This

grant of jurisdiction comes directly from

Congress, and the EPA is not authorized

to alter or eliminate this jurisdiction

under the CAA or any other law. With

respect to monetary penalties, CAA

section 113(e) explicitly includes the

factors that courts and the EPA are

required to consider in the event of

judicial or administrative enforcement

for violations of CAA requirements,

including SIP provisions.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, July 12, 2016 9:58 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: FW: SSM SIP Call 18 AAC 50.240 draft revision

And John's just recommended a change to the beginning of (b) to have it say "In determining whether to assess penalties for excess" rather than "…take enforcement action".

Rebecca

From: Smith, Rebecca T (DEC)
Sent: Tuesday, July 12, 2016 8:54 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: FW: SSM SIP Call 18 AAC 50.240 draft revision

Kristin,

I haven't heard back from Dave and figured he might be on vacation or really busy. I thought I'd send this by you to see what you think. We have added "upsets or" into 240(b)(4), because our Compliance folks wanted to keep upsets as part of our regs.

Rebecca

From: Smith, Rebecca T (DEC)
Sent: Wednesday, July 06, 2016 9:24 AM
To: Bray, Dave <bray.dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: SSM SIP Call 18 AAC 50.240 draft revision

Dave,

Attached please find our current draft of the revised 18 AAC 50.240 regulations to address the SSM SIP call issues. We worked with the suggestions you, Julie, and Kristin sent and then expanded on them, particularly in the malfunctions section to include the other criteria from the SSM SIP Policy we hadn't previously listed.

We're having a meeting with our Compliance managers today to make sure they will work for them, but would you please review the regs and let us know if they would be approvable as written?

Thank you,

Rebecca

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Tue 7/12/2016 6:38:27 PM
Subject: RE: Alaska rule - 18 AAC 50.240

I think that when you change to an enforcement discretion approach, you are not necessarily limited to whether the excess emissions are unavoidable or not…

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, July 12, 2016 11:34 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: FW: Alaska rule - 18 AAC 50.240

Also, this question.

From: Smith, Rebecca T (DEC)
Sent: Wednesday, July 06, 2016 9:16 AM
To: Bray, Dave <bray.dave@epa.gov>
Subject: FW: Alaska rule - 18 AAC 50.240

Dave,

We're working on this now, and I am having difficulty extracting from the final rule why it is

that there is no longer a de facto definition of "unavoidable" so I can finish my briefing document. Do you have any clarity to offer?

Thanks,

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision – with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

Some explanations and caveats about the markup are important:

First, we made an assumption that you would want to retain your current reporting requirements, but we did remove the specific provision regarding immediate notice for excess emissions which the source believes were unavoidable, which isn't needed and doesn't work without changes for a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

Second, we also assumed that you might want to retain your current sections on startup and shutdown, scheduled maintenance, and upsets with their separate and different factors that ADEC would consider. EPA's SSM guidance includes factors that the State can consider when

exercising its enforcement discretion but it doesn't have separate provisions for startup, shutdown and malfunction (upsets).

EPA notes that the current criteria in your rule don't include all of the elements of the five criteria in EPA's SSM guidance. We encourage you to consider adding some of those additional elements (e.g. using off-shift labor and overtime work to expedite repairs), but states have more discretion with a true enforcement discretion approach because it is a list of factors for the state to consider, and a source is not automatically entitled to an exemption from penalties if all the criteria are met.

-

Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
Cc: Turner, Thomas E (DEC)[tom.turner@alaska.gov]
From: Hall, Kristin
Sent: Tue 7/12/2016 5:19:31 PM
Subject: RE: SSM SIP Call 18 AAC 50.240 draft revision

I will let folks know. We won't be able to get you feedback by this afternoon, but I will work hard to try to corral everyone to get you what you need in the next two weeks.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, July 12, 2016 10:15 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: RE: SSM SIP Call 18 AAC 50.240 draft revision

We have to brief John and Denise this afternoon, as John is on leave starting tomorrow. We should have more of an idea about timing after that, but we were hoping to advance this to the Commissioner by the end of the month.

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Tuesday, July 12, 2016 9:13 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: RE: SSM SIP Call 18 AAC 50.240 draft revision

Hi Rebecca – Thank you for sending this draft. I will work with Dave and others here to review it. Do you have a target date?

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Tuesday, July 12, 2016 9:58 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: FW: SSM SIP Call 18 AAC 50.240 draft revision

And John's just recommended a change to the beginning of (b) to have it say "In determining whether to assess penalties for excess" rather than "…take enforcement action".

Rebecca

From: Smith, Rebecca T (DEC)
Sent: Tuesday, July 12, 2016 8:54 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: FW: SSM SIP Call 18 AAC 50.240 draft revision

Kristin,

I haven't heard back from Dave and figured he might be on vacation or really busy. I thought I'd send this by you to see what you think. We have added "upsets or" into 240(b)(4), because our Compliance folks wanted to keep upsets as part of our regs.

Rebecca

From: Smith, Rebecca T (DEC)
Sent: Wednesday, July 06, 2016 9:24 AM
To: Bray, Dave <bray.dave@epa.gov>
Cc: Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Subject: SSM SIP Call 18 AAC 50.240 draft revision

Dave,

Attached please find our current draft of the revised 18 AAC 50.240 regulations to address the SSM SIP call issues. We worked with the suggestions you, Julie, and Kristin sent and then expanded on them, particularly in the malfunctions section to include the other criteria from the SSM SIP Policy we hadn't previously listed.

We're having a meeting with our Compliance managers today to make sure they will work for them, but would you please review the regs and let us know if they would be approvable as written?

Thank you,

Rebecca

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Thur 6/23/2016 5:10:19 PM
Subject: RE: Alaska rule - 18 AAC 50.240

If you can wait until July 11, I can review your draft cover letter then. I'm assuming that's for the 2016 IBR update SIP?

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, June 23, 2016 9:35 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Thanks. Have a great vacation!

I should be able to send a draft SIP submittal letter soon (gotta get done with the SSM SIP call stuff first) to make sure I've caught everything. Should I wait till you get back or send it to someone else? Our regs still aren't done at DOL yet though, so it'll be a bit before they're ready to go to you as a final package, so we should have time.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]

Sent: Thursday, June 23, 2016 8:32 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Happy to help! I should let you know that I'll be out of the office for two weeks on vacation – if questions come up over the next two weeks, Dave Bray and Debra Suzuki will be available.

Thanks again for your hard work on this.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Thursday, June 23, 2016 9:28 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Ah, I must have skipped right over those sections when I was reading the proposal! Thanks.

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Thursday, June 23, 2016 8:27 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Yes – they are. Here is an excerpt from the EPA's SIP Call proposal that discusses specific Idaho and Oregon provisions:

2. Idaho

a. Petitioner's Analysis

The Petitioner objected to a provision in the Idaho SIP that appears to grant enforcement discretion to the state as to whether to impose penalties for excess emissions during certain SSM events (Idaho Admin. Code r. 58.01.01.131). [196] The provision provides that "[t]he Department shall consider the sufficiency of the information submitted and the following criteria to determine if an enforcement action to impose penalties is warranted * * *." The Petitioner argued that this provision could be interpreted to give the Department authority to decide that enforcement is not warranted by anyone, thereby precluding action by the EPA and citizens for civil penalties or injunctive relief.

b. The EPA's Evaluation

The EPA's SSM Policy interprets the CAA to allow states to elect to have appropriately drawn SIP provisions addressing the exercise of enforcement discretion by state personnel. As the Petitioner recognized, Idaho Admin. Code r. 58.01.01.131 appears to be a statement of enforcement discretion, and it delineates factors that will be considered by the Department in determining whether to pursue enforcement for violations due to excess emissions. Subsection 101.03 of the provision clearly states that "[a]ny decision by the Department * * * shall not excuse the owner or operator from compliance with the relevant emission standard." There is no language suggesting that the Department's determination to forgo state enforcement against a source would in any way preclude the EPA or the public from demonstrating that violations occurred or from taking enforcement action. Consequently, the EPA believes the provision is consistent with the requirements of the CAA.

c. The EPA's Proposal

The EPA proposes to deny the Petition with respect to Idaho Admin. Code r. 58.01.01.131. The EPA interprets this provision to allow both the EPA and the public to seek civil penalties or injunctive relief, regardless of how the state chooses to exercise its enforcement discretion. The EPA solicits comments on this issue, in particular from the State of Idaho, to assure that there is no misunderstanding with respect to the correct interpretation of Idaho Admin. Code r. 58.01.01.131.

3. Oregon

a. Petitioner's Analysis

The Petitioner objected to a provision in the Oregon SIP that grants enforcement discretion to the state to pursue violations for excess emissions during certain SSM events (Or. Admin. R. 340-028-1450). [197] The provision provides that "[i]n determining if a period of excess emissions is avoidable, and whether enforcement action is warranted, the Department, based upon information submitted by the owner and or operator, shall consider whether the following criteria are met * * *." The Petitioner argued that this provision could be interpreted to give the Department authority to decide that enforcement is not warranted by anyone, thereby precluding action by the EPA and citizens for civil penalties or injunctive relief.

b. The EPA's Evaluation

After the Petition was filed, the provision of the Oregon SIP cited by the Petitioner was recodified and revised by the state and was submitted to the EPA as part of a SIP revision. The EPA approved the SIP revision on December 27, 2011. [198] The provision has been recodified and revised at Or. Admin. R. 340-214-0350. The provision as recodified provides that "[i]n determining whether to take enforcement action for excess emissions, the Department considers, based upon information submitted by the owner or operator," a list of factors.

The EPA's SSM Policy interprets the CAA to allow states to elect to have SIP provisions that pertain to the exercise of enforcement discretion by state personnel. As revised by Oregon and approved by the EPA into the SIP, Or. Admin. R. 340-214-0350 is plainly a statement of enforcement discretion, and it delineates factors that will be considered by the Department in determining whether to pursue state enforcement for violations of the applicable SIP emission limitations due to excess emissions. There is no language in this provision suggesting that the Department's determination to forgo enforcement against a source would in any way preclude the EPA or the public from demonstrating that violations occurred and taking enforcement action. Consequently, the EPA believes the current SIP provision is consistent with the requirements of the CAA.

c. The EPA's Proposal

The EPA proposes to deny the Petition with respect to Or. Admin. R. 340-028-1450. This provision has since been recodified and approved by the EPA at Or. Admin. R. 340-214-0350. The EPA interprets the recodified provision to allow both the EPA and the public to seek civil penalties or injunctive relief, regardless of how the state chooses to exercise its enforcement discretion. The EPA solicits comments on this issue, in particular from the State of Oregon, to assure that there is no misunderstanding with respect to the correct interpretation of Or. Admin. R. 340-214-0350.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, June 22, 2016 5:21 PM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

One other question. Have both Idaho and Oregon's changed excess emissions regulations been approved into their SIPs already?

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Wednesday, June 22, 2016 10:51 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Hi Rebecca –

Check out **Section XI. Statement of the EPA's SSM SIP Policy as of 2015** (at page 139 of the pdf). It discusses alternative emission limits (at D. page 142), enforcement discretion (at E. page 142-143), and affirmative defense provisions (at F. page 143).

Section X. Implementation Aspects of EPA's SSM SIP Policy (at page 138 of the pdf) also talks a lot about the alternative emission limits option.

Hope this helps.

Kristin Hall

Air Planning Unit

Environmental Protection Agency

Seattle, Washington

206-553-6357

From: Smith, Rebecca T (DEC) [mailto:rebecca.smith@alaska.gov]
Sent: Wednesday, June 22, 2016 10:52 AM
To: Hall, Kristin <Hall.Kristin@epa.gov>
Subject: RE: Alaska rule - 18 AAC 50.240

Kristin,

We're working on the SSM SIP Call stuff, and I'm wondering if you can direct me to the pages of the June 12, 2015, Federal Register publication where the info I highlighted below can be found? I'm having difficulty pinpointing which info that is. Thank you.

Rebecca

From: Hall, Kristin [mailto:Hall.Kristin@epa.gov]
Sent: Monday, May 02, 2016 10:55 AM
To: Smith, Rebecca T (DEC) <rebecca.smith@alaska.gov>; Turner, Thomas E (DEC) <tom.turner@alaska.gov>
Cc: Suzuki, Debra <Suzuki.Debra@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>
Subject: Alaska rule - 18 AAC 50.240

Dear Rebecca and Tom,

You asked for an example of how to address the EPA's SSM SIP Call. Attached is a markup of one possible way to revise 18 AAC 50.240 to make it a true enforcement discretion provision – with minimal changes. We heard from you that an example would go a long way to assist you in evaluating options for responding to the SIP call.

Some explanations and caveats about the markup are important:

First, we made an assumption that you would want to retain your current reporting requirements, but we did remove the specific provision regarding immediate notice for excess emissions which the source believes were unavoidable, which isn't needed and doesn't work without changes for a enforcement discretion approach (because there is no longer a de facto definition of "unavoidable").

Second, we also assumed that you might want to retain your current sections on startup and shutdown, scheduled maintenance, and upsets with their separate and different factors that ADEC would consider. EPA's SSM guidance includes factors that the State can consider when exercising its enforcement discretion but it doesn't have separate provisions for startup, shutdown and malfunction (upsets).

EPA notes that the current criteria in your rule don't include all of the elements of the five criteria in EPA's SSM guidance. We encourage you to consider adding some of those additional elements (e.g. using off-shift labor and overtime work to expedite repairs), but states have more discretion with a true enforcement discretion approach because it is a list of factors for the state to consider, and a source is not automatically entitled to an exemption from penalties if all the criteria are met.

-

Finally, EPA's SSM guidance doesn't specifically address excess emissions during scheduled maintenance but rather treats excess emissions during scheduled maintenance in the same manner as malfunctions if maintenance is occurring while the source is operating.

There are other ways to address the SIP call, and the EPA has outlined the options in the final SSM SIP Call and restatement and update of the SSM guidance applicable to SIPs published on June 12, 2015 (80 FR 33840).

Thank you for your work on this. Please feel free to call with questions.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA

206-553-6357

To: Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]; Tom Turner (tom.turner@alaska.gov)[tom.turner@alaska.gov]
Cc: Bray, Dave[Bray.Dave@epa.gov]; Suzuki, Debra[Suzuki.Debra@epa.gov]
From: Hall, Kristin
Sent: Fri 4/22/2016 2:09:56 PM
Subject: Follow up from call

Hi Rebecca and Tom,

Here is an enforcement discretion example from the EPA's SSM SIP Call (June 12, 2015; 80 FR 33840, at page 33981):

When determining whether an enforcement action is appropriate in the case of excess emissions, the department will consider the following criteria:

1. Whether, to the maximum extent practicable the air pollution control equipment, process equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

2. Whether repairs were made in an expeditious fashion when the operator know or should have known that applicable emission limitation were being exceeded, including whether off-shift labor and overtime were utilized, to the extent practicable, to ensure such repairs were made as expeditiously as possible;

3. Whether the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

4. Whether all possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

5. Whether the excess emission are part of a recurring pattern indicative of inadequate design, operation or maintenance.

Here are links to provisions in Idaho and Oregon's rules:

Idaho excess emissions rule IDAPA 58.01.01.131 –

http://adminrules.idaho.gov/rules/current/58/0101.pdf

Oregon excess emissions rule OAR 340-214-0350 –
http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_214.html

Hope this helps.

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA 98101

206-553-6357

To: Bray, Dave[Bray.Dave@epa.gov]; Tom Turner (tom.turner@alaska.gov)[tom.turner@alaska.gov]; Smith, Rebecca T (DEC)[rebecca.smith@alaska.gov]
From: Hall, Kristin
Sent: Wed 4/20/2016 11:10:08 PM
Subject: Excess Emissions - SSM SIP Call - follow up discussion - Thursday at 1 PM Alaska Time / 2 PM Seattle Time

Just a reminder about our call tomorrow at 1 PM Alaska Time / 2 PM Seattle Time. The call-in number is on the calendar invite – and I am also sending it with this email.

Call-in number: Ex. 6 - Personal Privacy

Conference Code: Ex. 6 - Personal Privacy - No room reserved in Seattle - please call in directly

Talk to you tomorrow!

Kristin Hall

Air Planning Unit

EPA Region 10

Seattle, WA 98101

206-553-6357

To: Hunt, Jeff[Hunt.Jeff@epa.gov]
From: Dererie, Debebe (ECY)
Sent: Tue 3/21/2017 4:55:52 PM
Subject: Non-SSM part of draft Chapter 173-400 WAC
Used in Stakeholder meeting SSM Draft-3_20_2017.docx

Good morning Jeff,

I have attached the latest version of the draft rule for your review. I am sending you the whole draft that includes the SSM part, in case if you may need to check something related to the SSM part.

The main changes done after your review on the December 20 2016 version is on WAC 173-400-171. We have also withdrawn the proposed change to the non-road definition, as per your recommendation.

Debebe Dererie,

Environmental Planner, EP3,

Program Development Section,

Air Quality Program

360-407-7558 debebe.dererie@ECY.WA.GOV

DRAFT Rulemaking Changes to Chapters 173-400 and 173-401 WAC

March 20, 2017 version

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WAC 173-400-025 Adoption of federal rules.

(1) Federal rules mentioned in this rule are adopted as they exist on DATE, 2017. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

WAC 173-400-030 Definitions. [The section defines 95 defined terms.]

"**Alternate emission limit**" means an emissions limit that applies during some but not all periods of normal operation (e.g., applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limit is a component of a continuously applicable emission limit. An alternative emission limit may be a numerical limit or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

"**Electronic means**" means email, fax or other electronic method.

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

(30) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard.

"Hog fuel" means an unrefined mix of wood or wood waste.

"Hog fuel boiler" means device, furnace, or boiler using wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer.

"Industrial furnace" means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 CFR 260.10.

"**Mode of operation**" means a short-term operating condition of an emission unit with a specific beginning and end.

"Shutdown" means, generally, the cessation of operation of a stationary source for any reason.

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"Startup" means, generally, the setting in operation of a stationary source or emissions unit for any reason.

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

"**Wigwam or silo burner"** means a cone-shaped or cylindrical structure that burns wood waste for disposal.

"**Wood-fired boiler**" means device, furnace, or boiler that burns wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer.

"**Wood-waste burner**" means a device that burns wood.

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

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane

(HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; *trans*-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2- Tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane;and perfluorocarbon compounds that fall into these classes:

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

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

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

(d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limits or VOC content requirements: Tertiary-butyl acetate.

WAC 173-400-035 Nonroad engines.

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

(a) Any nonroad engine that is:
(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and

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performing another function; or

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

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

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

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

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

(a) New source review.
(b) Control technology determinations.
(c) Emission limits set by the SIP.
(d) Chapter 173-460 WAC.

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

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

(a) Notification of intent to operate is required before operations begin. The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:

(i) Name and address of owner or operator;
(ii) Site address or location;
(iii) Date of equipment arrival at the site;
(iv) Cumulative engine maximum rated BHP.

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(b) Recordkeeping. For each site, the owner or operator must record the following information for each nonroad engine:
- (i) Site address or location;
- (ii) Date of equipment arrival at the site;
- (iii) Date of equipment departure from the site;
- (iv) Engine function or purpose;
- (v) Identification of each component as follows:
  - (A) Equipment manufacturer, model number and its unique serial number;
  - (B) Engine model year;
- (vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep the records of the current engine and equipment activity in hard copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.

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

(a) Notification of intent to operate.

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

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

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

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

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

(6) **Requirements specific to projects on a Department of Defense and Department of Energy facility.**

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(a) A Department of Defense and Department of Energy facility over 50 acres in size may exclude engines below 50 brake horsepower to determine cumulative maximum engine horsepower.

(b) Ecology may establish specific criteria to assist it and the Departments of Defense and Energy to determine when a particular nonroad engine becomes a stationary engine. This criteria shall not conflict with the definition of "nonroad" engine.

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

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

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

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

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

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

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WAC 173-400-040 General standards for maximum emissions.

(1) General requirements.

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limits of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity.: The following are exceptions from this standard:

(a) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

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

(c) When an alternate opacity limit has been established per:

(i) RCW 70.94.331(2)(c); or

(ii) WAC 173-400-082(3).

(d) When emissions occur due to startup of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity when the owner or operator complies with (i) and (ii) of this subsection.

(i) Comply with all of the following mandatory requirements:

(A) This subsection applies to a combustion unit with dry particulate matter controls. This subsection does not apply to a combustion unit with wet particulate matter controls.

(B) For purposes of this subsection:

(I) Startup begins when fuel is ignited in the boiler fire box; and

(II) Startup ends at the earlier of the following;

(III) If applicable, the dry electrostatic precipitator or baghouse controlling emissions from the boiler has met its minimum operating temperature. The control must be operated at this time; or

(IV) Within four hours of the start of supplying useful thermal energy.

(C) Maintain records sufficient to demonstrate compliance.

(ii) Comply with one of the following requirements:

(A) Visible emissions shall not exceed 40 percent opacity for three minutes in an hour during startup; or

(B) Engage all air pollution control devices once you start firing fuels; or

(C) The boiler shall:

(I) Use clean fuel identified in 5.b. in Table 3 to Subpart DDDDD of 40 C.F.R. Part 63 to the extent practicable during the startup;

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(II) Minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator shall use the recommended startup procedure for a unit of a similar design;

(III) Engage all the air pollution control devices as required in (d)(i)(B)(III) of this subsection, if applicable; and

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

(e) When emissions occur due to soot blowing or grate cleaning of a hog fuel or wood fired boiler, visible emissions may not exceed 40 percent opacity for more than fifteen minutes in any eight consecutive hours. For this provision to apply, the owner or operator must meet all of the following requirements:

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

(ii) Notify the permitting authority in writing of the schedule in (i) of this subsection in advance of the occurrence of visible emission exceeding 20 percent opacity due to soot blowing and/or grate cleaning; and

(iii) Maintain records sufficient to demonstrate compliance.

(f) When emissions occur during curing of furnace refractory in an existing lime kiln, industrial furnace, or boiler, visible emissions may not exceed 40 percent opacity. For this provision to apply, the owner or operator must meet the following requirements:

(i) The total duration of refractory curing does not exceed 36 hours, unless provided for in an order issued in compliance with WAC 173-400-081(4) or WAC 173-400-082(4); and

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

(iii) The manufacturer's instructions on curing refractory are followed, including all instructions on temperature

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increase rates and holding temperatures and time; and

(iv) The emission controls are engaged as soon as possible during the curing process; and

(v) The owner or operator notifies the permitting authority at least one working day prior to the start of the refractory curing process.

(g) Visible emissions reader certification testing.
When testing and certifying visible emission readers, visible emissions from the "smoke generator" are exempt from the 20 percent opacity limit. Testing must follow testing and certification requirements in 40 C.F.R. Part 60, Appendix A, Reference Method 9 (in effect on the date in WAC 173-400-025) and ecology methods 9A and 9B (Ecology *Source Test Manual*).

(h) Military training exercises.
When holding military obscurant training exercises, visible emissions are exempt from the twenty percent opacity limit when the following requirements are met:

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

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

(i) Firefighter training.
When training firefighters, visible emissions from fixed and mobile firefighting training facilities are exempt from the 20 percent opacity limit. Compliance with chapter 173-425 WAC is required.

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

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enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

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

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.**

(a) No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes. Exceptions are listed in (b) and (c) of this subsection.

(b) Sulfur recovery unit alternate emission standard. During shutdown of a sulfur recovery unit regulated by 40 C.F.R. 63.1579 (in effect on the date in WAC 173-400-025), the owner or operator shall:

(i) Follow the facility's written startup or shutdown procedures;

(ii) Limit emissions to less than 100 pounds per event ;

(iii) Limit to [time limit]; and

(iv) Maintain records sufficient to demonstrate compliance.

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

(9) **Fugitive dust.**

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

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

WAC 173-400-050 Emission standards for combustion and incineration units.

(7) **Sewage sludge incineration units** constructed on or before October 14, 2010. Sewage sludge incineration units constructed on or before October 14, 2010, must comply with 40 C.F.R. Part 62, Subpart LLL (in effect on the date in WAC 173-400-025).

WAC 173-400-070 Emission standards for certain source categories.

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

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

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

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

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

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

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

(ii) A requirement to apply BACT.

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

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1).
(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

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

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

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

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

(a) Wood waste burners shall meet all applicable provisions of:

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

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

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

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

(6) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991**

WAC 173-400-081 Emission limits during startup and shutdown.

(1) In promulgating technology-based emission standards and establishing emission limits when making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

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

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

(4) An emission limit or other parameter adopted under this rule which increases allowable emissions during a startup or shutdown period over levels authorized in Washington's SIP shall not take effect until the requirements and procedures in WAC 173-400-082(4) are complied with..

WAC 173-400-082 Alternate emission limit that exceeds a standard in the SIP.

(1) Applicability.
- (a) The owner or operator of a source or stationary source may request an alternative emission limit that applies to a specific emission unit(s) during a clearly defined mode of operation. The alternative emission limit established under this section becomes a sourcespecific SIP emission standard.
- (b) Should we include info about process: request goes from facility to air agency to Ecology to EPA?

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

- (a) Opacity emission standard in:
  - (i) WAC 173-400-040 (2);
  - (ii) WAC 173-405-040(6);
  - (iii) WAC 173-415-030(3) and (3)(a); and
  - (iv) WAC 1730434-130(4).

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(b) Sulfur dioxide emission standard in:
(i) WAC 173-400-040 (7);
(ii) WAC 173-405-040 (11);
(iii) WAC 173-410-040 (1);
(iv) WAC 173-415-030(5); and
(v) WAC 173-434-130(3).

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

(d) Emission standards contained in a local air pollution control authority rule that has been approved into the SIP in 40 CFR 52.2470.

(3) Requirements to request an alternative emission limit.

(a) The owner or operator may request an alternative emission limit applicable to a specific mode of operation that exceeds a standard in the SIP. A mode of operation for an emission unit may include periods of startup, shutdown, maintenance, or other transient (short-term) operation.

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

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

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

(ii) Demonstrate the operating characteristics of the emission unit(s) for which the alternative emission standard is being requested prevent meeting the applicable emission standard during the specific mode of operation.

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Operating characteristics may include the operational variations in the emission unit, installed emission control equipment, work practices, or other means of emission control that could affect the frequency, or duration and quantity of emissions during the transient mode of operation.

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

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

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

(vi) Minimize the frequency and duration of the specific mode of operation to the shortest practicable amount of time;

(vii) Minimize the quantity and impact of the emissions resulting from the specific operating scenario; and

(viii) Not exceed an emission standard applicable to the emission unit in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption for a specific operating mode in an applicable rule does not apply.

(4) Process a request for a regulatory order.

(a) Completeness determination.

(i) Within sixty days of receiving an application, the permitting authority must notify the applicant that a request for an alternate emission limit is complete or incomplete.

(ii) The permitting authority must include the reasons they find the request incomplete.

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

(b) Denial. The permitting authority may deny a request for an alternative emission limit. The denial must include the basis for the denial.

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(c) Final determination. Within ninety days of receipt of a complete application, the permitting authority must either:

(i) Initiate notice and public comment for a mandatory action as required by WAC 173-400-171 followed as promptly as possibly by a final decision; or

(ii) Coordinate review and public comment consistent with (d) of this subsection.

(iii) Extend the determination period due to the complexity of the request.

(d) Coordinated review process. An applicant may request coordinated review of a request between the permitting authority and Ecology.

(i) Once the permitting authority has prepared a draft order, the permitting authority must send these documents electronically to Ecology for review:

(A) Request for an order;

(B) Draft order in a format specified by Ecology; and

(C) Permitting authority analysis of the request.

(ii) Within 60 days of receiving a draft order from the permitting authority, Ecology must inform the permitting authority of its approval or denial of the draft order. Ecology must include the reasons for a denial.

(iii) Once Ecology has approved a draft order, the permitting authority must initiate notice and public comment for a mandatory action as required by WAC 173-400-171 followed as quickly as as promptly as possibly by a final decision.

(5) Standard review process.
Local air agency must

- Send Ecology materials in advance of the public comment period
- hold hearing/comment period

- Send draft final order/materials to Ecology

Ecology must
- review and if disagree, return order with comments
- review and if agree, hold public comment period
- send SIP request to EPA

(6) The regulatory order must include:

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

(b) A clearly defined specific mode of operation that includes criteria [parameters?] for determining:

(i) The start and stop point for a mode of operation; and
(ii) When the alternative emission limit applies.

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

(d) A requirement that the applicable emission unit(s) are operated in a manner consistent with good operating practices for minimizing emissions during the time the alternative emission limit is in effect;

(e) A statement that the alternative emission limit authorized by the regulatory order is not in effect until the effective date of EPA's incorporation of the alternative emission limit in the SIP; and

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

(7) The pemitting authority can not issue a final order under this section until:

(a) Ecology is satisfied that the proposed alternative emission limit is consistent with the purposes of chapter 70.94 RCW as required by RCW 70.94.380; and

(b) The effective date of EPA's approval of the order as a SIP amendment.

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(8) Ecology requirements. Ecology must:

(a) Inform the permitting authority and the applicant of its acceptance or denial of the draft order within 60 days of receipt of the request.

(b) Approve an order when satisfied that the proposed alternative emission limit is consistent with the purposes of chapter 70.94 RCW as required by RCW 70.94.380.

(c) Hold a public comment period consistent with WAC 173-400-171(12) to submit the regulatory order to EPA as a SIP amendment, if the process has not gone through the coordinated review process in (4)(d).

(d) Notify the permitting authority and the applicant of the reasons for denial of a draft order.

(9) Fees. A permitting authority may assess and collect fees according to its fee schedule.

WAC 173-400-107 Excess emissions.

This section is in effect until the effective date of EPA's removal of the September 20, 1993 version of this section from the SIP. This section is not effective starting on that date.

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

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

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

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

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

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

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

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

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

WAC 173-400-108 Excess emissions reporting. [State-only requirement not federally enforceable]

(1)

Notify the permitting authority.

(i) The owner or operator must notify its permitting authority when excess emissions represent a potential threat to human health or safety as soon as possible, but not later than **twelve hours** after the excess emissions were discovered.

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(ii) For all other excess emissions, the owner or operator must notify its permitting authority within 30 days after the end of the month during which the excess emissions event occurred.

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

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

(ii) Chapter 173-401 WAC source: As provided in WAC 173-401-615(3).

(iii) All other sources:
(A) Within thirty days after the end of the month during which the event occurred; or

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

(3) The report must contain at least the following information:
(a) Date, time, duration of the episode;
(b) Known causes;
(c) For exceedances of emission limits other than opacity, an estimate of the quantity of excess emissions;
(d) The corrective actions taken;
(e) The preventive measures taken or planned to minimize the chance of recurrence; and
(f) Information in (4) of this section to claim an excess emission event is unavoidable.
(g) Exemption. A chapter 147-401 source must report equivalent information under WAC 173-401-615 so it is exempt from (a) through (e) of this subsection. Subsection (f) continues to apply.

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

(a) Contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the

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exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and

(c) All additional information required under WAC 173-400-109 (2), (3), (4), (5) or (6) supporting the claim that the excess emissions were unavoidable.

WAC 173-400-109 Unavoidable excess emissions. [State-only requirement not federally enforceable]

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

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source.

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

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

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

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

(2) The owner or operator of a source shall have the burden of proving to the permitting authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4) of this section.

(3) ~~(c)~~ This section does not apply to an exceedance of an emission standard in 40 C.F.R. Parts 60, 61, 62, 63, and 72 (in effect on the date in WAC 173-400-025), or a permitting authority's adoption by reference of these federal standards.

(4) ~~(d)~~ This section does not apply to an exceedance of an emission limit and standard in a PSD permit issued solely by EPA.

(5) ~~(f)~~ Excess emissions that occur due to upsets or malfunctions during startup or shutdown are treated as upsets or malfunctions under subsection (6) of this section.

(6) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and demonstrates to the permitting authority that:

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

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

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

(d) If the emitting equipment had to continue operation during the malfunction for safety reasons to prevent the loss of life, prevent personal injury, or to minimize overall emissions, repairs were made in an expeditious fashion;

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

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

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

WAC 173-400-171 Public notice and opportunity for public comment.

The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1)

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through (11) do not apply where the permitting authority has adopted its own public notice provisions.

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

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

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

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

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

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

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

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

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

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

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with

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subsection (2) of this section.

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

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

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

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

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

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

(g) An order to authorize a bubble; or

(h) An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) A notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) An order issued under WAC 173-400-091 that establishes limits on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

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(m) An extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) An application or other action for which the permitting authority determines that there is significant public interest; or

(o) An order issued under WAC 173-400-082 that establishes an emission limit that exceeds a SIP standard.

(4) **Advertising the mandatory public comment period.**

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must posted on the permitting authority web site for the duration of the public comment period. Duration does not require uninterrupted web site access.

(i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. ..

(ii) A permitting authority must publish a legal notice of the public comment period in a newspaper of general circulation in the area of the proposed action until July 1, 2018. It is recommended that a permitting authority continue publishing a legal notice for a project with high interest.

(b) This public notice can be posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

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

(d) The applicant or other initiator of the action must pay the publishing cost of providing public notice in a newspaper if the permitting authority determines supplemental noticing is required.

(5) **Information available for public review.**

(a) Administrative record. The information submitted by the applicant, and any applicable preliminary determinations,

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including analyses of the effects on air quality, must be available for public inspection. A permitting authority may comply with this requirement by making these materials available on their web site or in at least one physical location near the proposed project.

(b) The permitting authority must post the following information on their web site for the duration of the public comment period:

(A) Public notice complying with subsection (6) of this section;

(B) Draft permit, order, or action; and

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

(D) Duration does not require uninterrupted web site access.

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

(6) **Public notice components.** Public notice must be posted at least by the start date of the public comment period.

(a) The notice must include:
(i) The date the public notice is posted;
(ii) The name and address of the owner or operator and the facility;
(iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;
(iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;
(v) The location where those documents made available for public inspection may be reviewed;
(vi) Start date and end date for a thirty-day public comment period. If a holiday falls within this period, that is not considered one of the thirty-days.;
(vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;
(viii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom

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interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

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

(7) **Length of the public comment period.**
(a) The public comment period must extend at least thirty days prior to any hearing.
(b) If a public hearing is held, the public comment period must extend through the hearing date.
(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

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

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

(10) **Notice of public hearing.**
(a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:
(i) Post the public hearing notice on the permitting authority web site as directed by (4) of this section;

(ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community. and

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

applicant.

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

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

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

(12) **Special requirements for ecology only actions.**
(a) This subsection applies to ecology only actions including:
(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;
(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

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

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

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

WAC 173-400-740 Permitting public involvement requirements.

(1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:
(a) Any preliminary determination to approve or disapprove a PSD permit application; or
(b) An extension of the time to begin construction or suspend construction under a PSD permit; or
(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or
(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.

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

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

(i) Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post online on a web site but may be made available as part of the permit record either as hardcopy or on a data storage device.

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

(b) Notify the public by:

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(i) Posting the following information on ecology's web site for the duration of the public comment period:

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

(B) PSD draft permit;

(C) PSD technical support document; and

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

(E) Duration does not require uninterrupted web site access.

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

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

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

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

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

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

(c) Distribute by electronic means or postal service a copy of the public notice to:
(i) Any Indian governing body whose lands may be affected by emissions from the project;
(ii) The chief executive of the city where the project is located;
(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;
(v) Other individuals who requested notification of PSD permits;
(vi) Any state within 100 km of the proposed project.

(d) Distribute by electronic means or postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:
(i) The applicant;
(ii) The affected federal land manager;
(iii) EPA Region 10;
(iv) The permitting authority with authority over the source under chapter 173-401 WAC; and
(v) Individuals or organizations who request a copy.

(3) **Public notice content.** The public notice shall contain at least the following information:
(a) The date the public notice is posted;
(b) The name and address of the applicant;
(c) The location of the proposed project;
(d) A brief description of the project proposal;
(e) The preliminary determination to approve or disapprove the application;
(f) How much increment is expected to be consumed by this project;
(g) The name, address, and telephone number of the person to contact for further information;
(h) A brief explanation of how to comment on the project;
(i) An explanation on how to request a public hearing;
(j) The location of the draft permit and information on how to access the administrative record;
(k) The start date and end date for a thirty-day public comment period starting from the date of posting notice on the web site. If a holiday falls within this period, that is not considered one of the thirty-days. ;
(l) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;
(m) The length of the public comment period in the event of a public hearing; and
(n) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

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(4) **Public hearings.**

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

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

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

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

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

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

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

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

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

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

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

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

(d) Ecology shall distribute by electronic means or postal service a copy of the final determination shallto:

(i) The applicant;

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

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(iii) U.S. Department of Agriculture - Forest Service;
(iv) EPA Region 10;
(v) The permitting authority with authority over the source under chapter 173-401 WAC; and
(vi) Any person who commented on the preliminary determination.

WAC 173-401-645 Emergency provision.

Starting January 1, 2018 this section is no longer effective. A permitting authority must remove this provision from an individual operating permit during the first possible periodic permit renewal, permit modification, or permit reopening after this date.

(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 limit 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 limits 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 limits 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.

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(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.

WAC 173-401-724 Off-permit changes.

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

WAC 173-401-800 Public involvement.

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(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) Notice shall be given by the following methods:

(i) Permitting authority web site. A permitting authoriy must post notice on their web site for the duration of the public comment period. Duration does not require uninterrupted web site access:

(ii) A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newspaper of general circulation in the area of the permittee.

(iii) *Permit Register*.

(A) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805.

(B) 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 this 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. The mailing list may be electronic or hardcopy, or both. No request shall require the extension of the comment period associated with the notice. The permitting authority may

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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 (or an email or web site address) 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) Availability for public inspection.

(i) The permitting authority must post the draft permit and technical support document on their web site. Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post on a web site but may be made available as part of the administrative record either as hardcopy or on a data storage device.

(ii) Administrative record. The permitting authority must make the administrative record available for public inspection for the duration of the public comment period. The administrative record must:

(A) Be available in at least one location near the chapter 401 source. This may be at a physical location and/or posted on the permitting authority web site; and

(B) Include all nonproprietary information contained in the permit application and supporting materials.

(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.

(a) This comment period begins on the date of posting notice on their web site;

(b) 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.

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To: elena.guilfoil@ecy.wa.gov[elena.guilfoil@ecy.wa.gov]; Dererie, Debebe (ECY) (derd461@ECY.WA.GOV)[derd461@ECY.WA.GOV]
Cc: Suzuki, Debra[Suzuki.Debra@epa.gov]; Hunt, Jeff[Hunt.Jeff@epa.gov]; Hardesty, Doug[Hardesty.Doug@epa.gov]
From: Ruddick, Randall
Sent: Fri 1/6/2017 6:56:58 PM
Subject: ECY
SSM Draft-12_20_2016 R10 comments.pdf

Good morning,

Thanks for the chance to review Ecology's draft revisions to its SSM rules and certain other draft rule revisions. Region 10's comments on Ecology's 12-20-2016 draft SSM revisions are included in comment bubbles in the attached pdf.

Given the limited review time and its coincidence with the Holidays, we were unable to coordinate our review with EPA HQ. We also plan on reviewing the SSM draft that you put out for public comment and will coordinate our review with EPA Headquarters at that time. Of course, any final decision on whether these revisions are consistent with the SSM SIP Call will be based on our review of Ecology's complete submittal following your public notice/comment process and formal adoption of the plan and, after consideration of any comment we receive as part of the EPA public process.

Sincerely,

Randall Ruddick

Environmental Protection Specialist

Air Planning Unit

Office of Air and Waste

US EPA Region 10

1200 Sixth Ave, Suite 900, OAW-150

Seattle, WA 98101

206.553.1999

Draft 12/20/2016 SSM Changes

Contents

This draft dated December 20, 2016 contains the most recent version of Ecology's rule language to comply with the EPA SIP Call. Other rule changes Ecology is considering are found in the document "Rule changes not SSM-12_20_2016." Both documents are found on the rulemaking web page: http://www.ecy.wa.gov/programs/air/rules/wac173400/1507adv.htm.

Draft changes to Chapter 173-400 WAC

RCW 70.94.431(8) Civil penalties --- Excusable excess emissions. 2

WAC 173-400-040 General standards for maximum emissions. 2

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RCW 70.94.431(8) Civil penalties --- Excusable excess emissions.

By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

WAC 173-400-030 Definitions.

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

Industrial furnace means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 CFR 260.10.

WAC 173-400-040 General standards for maximum emissions.

(1) General requirements.

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard li sted in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

~~(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.~~

~~(b)~~(a) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

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

~~(d)~~(c) When an alternate opacity limit has been established per RCW 70.94.331(2)(c).

(d) When emissions occur due to start-up of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity but not exceed 40 percent opacity for more than 3 minutes in a one hour period. Determine opacity using ecology method 9A (*Ecology Source Test Manual*). ~~Visible emissions may not exceed twenty percent for more than 3 minutes in an hour when the earlier of~~ For purposes of this subparagraph, "start-up" ends at the earlier of the following:

(i) The dry electrostatic precipitator or baghouse has met its minimum operating temperature, at which time the control is to be operated; or

(ii) Four hours has elapsed since the beginning of supplying useful thermal energy.

(e) When the emissions occur due to soot blowing or grate cleaning of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity but not exceed 40 percent opacity on a 6 minute average, for more than one fifteen minute period in any eight consecutive hours.

(i) Determine opacity using EPA Method 9 – Visual determination of the opacity of emissions from stationary sources in Appendix A to Part 60.

(ii) To use this alternate standard, the soot blowing and/or grate cleaning must be scheduled for the same approximate time(s) each day and the permitting authority must be advised of the schedule.

(iii) Determine data reduction method based on the *Ecology Source Test Manual* (updated 7/1/2016).

(f) Visible emissions that occur during curing of furnace refractory after maintenance repair or replacement in an existing industrial furnace or boiler may exceed 20 percent opacity, on a 6 minute average, but not exceed 40 percent opacity, on a 6 minute average, provided the following requirements are met:

(i) Determine opacity using EPA Method 9 – Visual determination of the opacity of emissions from stationary sources – in Appendix A to Part 60; and

(ii) The total duration of refractory curing does not exceed 36 hours, unless provided for in a NOC approval or regulatory order issued under WAC 173-400-082; and

Commented [A1]: This provision is not currently in the SIP, and we assume Ecology will not be submitting it for approval. Please note specifically in your submission that these provisions are not being submitted.

Commented [A2]: We understand the concept Ecology is purusing in (2) (d), (e), and (f), and in 7(a) and (b) and believe these provisions could be consistent with the SIP call if supported by an adequate showing that they meet applicable overarching CAA requirements that this requirement was designed and intended to meet, including CAA 110(l) and, if applicable, CAA 193. See 80 FR 33976.

Commented [A3]: For clarity, the term "wood fired boiler" should be defined.

Commented [A4]: We understand that Ecology will be submitting the revised Source Test Manual as part of its SIP revision to address the SSM SIP Call.

Commented [A5]: The existing language (strikeout) didn't seem to get to the intent. Might this work??

Commented [A6]: Given that the opening sentences of (d) do not reference any control devices, this subparagraph would be clearer if it says "If applicable, the dry electrostatic precipitator or baghouse controlling emissions from such boiler…"

In addition, both (i) and (ii) need some recordkeeping component to ensure they are enforceable as a practical matter. See 80 FR 33980 ("(7) The alternative emission limit requires that that the owner's or operator's actions during startup or shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence."). Also, for (ii) to be enforceable as a practical matter, the operating temperature must be documented somewhere. Perhaps by adding language stating: "If applicable, the dry electrostatic precipitator or baghouse controlling emissions from such boiler has reached its minimum operating temperature, as identified in the applicable NOC or permit (or the operations and maintenance manual for such device if not specified in an NOC or permit), at which time the control is to be operated."…

Commented [A7]: The language here is best read as ending four hours after useful energy is actually supplied. To minimize the period of higher emissions, this should be revised to clarify that the higher opacity limit ends when four hours has elapsed since the boiler is capable of supplying useful thermal energy. In addition, ...

Commented [A8]: We assume this is a typo and was intended to read, "…no more than…"

Commented [A9]: If the 20% limit is a 3 minute exception and the 40% exception is a 6 minute average, referencing Method 9 here is confusing. It needs to make clear that Method 9 only applies to the 40% exception.

Commented [A10]: Without a requirement that this be provided in writing (rather than "advised of the schedule"), it would not appear to be enforceable. See 80 FR 33980 ("(7) The alterantive emission limit requires that that the owner's or operator's actions ...

Commented [A11]: Based on our understanding of the process, we do not understand why an exception to the 20% opacity limit is needed here. We understand that the main purpose of the thermal process related to refractory curing is to release unwanted *water* ...

Commented [A12]: We recommend a more complete citation to Appendix A-4 to 40 CFR Part 60

Commented [A13]: This language, alone, does not ensure the alterantive requirement does not become part of the SIP until approved by EPA as a SIP revision. To ensure it is not an impermissible Director's Discretion provision, language is needed ...

(iii) The owner/operator has supplied the permitting authority a copy of the manufacturer's instructions on curing refractory in the furnace, boiler, or lime kiln; and

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

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

(vi) The owner/operator notifies the permitting authority at least one working day prior to the start of the refractory curing process.

~~(f)~~(g) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 C.F.R. Part 60, Appendix A, Reference Method 9 and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Military training exercises. Visible emissions resulting from military obscurant training exercises are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

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

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

(iii) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter173-425 WAC.

(iv) Established as an alternate emission limit under WAC 173-400-082.

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

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

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

Commented [A14]: Since (d), (e), and (f) are also exemptions, it would be less confusing if the exceptions here in (g) were identified as (g), (h), (i), and (j) withouth the current lead in ("Exemptions from twenty percent opacity standard.")

Commented [A15]: See (2)(c) above. This would appear to be either the same exemption covered there and either is not necessary or would be better included in that subsection and phrased similarly.

Commented [A16]: This provision is not currently in the SIP, and we assume Ecology will not be submitting it for approval. Please note specifically in your submission that this is not being submitted.

Commented [A17]: This provision is not currently in the SIP, and we assume Ecology will not be submitting it for approval. Please note specifically in your submission that this is not being submitted .

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes. Alternate unit specific emission standards are:

(a) Sulfur recovery unit alternate emission standard. During startup or shutdown of a sulfur recovery unit described in 40 CFR 63.1579, the owner or operator shall:

(i) Follow the facility's written startup, shutdown, or maintenance procedures; and

(ii) Limit emissions to less than 100 pounds/hour from the event instead of the numeric limit prescribed by this subsection.

(b) Sulfur dioxide alternate emission standard. The permitting authority may, by regulatory order, approve for a specific emission unit(s) an alternative to the sulfur dioxide emission limit imposed by this subsection (WAC 173-400-040(7)).

(i) An order issued under this subsection which approves an alternative limit instead of the sulfur dioxide standard, shall not take effect until EPA approves the alternative sulfur dioxide limit as an amendment to the SIP.

(ii) The owner or operator of a source requesting approval of an alternative sulfur dioxide limitation applicable to specific operating scenario(s) must demonstrate all of the following to the satisfaction of the permitting authority:

(A) The NAAQS and Washington ambient air quality standards for oxides of sulfur in chapter 173-476 WAC will not be exceeded as a result of the proposed alternative limitation, based on worst-case emission rates. The ambient air quality standards analysis must include the effects of background sulfur dioxide concentrations and sulfur dioxide emissions from adjacent facilities.

(B) Demonstrate that all practicable steps will be made to minimize the quantity and impact of emissions during the alternative operating scenario.

(C) The alternative limitation would not exceed the levels allowed by an applicable sulfur dioxide emission standard in 40 CFR Parts 60, 61, 62, 63, or 72.

(D) It is not technologically feasible to use the existing control system or an operating scenario that would avoid the need for an alternative emission standard.

Commented [A18]: This would be more clear if set up similar to (2), stating at the beginning of the first sentcence, "Except as provided below…." It might also be more clear if the general SO2 limit were (a) and then the exceptions were (b) and (c). That would help with clarity throughout.. For example:

(a)Except as provided in (b) and (c) below,

Commented [A19]: As discussed above, exceptions to the opacity rule during "startup" and "shutdown"must have a contemporaneuous recordeekping component so that it is clear when the alternative limit applies (i.e., to ensure enforceability). See 80 FR 33980 ("(7) The alterantive emission limit requires that that the owner's or operator's actions during startup or shutdown periods are documented by properly signed, contemporanenous operating logs or other relevant evidence.")

Commented [A20]: Since no averaging period is specified we assume this requires that emissions not exceed 100 pounds in each hour of startup or shutdown.

Commented [A21]: Approval of this provision into the SIP does not seem necessary, since this provision only contains a procedure for revising the SIP and the resulting order is not federally enforceable until approved by EPA as a source-specific SIP revision.

Commented [A22]: Note the reference here differs from that used elsewhere (see 7(a)(i): "numeric limit prescribed by this subsection. Our suggestion to put the general SO2 limit in (a) and the exceptions (b) and (c) would allow this cross-reference and others in subsection (7) to be more clear.

Commented [A23]: A demonstration that applicable PSD increments will continue to be protected will also be needed prior to EPA approval of any such order as a SIP revision.

Commented [A24]: This word isn't needed in light of the lead in.

Commented [A25]: This would be better stated as: "…would not allow emissions in excess of the levels…"

Commented [A26]: The comparable criteria identified in EPA's SSM policy contemplates a demonstration that the use of the control strategy for the relevant source category is technically infeasible during startup or shut down. See 80 FR 33980. Limiting this to the existing control system currently in use at the particular source is narrower and not consistent with EPA's SSM SIP Policy. Looking at controls on a source category basis is also consistent with the RACT requirement in Washington's statutes and Ecology's rules.

(E) The operating characteristics of the emission unit(s) for which an alternative emission standard is being requested that prevent meeting the sulfur dioxide standard in this subsection during the specific operating scenario(s).

(iii) The permitting authority must follow the mandatory public comment period requirements specified in WAC 173-400-171.

(iv) An order issued under this subsection shall include:

(A) The name or other designations used by the source to identify the specific the emission unit(s) at the source subject to the alternative emission limitation

(B) The criteria defining when the alternative emission limitation is applicable.

(C) The alternative sulfur dioxide limit. The alternative sulfur dioxide limitation approved under this subsection may be a numerical limitation, technology requirement or a work practice standard.

(D) Requirements to minimize the frequency and duration of the approved alternative operating scenario;

Commented [A27]: Would perhalps be better worded: "…the operating scenario during which the approved alternative sulfur dioxide limit applies…"

(E) A requirement that the emission unit(s) involved are operated in a manner consistent with good operating practices for minimizing emissions;

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

(v) The permitting authority may assess and collect fees at the rate prescribed by the permitting authority's fee schedule.

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

(9) **Fugitive dust.**

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

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

(10) **Requirement to minimize emissions**. At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(11) **Operation of installed air pollution control equipment**. When an emission unit or source is in operation, air pollution control equipment installed on an emission unit or source must be operated at all times, including startup, shutdown, and periods of malfunction, recognizing limitations imposed by the need to protect of personnel and equipment from fire and to meet personnel and fire safety requirements.

Commented [A28]: This provision creates a broad exception to permit terms and other requirements where control equipment is specifically required. Such a provision would not appear to be approvable.

WAC 173-400-070 Emission standards for certain source categories.

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

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

(a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) or ~~173-400-115 (40 C.F.R. Part 60, subpart DDDD)~~ 40 C.F.R. Part 62, Subpart III as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

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

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

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. ~~An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.~~

(ii) A requirement to apply BACT.

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

~~(2) **Hog fuel and wood fired boilers.** Hog fuel and wood fired boilers shall:~~

~~(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen~~

~~consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.~~

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

~~(c) During start-up of a hog fuel or wood fired boiler with an dry electrostatic precipitator particulate emission control device:~~

~~Visible emissions must not exceed an opacity limit of forty percent for more than 3 minutes in a one hour period, until the earlier of:~~
~~The electrostatic precipitator temperature is above the dew point (minimum operating temperature) allowing it to be energized; or~~
~~Four hours has elapsed since the beginning of start up; and~~

~~Not exceed an opacity limit of 40 percent during soot blowing. Soot blowing is confined to one fifteen minute period during an eight hour period.~~

(iv) ~~This practice must be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.~~

Commented [A29]: Any decision to remove the RACT/minimize emissions requirement (current 2(b)) would need to be supported with a demonstration that removal of such provision meets applicable overarching CAA requirements that this requirement was designed and intended to meet, including CAA 110(l) and, if applicable, CAA 193. See 80 FR 33976.

Such a demonstration would also be needed if this entire section (2) is deleted if determined to no longer be needed in light of the revisions to -040.

~~(3)~~(2) **Orchard heating.**

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

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity for more than 3 minutes in a one hour period determined using ecology method 9A~~, except during the first thirty minutes after such device or material is ignited~~.

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

~~(5) **Catalytic cracking units.**~~

~~(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:~~

~~(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.~~

~~(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.~~

~~(b) (b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.~~

~~(6)~~(4) **Other wood waste burners.**

(a) Wood waste burners ~~not specifically provided for in this section~~ shall meet all applicable provisions of WAC 173-400-040 and 050. In addition, wood waste burners subject to WAC 173-400-050(4) or ~~173-400-115 (40 C.F.R. 60 subpart DDDD)~~ 40 CFR Part 62, Subpart III must meet all applicable provisions of those sections.

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

~~(7) **Sulfuric acid plants.**~~
~~No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H_2SO_4.~~

~~(8)~~(5) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991**

Commented [A30]: Depending on how wood waste burner is defined, such units could also be subject to 40 CFR Part 60, subpart CCCC, that regulation should also be referenced to avoid confusion.

Commented [A31]: This provision is not currently in the SIP, and we assume Ecology will not be submitting it for approval. Please note specifically in your submission that these provisions are not being submitted.

WAC 173-400-081 Emission limits during startup and shutdown.

(1) In promulgating technology-based emission standards and establishing emission limits when making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting ~~authorities~~ authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

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

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

(4) Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in Washington's state implementation plan shall not take effect until approved by EPA as a SIP amendment.

***(NEW)* WAC 173-400-082 Establishing an emissions limitation for startup and shutdown when exceeding a standard in the SIP.**

(1) The owner or operator of a source or stationary source may request an alternative emission limitation applicable to specific operating scenario(s). The owner or operator must demonstrate to the satisfaction of the permitting authority. The demonstration must show:

(a) The NAAQS and Washington ambient air quality standards in chapter 173-476 WAC will not be exceeded as a result of the proposed alternative limitation, based on worst-case emission rates. The ambient air quality standards analysis must include the effects of background concentrations and emissions from adjacent facilities.

(b) Demonstrate that all practicable steps will be made to minimize the quantity and impact of emissions during the alternative operating scenario.

(c) The alternative limitation would not exceed the levels allowed by an applicable emission standard in 40 CFR Parts 60, 61, 62, 63, or 72.

Commented [A32]: The title would be better phrased "Establishing an emissions limitation for startup and shutdown that exceeds a standard in the SIP through a SIP Revision." In addition, approval of this provision into the SIP does not seem necessary, since this procedure only contains a procedure for revising the SIP and the resulting order is not federally enforceable until approved by EPA as a source-specific SIP revision.

Commented [A33]: The first sentence seems incomplete. Perhaps combine these two sentences and use language similar to that in WAC 173-400-040(7)(b): "The owner or operator must demonstrate all of the following to the satisfaction of the permitting authority:"

Commented [A34]: A demonstration that applicable PSD increments will continue to be protected will alsobe needed prior to EPA approval of any such order as a SIP revision.

Commented [A35]: This word isn't needed in light of the lead in.

Commented [A36]: This would be better stated as: "…would not allow emissions in excess of the levels…"

(d) It is not technologically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit, source, or stationary source to comply with the emission standard and avoid the need for an alternative emission standard.

(e) The alternative emission limitation will be in place for the shortest practicable amount of time.

(f) The alternative emission limitation proposed must:

(i) Reflect best operational practices for the emission unit(s) involved; and

(ii) Minimize the extent, duration, and emissions resulting from the alternative operating scenario.

(g) The operating characteristics of the emission unit(s) for which an alternative emission standard is being requested that prevent meeting the emission standard during the specific operating scenario(s).

(2) The permitting authority may approve an alternative emission limit applicable to an emission unit(s) during startup or shutdown, or both, that will apply instead of one or more of the emission standards listed below. The applicable emission standards may include but are not limited to:

(a) Opacity standard in WAC 173-400-040 (2);

(b) Sulfur dioxide emission standard in WAC 173-400-040 (7) and WAC 173-405-040 (11);

(c) Particulate matter standards in WAC 173-400-050 and 060;

(d) Chapter 173-405 WAC: particulate matter [Total Suspended Particulate], opacity standards, sulfur dioxide emission standard;

(e) Chapter 173-410 WAC: particulate matter [Total Suspended Particulate], and sulfur dioxide emission standard; and

(f) WAC 173-415-040 (6).

(3) The permitting authority may approve a numerical limitation, technology requirement, or a work practice standard as an alternative emission limitation under this provision.

(4) Regulatory order.

(a) The permitting authority must include the alternative emission limitation in a regulatory order.

Commented [A37]: The comparable criteria identified in EPA's SSM policy contemplates a demonstration that the use of the control strategy for the relevant source category is technically infeasible during startup or shut down. See 80 FR 33980. Limiting this to the existing control system currently in use at the particular source is narrower and not consistent with EPA's SSM SIP Policy. Looking at controls on a source category basis is also consistent with the RACT requirement in Washington's statutes and Ecology's rules.

Commented [A38]: "Practicable" was added here but not in 040(7).

Commented [A39]: These are excellent provisions for ensuring emissions are minimized. These provisions are not included in the similar provision for alterantives to the SO2 limit in 040(7) and would appear to be equally appropriate there..

Commented [A40]: Typo??? Could not locate on WA leg site. Perhaps: 173-415-030(6) ???

(b) The regulatory order must specify the emission unit(s) at the source or stationary source subject to the alternative emission limitation and the criteria defining when the alternative emission limitation is applicable.

(c) The permitting authority must follow the mandatory public comment period requirements specified in WAC 173-400-171.

(d) An order issued under this subsection must include:

(i) The name or other designations used by the source to identify the specific the emission unit(s) at the source subject to the alternative emission limitation

(ii) The criteria defining when the alternative emission limitation is applicable.

(iii) The alternative sulfur dioxide limit. The alternative sulfur dioxide limitation approved under this subsection may be a numerical limitation, technology requirement or a work practice standard.

(iv) Requirements to minimize the frequency and duration of the approved alternative operating scenario;

(v) A requirement that the emission unit(s) involved are operated in a manner consistent with good operating practices for minimizing emissions; and

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

(e) The permitting authority may assess and collect fees at the rate prescribed by the permitting authority's fee schedule.

~~(1)~~(5) An order issued under this provision that increases permitted emissions over levels authorized in the SIP must not take effect until EPA approves the order as a SIP amendment.
Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in Washington's state implementation plan shall not take effect until approved by EPA as a SIP amendment.

WAC 173-400-107 Unavoidable excess emissions.

This section is in effect until December 31, 2017.

Commented [A41]: 040(7)(b) uses "shall." Either is ok, but it would be most clear for this provision to be the same as 040(7)(b) unless a difference is intended.

Commented [A42]: We assume this is not intended to be limited to sulfur dioxide.

Note also the inconsistency here and in 040(7)(b) with the punctuation for the requirements of the order and the demonstration by the source (sometimes "and" in between each criteria and sometimes not).

Commented [A43]: Because this provision is specifically intended to revise SIP emission limits, no order issued under this provision should take effect as a matter of state law until EPA approves the order as a SIP amendment and in any event the order would not relieve the source from complying with the underlying SIP limit as a matter of federal law until the order is approved by EPA. The phrase "…that increases permitted emissions over levels authorized in the SIP…" could therefore be misleading. Of course, any request to revise the SIP through the submission of such an order must meet requirements for SIP revisions, including CAA Section 110(l) and 193, as applicable.

Commented [A44]: We don't understand the reason for this date. We will not be able to approve a SIP revision to address the SIP call until this provision is no longer in effect and removed from the SIP.

This provision could be written to sunset on the effective date of EPA's approval of its removal from the SIP.

~~This section is in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section. This section is not effective starting on that date.~~

WAC 173-400-108 Excess emissions reporting. **[State-only requirement not federally enforceable]**

~~This section takes effect on the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan SIP as replacement for WAC 173-400-107.~~

(1) Excess emissions must be reported to the permitting authority.

(a) Notification requirements:~~.~~ When the owner or operator becomes aware that a source's emissions exceeded permitted levels, the owner or operator must notify the permitting authority as soon as possible, but no later than:

(i) Emissions represent potential threat to human health or safety: twelve hours after the owner or operator becomes aware of the excess emissions; or ~~Excess emissions which represent a potential threat to human health or safety must be reported as soon as possible, but in no case later than twelve hours after the excess emissions were discovered~~.

(ii) Upsets or malfunctions thought to be unavoidable: twenty four hours after the owner or operator becomes aware of the excess emissions. ~~Excess emissions which the owner or operator of the source believes to be unavoidable, per the criteria under WAC , must be reported tothe permitting authority as soon as possible after the excess emissions were discovered~~.

(b) Reporting schedule. The owner or operator must report ~~Other~~ excess emissions ~~must be reported~~ to the permitting authority:

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

(ii) As part of the routine emission monitoring reports; or

(iii) As provided in WAC 173-401-615 for chapter 173-401 WAC sources.

(2) ~~For those sources not required to report under WAC 173-401-615, t~~The report must contain at least the following information:

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

(b) Known causes;

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

(d) The corrective actions taken; and

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

(f) Exemption. This subsection does not apply to sources required to report under WAC 173-401-615.

Commented [A45]: This might be better phrased as "…that the owner or operator asserts were unavoidable…"

Commented [A46]: The difference between (a) and (b) is not altogether clear. Is it intended that (a) can be verbal and (b) must be in writing?

Commented [A47]: The extent of this exemption is unclear. Just an exemption from (2)?

(3) For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must include the following information in addition to that required in subsection (2) of this section:

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

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

(c) All additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

WAC 173-400-109 Unavoidable excess emissions. [State-only requirement not federally enforceable]

~~This section takes effect on the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.~~

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

~~(2)~~(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, ~~regulation~~rule, permit, or regulatory order.

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source.

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

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

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

Note: Nothing in state rule affects the statutory authority of the courts to determine liability and impose remedies from provisions of the federal CAA.

~~Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority, however, in a federal enforcement action filed under 42 U.S.C. § 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (3), (4), and (5) of this section.~~

~~(3)~~(2)

(a) The owner or operator of a source shall have the burden of proving to the permitting authority ~~or the decision-making authority~~ in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsection~~s (3) and~~ (4) of this section.

~~(b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.~~

~~(c)~~(b) This section does not apply to exceedances of emission standards ~~promulgated under~~ in 40 C.F.R. Parts 60, 61, 62, 63, and 72, or a permitting authority's adoption by reference of ~~such~~ these federal standards.

~~(d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.~~

~~(4) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:~~

~~(a) Excess emissions could not have been prevented through careful planning and design;~~

~~(b) Startup or shutdown was done as expeditiously as practicable;~~

~~(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;~~

~~(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;~~

~~(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and~~

~~(5)~~(3) Excess emissions that occur due to upsets or malfunctions during ~~routine~~ startup or shutdown are treated as upsets or malfunctions under subsection (~~5~~4) of this section.

~~(6) Maintenance. Excess emissions during scheduled maintenance may be considered unavoidable if the source reports as required by WAC 173-400-108 and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.~~

~~(7)~~(4) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates to the permitting authority that:

Commented [A48]: If you are adding permitting authority here, it should be consistent with the language in (3)(a) above.

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

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

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

(d) If the emitting equipment had to continue operation during the malfunction for safety reasons to prevent the loss of life, prevent personal injury, or to minimize overall emissions, repairs were made in an expeditious fashion;

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

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

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

To: Bray, Dave[Bray.Dave@epa.gov]; Newman, Alan (ECY)[anew461@ECY.WA.GOV]; Glass, Geoffrey[GLASS.GEOFFREY@EPA.GOV]; Hunt, Jeff[Hunt.Jeff@epa.gov]; Ruddick, Randall[ruddick.randall@epa.gov]; Vergeront, Julie[Vergeront.Julie@epa.gov]
Cc: Dererie, Debebe (ECY)[derd461@ECY.WA.GOV]; Gent, Philip (ECY)[pgen461@ECY.WA.GOV]
From: Guilfoil, Elena (ECY)
Sent: Thur 12/29/2016 12:31:01 AM
Subject: RE: SSM draft rule changes and other goodies

Thanks Dave.

This was/is a new section. Our intent with the Hanford clause is to address the volume of notices that Ecology gets from Hanford due to the variety and volume of projects with nonroad engines.

Your comments are helpful.

Elena

Elena Guilfoil / Air Quality Program / Department of Ecology / elena.guilfoil@ecy.wa.gov / (360)407-6855

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Wednesday, December 28, 2016 2:36 PM
To: Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Newman, Alan (ECY) <anew461@ECY.WA.GOV>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Hi Elena,

Although you didn't say it specifically, I'm assuming that this would be a new subsection (7) at the end of WAC 173-400-035 **Nonroad Engines**. Is that correct?

If that is the case, then yes, you can add something along these lines to that rule. WAC 173-400=035 only applies to nonroad engines and is a rule that establishes a category specific "permitting" program along with "in-use" standards (States (except CA) can't establish tailpipe emission standards for nonroad engines or regulate them under stationary source permitting programs). Ecology is free to determine which nonroad engines located at DOD or DOE facilities that it wants to regulate under -035 as well as establishing criteria for identifying those engines consistent with the federal definition of "nonroad engine."

However, Ecology can't change the EPA definition of a nonroad engine. Importantly, an engine cannot be a nonroad engine and a stationary engine at the same time. Any stationary engine, regardless of size, will be subject to Quad I or Quad Z or both, and an engine that isn't subject to these federal standards cannot be considered a stationary engine under State rules. So while Ecology can develop situation-specific guidance (e.g., engines at DOD and DOE facilities) that help determine when an engine is a nonroad engine versus a stationary engine (ala EPA's Aerospace Ground Equipment guidance), it still must be consistent with the EPA definition.

Hope this helps.

Dave

From: Guilfoil, Elena (ECY) [mailto:egui461@ECY.WA.GOV]
Sent: Wednesday, December 28, 2016 10:33 AM
To: Newman, Alan (ECY) <anew461@ECY.WA.GOV>; Bray, Dave <Bray.Dave@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Dave

We are thinking of proposing the following language to the nonroad engine section. Would you let us know if we are still running into the same problem you discuss below. (7)(c) in particular may be problematic.

Elena

(7) **Criteria specific to projects on Department of Defense and Department of Energy facilities.**

(a) Department of Defense and Department of Energy facilities over 50 acres in size may exclude engines below 50 brake horsepower to determine cumulative maximum engine horsepower.

(b) Ecology may designate the size of the location at the Department of Energy Hanford facility.

(c) Ecology may establish specific criteria to assist it and the Departments of Defense and Energy to determine when a particular nonroad engine becomes a stationary engine.

Elena Guilfoil / Air Quality Program / Department of Ecology / elena.guilfoil@ecy.wa.gov / (360)407-6855

From: Newman, Alan (ECY)
Sent: Tuesday, December 27, 2016 11:36 AM
To: Bray, Dave <Bray.Dave@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Dave,

Thanks for looking at it and thinking. I knew it could be a challenge to draft a limited circumvention language for nonroad engines.

Looks like we will need to develop a broader circumvention provision. That will have to happen in the next 400 revision, it's too late for this one.

Alan

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Tuesday, December 27, 2016 11:31 AM
To: Newman, Alan (ECY) <anew461@ECY.WA.GOV>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Hi Al.

Nice try, but no go.

Congress exercised the Commerce Clause of the U.S. Constitution to preempt States (except for CA) from regulating mobile sources, including nonroad engines. States can't circumvent that preemption by adopting State rules that try to change a nonroad engine into a stationary engine.

The fact that a company buys a nonroad engine and uses it for years at a plant site does not necessarily change it into a stationary engine. A nonroad engine that continues to meet the criteria in EPA's definition of "nonroad engine" is, and continues to be a nonroad engine.

Of course, an engine that doesn't meet the criteria in the definition of "nonroad engine" is a stationary engine and an engine that is moved to circumvent the 365 day limit also continues to be a stationary engine.

If Ecology wants to add a circumvention provision to its rules, we can work with you on that. But you can't fundamentally change the definition of "nonroad engine" such that nonroad engines operating for more than 365 days at multiple locations within a plant site automatically become stationary engines.

BTW, we agree that this engine-driven tub grinder is a stationary engine and I'm pretty sure that we've told the company that. Hopefully, that will be enough to make them decide not to appeal the NOV.

Dave

From: Newman, Alan (ECY) [mailto:anew461@ECY.WA.GOV]
Sent: Thursday, December 22, 2016 5:28 PM
To: Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Bray, Dave <Bray.Dave@epa.gov>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Geoffry, et al.

An NOV has been issued, I am not certain if an appeal has been filed yet, the region expects one.

The situation was an engine driven tub grinder being used to chip up wood for feed to a pulping process. The grinder is on the property of the pulp mill. The company moved it a 1000 feet or so to circumvent the 365 day limit. It still chipped wood from the same piles to feed the same pulping operation. This approach is counter to the guidance contained in the preamble for the nonroad engine definition and in guidance letters, including one from Mr. Bray.

Yes, we are considering adding a criterion that engines that are part of the source, such as air compressors, arc welders, pressure washers, etc that are part of the stationary source to be part of

the source and not subject to this process.

We have a more detailed proposal in section 035 to address the situation.

We are not wedded to the proposed change to the nonroad engine definition that you are looking at.

Alan

From: Glass, Geoffrey [mailto:GLASS.GEOFFREY@EPA.GOV]
Sent: Thursday, December 22, 2016 4:55 PM
To: Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Bray, Dave <Bray.Dave@epa.gov>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>; Newman, Alan (ECY) <anew461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Did you issue an NOV and lose at the hearings board?

From: Guilfoil, Elena (ECY) [mailto:egui461@ECY.WA.GOV]
Sent: Thursday, December 22, 2016 4:36 PM
To: Bray, Dave <Bray.Dave@epa.gov>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>; Newman, Alan (ECY) <anew461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Dave

We are trying to address the 12 month circumvention situation. A facility moved a large engine

1000 feet that continued to provide power for the exact same reason. They said the 12 month clock was restarted each time they moved the nonroad engine.

What approach might resolve this concern?

Elena

Elena Guilfoil / Air Quality Program / Department of Ecology / elena.guilfoil@ecy.wa.gov / (360)407-6855

From: Bray, Dave [mailto:Bray.Dave@epa.gov]
Sent: Thursday, December 22, 2016 3:42 PM
To: Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Hi Jeff,

As you requested, I've taken a look at the draft revision to the definition of "nonroad engine" in -030. As currently drafted, the revised definition would not be approvable and would impact the approvability of the stationary source permitting rules.

As currently drafted, the new phrase is an alternative to the opening phrase (it's an "or" statement) such that an engine that performs the same or similar function at different locations for more than 12-months would not be considered a nonroad engine. However, many engines perform the same function at different locations (e.g., spray paint compressor, pressure washer) and a State can't make them subject to stationary source requirements.

I'm not certain what "function issue" this is trying to fix but if it is the situation where a

stationary engine is being moved to circumvent the 12-month requirement, then that can be fixed with different approach rather than trying to fundamentally change the definition of "nonroad engine."

Dave

From: Guilfoil, Elena (ECY) [mailto:egui461@ECY.WA.GOV]
Sent: Thursday, December 22, 2016 2:29 PM
To: Hunt, Jeff <Hunt.Jeff@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: RE: SSM draft rule changes and other goodies

Jeff

Your comments make sense.

Elena

Elena Guilfoil / Air Quality Program / Department of Ecology / elena.guilfoil@ecy.wa.gov / (360)407-6855

From: Hunt, Jeff [mailto:Hunt.Jeff@epa.gov]
Sent: Thursday, December 22, 2016 12:16 PM
To: Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>; Hunt, Jeff <Hunt.Jeff@epa.gov>
Subject: RE: SSM draft rule changes and other goodies

HI Elena and Debebe – a few nitpicky things to make sure we are on the same page:

•□□□□□□□ 173-400-025 is already in the SIP; so we will want to include that update. Your PSD program and other SIP approved sections reference back to it.

•□□□□□□□ In my mind, I put the -030 updates for "Useful thermal energy " and "Industrial furnace" in the 'related to SSM' category, so I will let Randall handle those. In my 'non SSM/other rules' action I plan to propose approval of your updated VOC definition. Granted, you will probably lump all the rule changes in one SIP submission. But I didn't want you to be surprised months from now if my 'non-SSM' FR proposal only includes the VOC part of -030. Does than make sense?

•□□□□□□□ I agree that -050(7) and -035 are outside the scope of the SIP.

Thanks …… jh

From: Guilfoil, Elena (ECY) [mailto:egui461@ECY.WA.GOV]
Sent: Wednesday, December 21, 2016 3:53 PM
To: Ruddick, Randall <ruddick.randall@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Hunt, Jeff <Hunt.Jeff@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Guilfoil, Elena (ECY) <egui461@ECY.WA.GOV>; Dererie, Debebe (ECY) <derd461@ECY.WA.GOV>
Subject: SSM draft rule changes and other goodies

Greetings.

As part of EPA's SIP Call, we are revising our state rules. Attached are two documents representing our most current views. Rule changes are divided by content: SSM related changes and Other rule changes.

Comments provided no later than Friday, January 6 would be the most useful because I must finish drafting rule language by January 10. You can, of course, also provide comments during our public comment period (March 1 through April 11, 2017).

•□□□□□□□ SSM Draft includes only those revisions related to the SIP call:

- Sections 040, 070, 081, 082 would be submitted into the SIP.
- Section 107 would be removed from the SIP.
- Sections 108 and 109 would be submitted into the SIP for purposes of demonstrating our enforcement authority.

•□□□□□□□ Other rule changes includes rule revisions that would be a general SIP revision to Chapter 173-400 WAC:

- Sections -030, 171 and 740 would be submitted into the SIP.
- Sections 025 and 050 update our adoption of federal rules so those aren't in the SIP.
- Section 035 nonroad engine requirements will remain a state only provision.

•□□□□□□□ Other rule changes includes revisions to the statewide Operating Permit Regulation (Chapter 173-401 WAC) so we would need to submit our revised rule to EPA to update that program approval:

- Sections 645 and 800

Additional information about this rulemaking is found on our webpages:
http://www.ecy.wa.gov/programs/air/rules/wac173400/1507ov.htm

Please contact me if you have any questions.

Elena

Contents

This draft dated December 20, 2016 contains the most recent version of Ecology's rule language to comply with the EPA SIP Call. Other rule changes Ecology is considering are found in the document "Rule changes not SSM-12_20_2016." Both documents are found on the rulemaking web page: http://www.ecy.wa.gov/programs/air/rules/wac173400/1507adv.htm.

Draft changes to Chapter 173-400 WAC

RCW 70.94.431(8) Civil penalties --- Excusable excess emissions....2

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RCW 70.94.431(8) Civil penalties --- Excusable excess emissions.

By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

WAC 173-400-030 Definitions.

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

Industrial furnace means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 CFR 260.10.

WAC 173-400-040 General standards for maximum emissions.

(1) General requirements.

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the owner or operator of a source supplies valid data to show that the

presence of uncombined water is the only reason for the opacity to exceed twenty percent.

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

(c) When an alternate opacity limit has been established per RCW 70.94.331(2)(c).

(d) When emissions occur due to start-up of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity but not exceed 40 percent opacity for more than 3 minutes in a one hour period. Determine opacity using ecology method 9A (*Ecology Source Test Manual*). Visible emissions may not exceed twenty percent for more than 3 minutes in an hour when the earlier of:

(i) The dry electrostatic precipitator or baghouse has met its minimum operating temperature, at which time the control is to be operated; or

(ii) Four hours has elapsed since the beginning of supplying useful thermal energy.

(e) When the emissions occur due to soot blowing or grate cleaning of a hog fuel or wood fired boiler, visible emissions may exceed 20 percent opacity but not exceed 40 percent opacity on a 6 minute average, for more than one fifteen minute period in any eight consecutive hours.

(i) Determine opacity using EPA Method 9 – Visual determination of the opacity of emissions from stationary sources in Appendix A to Part 60.

(ii) To use this alternate standard, the soot blowing and/or grate cleaning must be scheduled for the same approximate time(s) each day and the permitting authority must be advised of the schedule.

(iii) Determine data reduction method based on the *Ecology Source Test Manual* (updated 7/1/2016).

(f) Visible emissions that occur during curing of furnace refractory after maintenance repair or replacement in an existing industrial furnace or boiler may exceed 20 percent opacity, on a 6 minute average, but not exceed 40 percent opacity, on a 6 minute average, provided the following requirements are met:

(i) Determine opacity using EPA Method 9 – Visual determination of the opacity of emissions from stationary sources – in Appendix A to Part 60; and

(ii) The total duration of refractory curing does not exceed 36 hours, unless provided for in a NOC approval or regulatory order issued under WAC

173-400-082; and

(iii) The owner/operator has supplied the permitting authority a copy of the manufacturer's instructions on curing refractory in the furnace, boiler, or lime kiln; and

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

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

(vi) The owner/operator notifies the permitting authority at least one working day prior to the start of the refractory curing process.

(g) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 C.F.R. Part 60, Appendix A, Reference Method 9 and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Military training exercises. Visible emissions resulting from military obscurant training exercises are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

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

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

(iii) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter 173-425 WAC.

(iv) Established as an alternate emission limit under WAC 173-400-082.

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

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

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

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes. Alternate unit specific emission standards are:

(a) Sulfur recovery unit alternate emission standard. During startup or shutdown of a sulfur recovery unit described in 40 CFR 63.1579, the owner or operator shall:

(i) Follow the facility's written startup, shutdown, or maintenance procedures; and

(ii) Limit emissions to less than 100 pounds/hour from the event instead of the numeric limit prescribed by this subsection.

(b) Sulfur dioxide alternate emission standard. The permitting authority may, by

regulatory order, approve for a specific emission unit(s) an alternative to the sulfur dioxide emission limit imposed by this subsection (WAC 173-400-040(7)).

(i) An order issued under this subsection which approves an alternative limit instead of the sulfur dioxide standard, shall not take effect until EPA approves the alternative sulfur dioxide limit as an amendment to the SIP.

(ii) The owner or operator of a source requesting approval of an alternative sulfur dioxide limitation applicable to specific operating scenario(s) must demonstrate all of the following to the satisfaction of the permitting authority:

(A) The NAAQS and Washington ambient air quality standards for oxides of sulfur in chapter 173-476 WAC will not be exceeded as a result of the proposed alternative limitation, based on worst-case emission rates. The ambient air quality standards analysis must include the effects of background sulfur dioxide concentrations and sulfur dioxide emissions from adjacent facilities.

(B) Demonstrate that all practicable steps will be made to minimize the quantity and impact of emissions during the alternative operating scenario.

(C) The alternative limitation would not exceed the levels allowed by an applicable sulfur dioxide emission standard in 40 CFR Parts 60, 61, 62, 63, or 72.

(D) It is not technologically feasible to use the existing control system or an operating scenario that would avoid the need for an alternative emission standard.

(E) The operating characteristics of the emission unit(s) for which an alternative emission standard is being requested that prevent meeting the sulfur dioxide standard in this subsection during the specific operating scenario(s).

(iii) The permitting authority must follow the mandatory public comment period requirements specified in WAC 173-400-171.

(iv) An order issued under this subsection shall include:

(A) The name or other designations used by the source to identify the specific the emission unit(s) at the source subject to the alternative emission limitation

(B) The criteria defining when the alternative emission limitation is applicable.

(C) The alternative sulfur dioxide limit. The alternative sulfur dioxide limitation approved under this subsection may be a numerical limitation, technology requirement or a work practice standard.

(D) Requirements to minimize the frequency and duration of the approved alternative operating scenario;

(E) A requirement that the emission unit(s) involved are operated in a manner consistent with good operating practices for minimizing emissions;

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

(v) The permitting authority may assess and collect fees at the rate prescribed by the permitting authority's fee schedule.

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

(9) **Fugitive dust.**

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

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

(10) **Requirement to minimize emissions**. At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(11) Operation of installed air pollution control

equipment. When an emission unit or source is in operation, air pollution control equipment installed on an emission unit or source must be operated at all times, including startup, shutdown, and periods of malfunction, recognizing limitations imposed by the need to protect of personnel and equipment from fire and to meet personnel and fire safety requirements.

WAC 173-400-070 Emission standards for certain source categories.

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

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

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

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

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

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

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

(ii) A requirement to apply BACT.

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

(iv)

(2) Orchard heating.

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

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity for more than 3 minutes in a one hour period determined using ecology method 9A.

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

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

(a) Wood waste burners shall meet all applicable provisions of WAC 173-400-040 and 050. In addition, wood waste burners subject to WAC 173-400-050(4) or 40 CFR Part 62, Subpart III must meet all applicable provisions of those sections.

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

(5) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991

WAC 173-400-081 Emission limits during startup and shutdown.

(1) In promulgating technology-based emission standards and establishing emission limits when making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

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

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

(4) Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in Washington's state implementation plan shall not take effect until approved by EPA as a SIP amendment.

(*NEW*) WAC 173-400-082 Establishing an emissions limitation for startup and shutdown when exceeding a standard in the SIP.

(1) The owner or operator of a source or stationary source may request an alternative emission limitation applicable to specific operating scenario(s). The owner or operator must demonstrate to the satisfaction of the permitting authority. The demonstration must show:

(a) The NAAQS and Washington ambient air quality standards in chapter 173-476 WAC will not be exceeded as a result of the proposed alternative limitation, based on worst-case emission rates. The ambient air quality standards analysis must include the effects of background concentrations and emissions from adjacent facilities.

(b) Demonstrate that all practicable steps will be made to minimize the quantity and impact of emissions during the alternative operating scenario.

(c) The alternative limitation would not exceed the levels allowed by an applicable emission standard in 40 CFR Parts 60, 61, 62, 63, or 72.

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(d) It is not technologically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit, source, or stationary source to comply with the emission standard and avoid the need for an alternative emission standard.

(e) The alternative emission limitation will be in place for the shortest practicable amount of time.

(f) The alternative emission limitation proposed must:

(i) Reflect best operational practices for the emission unit(s) involved; and

(ii) Minimize the extent, duration, and emissions resulting from the alternative operating scenario.

(g) The operating characteristics of the emission unit(s) for which an alternative emission standard is being requested that prevent meeting the emission standard during the specific operating scenario(s).

(2) The permitting authority may approve an alternative emission limit applicable to an emission unit(s) during startup or shutdown, or both, that will apply instead of one or more of the emission standards listed below. The applicable emission standards may include but are not limited to:

(a) Opacity standard in WAC 173-400-040 (2);

(b) Sulfur dioxide emission standard in WAC 173-400-040 (7) and WAC 173-405-040 (11);

(c) Particulate matter standards in WAC 173-400-050 and 060;

(d) Chapter 173-405 WAC: particulate matter [Total Suspended Particulate], opacity standards, sulfur dioxide emission standard;

(e) Chapter 173-410 WAC: particulate matter [Total Suspended Particulate], and sulfur dioxide emission standard; and

(f) WAC 173-415-040 (6).

(3) The permitting authority may approve a numerical limitation, technology requirement, or a work practice standard as an alternative emission limitation under this provision.

(4) Regulatory order.

(a) The permitting authority must include the alternative emission limitation in a regulatory order.

(b) The regulatory order must specify the emission unit(s) at the source or stationary source subject to the alternative emission limitation and the criteria defining when the alternative emission limitation is applicable.

(c) The permitting authority must follow the mandatory public comment period requirements specified in WAC 173-400-171.

(d) An order issued under this subsection must include:

(i) The name or other designations used by the source to identify the specific the emission unit(s) at the source subject to the alternative emission limitation

(ii) The criteria defining when the alternative emission limitation is applicable.

(iii) The alternative sulfur dioxide limit. The alternative sulfur dioxide limitation approved under this subsection may be a numerical limitation, technology requirement or a work practice standard.

(iv) Requirements to minimize the frequency and duration of the approved alternative operating scenario;

(v) A requirement that the emission unit(s) involved are operated in a manner consistent with good operating practices for minimizing emissions; and

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

(e) The permitting authority may assess and collect fees at the rate prescribed by the permitting authority's fee schedule.

(5) An order issued under this provision that increases permitted emissions over levels authorized in the SIP must not take effect until EPA approves the order as a SIP amendment.

WAC 173-400-107 Unavoidable excess emissions.

This section is in effect until December 31, 2017.

WAC 173-400-108 Excess emissions reporting. [State-only requirement not federally enforceable]

(1) Excess emissions must be reported to the permitting authority.

(a) Notification requirements: When the owner or operator becomes aware that a source's emissions exceeded permitted levels, the owner or operator must notify the permitting authority as soon as possible, but no later than:

(i) Emissions represent potential threat to human health or safety: twelve hours after the owner or operator becomes aware of the excess emissions; or .

(ii) Upsets or malfunctions thought to be unavoidable: twenty four hours after the owner or operator becomes aware of the excess emissions.
.

(b) Reporting schedule. The owner or operator must report excess emissions to the permitting authority:

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

(ii) As part of the routine emission monitoring reports; or

(iii) As provided in WAC 173-401-615 for chapter 173-401 WAC sources.

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

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

(b) Known causes;

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

(d) The corrective actions taken; and

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

(f) Exemption. This subsection does not apply to sources required to report under WAC 173-401-615.

(3) For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must include the following information in addition to that required in subsection (2) of this section:

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

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

(c) All additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

WAC 173-400-109 Unavoidable excess emissions. [State-only requirement not federally enforceable]

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

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source.

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

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

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

Note: Nothing in state rule affects the statutory authority of the courts to determine liability and impose remedies from provisions of the federal CAA.

(2)

(a) The owner or operator of a source shall have the burden of proving to the permitting authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsection (4) of this section.

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

(3) Excess emissions that occur due to upsets or malfunctions during startup or shutdown are treated as upsets or malfunctions under subsection (4) of this section.

(4) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates to the permitting authority that:

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

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

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

(d) If the emitting equipment had to continue operation during the malfunction for safety reasons to prevent the loss of life, prevent personal injury, or to minimize overall emissions, repairs were made in an expeditious fashion;

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

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

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

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Cc: Hulse-Moyer, Laurie (ECY)[lahu461@ECY.WA.GOV]
From: Dererie, Debebe (ECY)
Sent: Tue 8/2/2016 3:21:23 PM
Subject: EFSEC's raft SIP Submittal
Proposed Revision to Washington State Implementation Plan_with my notes July 28 2016.docx
SIP Revision Overview Table for EFSEC Rule Updated July 26.docx
WAC 463_39 WAC Strikeout 062816.docx

Good morning Jeff,

I have uploaded EFSEC's draft SIP submittal document (as three separate chapters) on the SharePoint site (draft documents category). I have also attached it herewith. It includes: strikeout rule language, draft SIP revision proposal, and the overview table. I have highlighted some points where I need support from you. I am working on the introduction/background chapter. With your inputs, we will be ready for public comment period.

http://awwecology/insideecology/SitePages/Home.aspx

Thank you

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Air Quality Program

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Proposed Revision to Washington State Implementation Plan

The federal Clean Air Act (CAA), in section 109, authorizes EPA to set the national ambient air quality standards (NAAQS) for six criteria pollutants to protect the public health and welfare. The act, in its section 110, requires each state submit state implementation plan (SIP) to attain and maintain these NAAQS. In Washington State, Department of Ecology (Ecology), the seven local clean air agencies (LCAAs) and Energy Facilities Site Evaluation Council (EFSEC) share this responsibility of attaining and maintaining the NAAQS. Therefore, some of the rules and programs of Ecology, LCAAs and EFSEC that are approved by EPA, for their role in attaining and maintaining the NAAQS, constitute the Washington SIP. Ecology, as the Governor designee for Washington state implementation plan (SIP) submittal, requests EPA to approve proposed revisions to these EPA approved Washington SIP applicable in the jurisdictions of Ecology, LCAAs or EFSEC.

Energy Facilities Site Evaluation Council's (EFSEC's) General and Operating Permit Regulation for Air Pollution Sources (Chapter 463-39 WAC) was approved by EPA for inclusion in the Washington state implementation plan (SIP) applicable in EFSEC's jurisdiction in 1996. This EPA approved version of EFSEC rule was updated on 08/21/1995. Since then this regulation has undergone through changes; however these changes were not included in the SIP. The current EFSEC rule that serve the same purpose is re-coded as Chapter 463-78 WAC (updated on 7/27/15). Therefore, this SIP revision is to request EPA to include portions of the current Chapter 463-78 WAC in the Washington SIP applicable in EFSEC's jurisdiction. As part of its Chapter 463-78 WAC, EFSEC adopted by reference portions of Ecology's Chapter 173-400 WAC as it existed on December 29, 2012, with some exceptions including mainly provisions that are not applicable to EFSEC authority.

Ecology, as the Governor's designee, submits the proposal to EPA to include portions of the current Chapter 463-78 WAC to replace parts of the 1996 version of EPA approved Chapter 463-39 WAC in the Washington SIP applicable in EFSEC's jurisdiction. This chapter provides the details of which parts of the Chapter 463-78 WAC need to be changed (removed, added or amended) in the Washington SIP applicable in EFSEC's jurisdiction to replace the EPA approved Chapter 463-39 WAC. It also tries to briefly explain the reasons for removing, adding or revising the provisions in the Washington SIP applicable in EFSEC's jurisdiction.

In order to clearly show the proposed changes in the SIP, the chapter is organized into two parts. The first part provides details the provisions of Chapter 463-78 WAC that Ecology proposes to include or not include in the Washington SIP. All the sections of EFSEC's Chapter 463-78 WAC are analyzed to explain why they are proposed to be included or excluded from the Washington SIP applicable in EFSEC's jurisdiction to meet the NAAQS and other requirements of CAA section 110.

The second part provides details on provisions from Ecology's Chapter 173-400 WAC that EFSEC adopted by reference in its Chapter 463-78 WAC; and it explains which sections of Chapter 173-400 WAC are to be included in the Washington SIP applicable in EFSEC's

jurisdiction. EPA has analyzed and approved the current Ecology's Chapter 173-400 WAC and included the provision that are required to attain and maintain the NAAQS in the Washington SIP applicable in Ecology's jurisdiction. Therefore, the second part is limited to identifying provisions of Ecology's Chapter 173-400 WAC that EFSEC adopted by reference and involve changes (added, removed or revised) when compared with the provision in the EPA approved Chapter 463-39 WAC of 1996. Ecology also do not propose to submit provisions that are not related to criteria pollutants regulated under title I of the federal Clean Air Act. As shown in 40 CFR 52.2740(c) table 2, parts of the Washington SIP are categorized to jurisdictions that they are applicable. In this SIP revision proposal, for sake of conciseness, the term SIP refers to state implementation plan applicable in EFSEC jurisdiction.

Changes in EFSEC's Chapter 463-78 WAC that Ecology proposes in the SIP applicable in the jurisdiction of EFSEC:

- **WAC 463-78-005 Adoption by reference.**
  - This section has five subsections that adopted by reference different Ecology rules, but only the first section, WAC 463-78-005(1), that adopted by reference Ecology's Chapter 173-400 WAC is related to the attainment and maintenance of the NAAQS. This subsection was included in the SIP; and Ecology proposes to include only the amendments to WAC 463-78-005(1) in the SIP. The specific provisions of Chapter 173-400 WAC that Ecology proposes to include in the SIP are explained in the next part of this chapter.
- **WAC 463-78-010 Purpose.**
  - This section was in the SIP. The main change in this section is that the reference to 40 C.F.R Part 52 was replaced by Chapter 70.94 RCW as EFSEC's state authority stems from Chapters 80.50 and 70.94. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-020 Applicability**.
  - This section was in the SIP, and there is no substantive change; and Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-030 Additional definitions.**
  - The main change in this section is that it included additional definitions required to regulate major sources in attainment, unclassifiable and non-attainment areas by adopting by reference WAC 173-400-710 and WAC 173-400-810. This section was in the SIP; and Ecology proposes to include these additional definitions and revisions to existing definitions be included in the SIP.
- **WAC 463-78-070 Radioactive emissions.**
  - This section was not in the SIP; and Ecology do not propose to include it in the SIP, as the provisions are not related to criteria pollutants and other requirements of Title I section 110 of the federal Clean Air Act.
- **WAC 463-78-90 Permit application form.**
  - This section was not in the SIP; and Ecology do not propose to include it in the

SIP as this provision is not related to the requirements of Title I of the federal Clean Air Act. Rather, the provisions are related to the requirements of Title V of the CAA, which are not normally included in the SIP.

- **WAC 463-78-095 Permit issuance.**
  - The main changes in this section is that it has included additional provisions that require compliance with EPA approved SIP before permit issuance, and provisions required to handle changes in permit and site certification agreement,. This section addresses the effective date of permits when issued to new facilities and modifications. This section was in the SIP, and Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-100 Registration.**
  - This section was in the SIP; however, Ecology proposes to remove this section from the SIP because the provision is not linked to EFSEC's new source review (NSR) provisions, and it does not set requirements for pollution control. Rather, the WAC 173-400-105, which is adopted by reference, sets the requirement to submit emissions information.
- **WAC 463-78-105 Fees and costs.**
  - This section was not in the SIP; and Ecology do not propose to include it in the SIP as the provision is not related to the attainment and maintenance of the NAAQS, or other requirements of section 110 of the federal Clean Air Act. This provision is related to Title V, which are not normally included in the SIP.
- **WAC 463-78-115 Standards of performance for new stationary sources (NSPS).**
  - This section adopts by reference federal regulation 40 CFR Part 60 that regulate non-criteria pollutants. The section was not in the SIP; and Ecology do not propose to include it in the SIP as the provisions do not regulate the criteria pollutants.
- **WAC 463-78-120 Monitoring and special report.**
  - This section was in the SIP, and there is no substantive change. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-135 Criminal penalties.**
  - This section was in the SIP, and there is no substantive change. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-140 Appeals procedure.**
  - This section is almost having additional four new sub-sections (1) to (4) setting new detailed appealing requirements for each of the different permits issued pursuant to WAC 173-400-110, WAC 173-400-730, WAC 173-401, and WAC 173-406. This section was not in the SIP; but Ecology proposes to include the amendments to this section in the SIP because the provisions in WAC 173-400-110 (new source review (NSR) for sources and portable sources) and WAC 173-400-730 (Prevention of significant deterioration application processing procedures) are related to the attainment and maintenance of NAAQS.
- **WAC 463-78-170 Conflict of interest.**

- This section was in the SIP, and there is no substantive change. The council is comprised solely of members that represent the public interest, according to RCW 80.50.30; therefore EFSEC meet the CAA requirements of Title I section 128. Thus, Ecology proposes to include the amendments to this section in the SIP.

- **WAC 463-78-230 Regulatory Actions.**
  - This section was in the SIP, and there is no substantive change. EFSEC is unique among the air agencies as it is not charged with the responsibility of managing ambient air quality for the purpose of attaining and maintaining the NAAQS. Ecology proposes to include the amendments to this section in the SIP.

Changes in WAC 463-78-005 (where EFSEC adopted by reference sections from Chapter 173-400 WAC) that Ecology proposes in the SIP applicable in EFSEC's jurisdiction:

As part of its General and Permitting Regulation for Air Pollution Sources (Chapter 463-78 WAC), EFSEC adopted by reference portions of General Regulation for Air Pollution Sources (Chapter 173-400 WAC) as it existed on December 29, 2012, with some exceptions that. These exceptions are made mainly because they are not applicable to either EFSEC's authority (examples: designation of areas into class I, II and III) and regulatory system (examples: appeals, council members, fees, enforcement actions, etc.) and/or the sources in EFSEC's jurisdiction (example: retrofit requirements for visibility protection).

EPA has analyzed and approved provisions in Ecology's Chapter 173-400 WAC (updated on 12/29/12) and included them in the Washington SIP applicable in Ecology's jurisdiction. The proposed SIP revision that requested EPA to include portions of the Chapter 173-400 WAC in the Washington SIP applicable in Ecology's jurisdiction is available at: https://fortress.wa.gov/ecy/publications/SummaryPages/1302039.html. It can also be found using its publication no. 13-02-039 at: https://fortress.wa.gov/ecy/publications/UIPages/Home.aspx. EPA's approval of Ecology's request was published in federal register in three parts: General Regulations for Air Pollution Sources on FR 59653 of October 3, 2014; Nonattainment New Source Review on FR 66291 of November 7, 2014; and Prevention of Significant Deterioration and Visibility Protection 23721 of April 29, 2015. Summary of these EPA approved provisions is available in table 2 of 40 CFR 52.2470(c) table 2 and (e) table 1 at http://www.ecfr.gov/cgi-bin/text-idx?SID=998e9092d5d7235b7b96b36baef5e9f1&mc=true&node=se40.5.52_12470&rgn=div8.

Therefore, this part is limited to identifying provisions of Ecology's Chapter 173-400 WAC that EFSEC adopted by reference and involve changes (added, removed or revised) when compared with the provision in the EPA approved Chapter 463-39 WAC of 1996. Ecology, proposes the following changes in WAC 463-78-005 be included in the Washington SIP applicable in EFSEC jurisdiction.

- **WAC 173-400-030: Definitions.**
  - This section was in the SIP; and the section has expanded the number of definitions from 81 to 97, in addition to amendments to some of the 81 definitions. All the definitions, except definition # 91 (toxic air pollutant), are in

the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include the amendments in this section into the SIP applicable in EFSEC's jurisdiction, **except WAC 173-400-030 (91)**.

- **WAC 173-400-036: Relocation of portable sources. (New provision)**
  - EFSEC **newly** adopted this section by reference; and it was approved by EPA to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to include it in the SIP applicable in EFSEC's jurisdiction.
- **WAC 173-400-040: General standards for maximum emissions**.
  - This section was in the SIP applicable in EFSEC's jurisdiction, and is revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction with some exceptions**.** Therefore, Ecology proposes to EPA to include the amendments in this section into the SIP, **except WAC 173-400-040(2)(c) and (d), (3), (5), and the second paragraph in (7).** These exceptions are the same in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-050: Emission standards for combustion and incineration units.**
  - This section was in the SIP, and is revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction except WAC 173-400-040(2), (4), and (5)**.** Therefore, Ecology proposes to EPA to include the amendments in this section into the SIP, **except WAC 173-400-050(2), (4) and (5).**
- **WAC 173-400-060: Emission standards for general process units.**
  - This section was in the SIP, and is revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore Ecology proposes to EPA to include the amendments in this section into the SIP.
- **WAC 173-400-070: Emission standards for certain source categories.**
  - EFSEC **newly** adopted this section, specifically sub-section (5) and (7). EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction except WAC 173-400-070(7) and (8). Therefore, Ecology proposes to include **only WAC 173-400-070(5) (Catalytic Cracking Unit)** in the SIP.
- **WAC 173-400-081: Startup and shutdown.**
  - This section was in the SIP, and was revised with no substantive change. Ecology proposes to EPA to include the amendments in this section into the SIP.
- **WAC 173-400-091: Voluntary limits on emissions.**
  - This section was in the SIP; and was revised with no substantive change. Ecology proposes to EPA to include the amendments in this section into the SIP.
- **WAC 173-400-105: Records, monitoring, and reporting.**
  - This section was in the SIP, and was revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore Ecology proposes to EPA to include the amendments in this section into the SIP.
- **WAC 173-400-107: Excess emissions.**
  - This section was in the SIP, and it was revised. Ecology proposes not to submit any changes to this section in the SIP, until Ecology revised WAC 173-400-107 to 109 according to the startup, shutdown and malfunction (SSM) SIP call of

EPA. Then EFSEC can adopt them by reference; and another SIP submittal can be proposed to include these sections in the SIP applicable to EFSEC jurisdiction.

- **WAC 173-400-110: New source review (NSR) for sources and portable sources.**
  - This section was in the SIP; and was revised. The main change is that this section sets the criteria (de minimus emission unit, activity and annual emission threshold) for the applicability of the new source review (NSR) permitting program. The criteria for new source review permitting program used to be done according to the registration program in WAC 173-400-100 that lists facilities that are required to go through new source review permitting. Thus, the previous version lists the facilities that are required go through the NSR permitting program, while the new version lists emission units and the minimum emission level that qualifies them to be required in the NSR review.
  - EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction with some exceptions**.** Therefore, Ecology proposes to EPA to include the amendments in this section into the SIP, except 173-400-110(1)(c)(ii)(C), 173-400-110(1)(e) and 173-400-110(2)(d). Another set of exceptions that Ecology proposes to EPA not to include in the SIP are phrases of provisions that refers to "toxic air pollutants" and "Chapter 173-460". These include phrases in WAC 173-400-100(4)(b)(vi), 173-400-110(4)(e)(iii), 173-400-110(4)(f)(i), 173-400-110(4)(h)(xviii), 173-400-110(4)(h)(xxxiii) to (xxxvi), 173-400-110(4)(h)(xl) the second sentence, and the last row of the table in 173-400-110(5)(b) regarding exemption levels for toxic air pollutants. All these exceptions are the same as in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-111: Processing notice of construction applications for sources, stationary sources and portable sources.**
  - EFSEC **newly** adopted by reference this section in its Chapter 463-78 WAC, except the **last six word in (5)(a) and sub-sections (6) and (9)**. These exceptions are refers to "pollution control hearings board", which is not the body to appeal to in EFSEC's jurisdiction; and Chapter 173-455 WAC, which is the regulation for fees that is not applicable in EFSEC's jurisdiction.
  - EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, except **111(3)(h), (9), and the part that says "and 173-460-040" in 111(8)(a)(v)**. Therefore, Ecology proposes to EPA to include adopted by reference part of this section in the SIP applicable in the EFSEC's jurisdiction, except **(3)(h), and the part of 173-400-111(8)(a)(v) that says "and 173-460-040,".** These exceptions refer to "toxic air pollutant" or "Chapter 173-460", which are not related to criteria pollutants.
- **WAC 173-400-112: Requirements for new sources in nonattainment areas.**
  - This section was in the SIP, and was revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, except 112 (8). Therefore, Ecology proposes to EPA to include the amendments in this section into the SIP **except 173-400-112(8),** which refers to toxic air pollutants regulated under

chapter 173-460 WAC that are not supposed to be in the SIP.

- **WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.**
    - This section was in the SIP, and was revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, except the second sentence in subsection 113(3). Ecology proposes to EPA to include the amendments in this section into the SIP, **except the second sentence in 173-400-113(3).**
- **WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.**
    - EFSEC adopted by reference this section in its Chapter 463-39 WAC (equivalent to the current Chapter 463-78 WAC); but it was not in the SIP. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** proposes to EPA to include this section in the SIP applicable in EFSEC's jurisdiction.
- **WAC 173-400-116: Increment protection.**
    - EFSEC **newly** adopted this section by reference in its Chapter 463-78 WAC. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Thus, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.
- **WAC 173-400-117: Special protection requirements for federal Class I areas.**
    - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC; and Ecology proposes to EPA to include this section into the SIP.
- **WAC 173-400-120: Bubble rules.**
    - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP applicable in EFSEC's jurisdiction. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** proposes to EPA to include this section in the SIP applicable in EFSEC's jurisdiction.
- **WAC 173-400-131: Issuance of emission reduction credits.**
    - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP applicable in EFSEC's jurisdiction. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.
- **WAC 173-400-136: Use of emission reduction credits.**
    - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.
- **WAC 173-400-151 Retrofit Requirements for Visibility Protection.**
    - This section was in the EPA approved SIP applicable in EFSEC jurisdiction. This section is to establish Best Available Retrofit Technology (BART) for existing

facilities (operational after August 7, 1962 and in existence in August 7, 1977) that meets specific criteria. There are no sources that meet the statutory definition of Best Available Retrofit Technology (BART) in EFSEC's jurisdiction. Therefore, Ecology proposes to EPA **to remove** this section from the SIP, because it is no more adopted by reference in EFSEC's Chapter 463-78 WAC.

- **WAC 173-400-161: Compliance schedules.**
  - This section was in the SIP; and Ecology didn't revise this section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.
- **WAC 173-400-171: Public involvement.**
  - This section was in the SIP; and was revised. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, with some exceptions. Ecology proposes to EPA to include the revised section into the SIP, **except 173-400-171(12) and the part of 173-400-171(3)(b) that says** "any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC". These exceptions are the same as in the SIP applicable in Ecology's jurisdiction; and the provisions are related to "toxic air pollutants" or special requirements that are applicable to Ecology only.
- **WAC 173-400-175: Public information.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.
- **WAC 173-400-180: Variance.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP applicable in EFSEC's jurisdiction. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** proposes to EPA to include this section in the SIP applicable in EFSEC's jurisdiction.
- **WAC 173-400-190: Requirements for nonattainment areas.**
  - This section was in the SIP; and Ecology didn't revise this section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.
- **WAC 173-400-200: Creditable stack height and dispersion techniques.**
  - This section was in the SIP, and was revised EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.
- **WAC 173-400-205: Adjustment for atmospheric conditions.**
  - This section was in the SIP; and Ecology didn't revise this section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.

Provisions for Permitting of Major Stationary Sources and Major Modifications to Major Stationary Sources:

EFSEC newly (after the 1996 SIP approved Chapter 463-39 WAC) adopted by reference the following sections from Ecology's Chapter 173-400 WAC to in its Chapter 463-78 WAC (with few exceptions detailed below) to regulate new major stationary sources and major modifications at existing stationary sources in its jurisdiction. When these sources are located in areas in attainment or unclassifiable with the National Ambient Air Quality Standards (NAAQS), EFSEC will be regulating them according to WAC 173-400-700 through WAC 173-400-750 to prevent significant deterioration of ambient air quality so that the NAAQS are not violated. Similarly, when such sources are located in non-attainment areas with NAAQS, EFSEC will be regulating them according to WAC 173-400-800 through WAC 173-400-860 that sets a relatively stringent requirements compared to the PSD program.

The provisions that were not adopted by reference, or provisions that were adopted by reference with some modification are the following:

- WAC 173-400-720(4)(a)(vi): This provision is adopted by reference except that the effective date of incorporating by reference the federal regulation 40 CFR 52.21 was in this provision is made May 1, 2015. This change was made to incorporate EPA's action to resolve court's decisions to vacate provisions related the significant impact levels (SILs) of PM2.5 (40 CFR 52.21(k)(2)) and significant monitoring concentrations (SMCs) of PM2.5 (40CFR 52.21(i)(5)(i)).
- WAC 173-400-730 (4): Appeals. This provision was made exception because the sources in EFSEC's jurisdiction are not required to appeal to "pollution control hearing board", as stated in this provision.
- WAC 173-400-750(2), second sentence: This provision is made because the fee schedule in Chapter 173-455 WAC is not applicable in EFSEC's jurisdiction.

EPA has approved the following sections of Chapter 173-400 WAC to be in the SIP applicable in Ecology's jurisdiction with some exceptions that are identified below. Therefore, Ecology proposes to EPA to include all these sections, other than the change and exceptions explained in the previous paragraph, in the SIP applicable in EFSEC's jurisdiction.

- **WAC 173-400-700: Review of major stationary sources of air pollution.**
- **WAC 173-400-710: Definitions.**
- **WAC 173-400-720: Prevention of significant deterioration (PSD).** The exceptions that Ecology does not propose to EPA to include in the SIP are 173-400-720(4)(a)(i through iv); 173-400-720(4)(b)(iii)(C); and 173-400-720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v).
- **WAC 173-400-730: Prevention of significant deterioration application processing procedures, except sub-section (4).**
- **WAC 173-400-740: PSD permitting public involvement requirements.**
- **WAC 173-400-750: Revisions to PSD permits, except the second sentence in subsection (2).**
- **WAC 173-400-800: Major stationary source and major modification in a nonattainment area.**

- **WAC 173-400-810: Major stationary source and major modification definitions.**
- **WAC 173-400-820: Determining if a new stationary source or modification to a stationary source is subject to these requirements.**
- **WAC 173-400-830: Permitting requirements.**
- **WAC 173-400-840: Emission offset requirements.**
- **WAC 173-400-850: Actual emissions plantwide applicability limitation (PAL).**
- **WAC 173-400-860: Public involvement procedures.**

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SIP Revision Overview Table – Status of EFSEC's Chapter 463-78 WAC in Washington SIP

Table 1. General overview of the status of sections in Chapter 463-78 WAC and SIP submittal.

Sections of Chapter 463-78 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?				This provision is already in the SIP. No revisions.	Not being submitted in the SIP
Section	Section Title		Revise	Remove	New	Unchanged		
005	Adoption by reference. Except		X					
	(2), (3), (4), and (5)							X
010	Purpose.	Revised, in the SIP	X					
020	Applicability.	Revised, in the SIP	X					
030	Additional definitions.	Revised, in the SIP	X					
070	Radioactive emissions.	Not in the SIP						X
090	Permit application form	Not in the SIP						X
095	Permit issuance.	Revised, in SIP	X					
100	Registration.	Remove from SIP		X				
105	Fees and cost.	Not in the SIP						X
115	Standards of performance for new stationary sources	Not in the SIP						X
120	Monitoring and special report	In the SIP		X				
135	Criminal penalties.	In the SIP	A					
140	Appeals procedure.	Revised, in SIP	A					
170	Conflict of interest.	In the SIP	A					
230	Regulatory actions.	In the SIP	A					

NOTE: Sections marked X are proposed to be adopted by reference (ABR) by EPA, while those marked A are to be approved by EPA, not ABR.

Table 2. General overview of the status of sections in Chapter 173-400 WAC adopted by reference in Chapter 463-78 WAC and SIP submittal.

Sections of Chapter 173-400 WAC Adopted by Reference in 463-		In this SIP	Not in this SIP

78-005 WAC		Status of the Rule Section in the SIP	Submittal				Submittal	
Section	Section Title		What is different since the last SIP approval?				This provision is already in the SIP. No revisions.	Not being submitted in the SIP
			Revise	Remove	New	Unchanged		
030	Definitions, except	Revised, in the SIP	X					
	(91)	New, not in the SIP						X
036	Relocation of portable sources.	New, in the SIP			X			
040	General standards for maximum emissions, except	Revised, in the SIP	X					
	(2)(c) and (d); (3); (5); (7), second paragraph	Revised, not in the SIP						X
050	Emission standards for combustion and incineration units. except	Revised, in the SIP	X					
	(2)	Remove, not in the SIP		X				
	(4), (5)	New, not in the SIP						X
060	Emission standards for general process units.	Revised, in the SIP	X					
070	Emission standards for certain source categories, except:	New, in the SIP			X			
	(1); (2); (3); (4); (6); (7) and (8)	New, not in the SIP						X
075	Emission standards for sources emitting hazardous air pollutants.	Revised, not in the SIP						X
081	Startup and shutdown.	Revised, in the SIP	X					
091	Voluntary limits on emissions.	Revised, in the SIP	X					
105	Records, monitoring, and reporting.	Revised, in the SIP	X					
107	Excess emissions.	Revised, not in the SIP					X	
110	New source review (NSR) for sources and portable sources, except:	Revised, in the SIP	X					

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	(1)(c)(ii)(C); (1)(e); (2)(d); and	Revised, not in the SIP						X
	The following parts of sub-section (4) and (5) that refer to "toxic air pollutants and/or "chapter 173-460 WAC"							
	• (4)(b)(vi) that says, "not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,";	Revised, not in the SIP						X
	• (4)(e)(iii) that says, "where toxic air pollutants as defined in chapter 173-460 WAC are not emitted";	Revised, not in the SIP						X
	• (4)(f)(i) that says, "that are not toxic air pollutants listed in chapter 173-460 WAC";	Revised, not in the SIP						X
	• (4)(h)(xviii) that says, ", to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted";	Revised, not in the SIP						X
	• (4)(h)(xxxiii) that says, "where no toxic air pollutants as listed under chapter 173-460 WAC are emitted";	Revised, not in the SIP						X
	• (4)(h)(xxxiv) that says, ", or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC";	Revised, not in the SIP						X
	• (4)(h)(xxxv) that says, "or ≤ 1% (by weight) toxic air pollutants";	Revised, not in the SIP						X
	• (h)(xxxvi) that says, "or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC";	Revised, not in the SIP						X
	• (4)(h)(xl) , second sentence;	Revised, not in the SIP						X
	• The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.	Revised, not in the SIP						X
111	Processing notice of construction applications for sources, stationary sources and portable sources.	Revised, in the SIP	X					
	(5)(a)(last six words); (6); and (9)	Not adopted by reference						X
	(3)(h); (8)(a)(v) that says , "and 173-460-040".	Revised, not in the SIP						X
112	Requirements for new sources in nonattainment areas.	Revised, in the SIP	X					
	(8)							X
113	Requirements for new sources in attainment or unclassifiable areas.		X					

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	Second sentence in (3)	Revised, not in the SIP						X
114	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.	Revised, not in the SIP						X
116	Increment protection.	New, in the SIP			X			
117	Special protection requirements for federal Class I areas.	New, in the SIP			X			
120	Bubble rules.	Revised, out of the SIP						X
131	Issuance of emission reduction credits.	New, in the SIP			X			
136	Use of emission reduction credits.	New, in the SIP			X			
151	Retrofit requirements for visibility protection.	Remove from the SIP		X				
161	Compliance schedules.	Unchanged, in the SIP					X	
171	Public involvement, except	Revised, in the SIP		X				
	(3)(b) that says "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC"; (12)	Revised, out of the SIP						X
175	Public information.	New, in the SIP			X			
180	Variance.	New, not in the SIP						X
190	Requirements for nonattainment areas.	Unchanged, in the SIP					X	
200	Creditable stack height and dispersion techniques.	Revised, in the SIP	X					
205	Adjustment for atmospheric conditions.	Unchanged, in the SIP					X	
700	Review of major stationary sources of air pollution.	New, in the SIP			X			
710	Definitions.	New, in the SIP			X			
720	Prevention of significant deterioration (PSD), except:	New, in the SIP			X			
	(4)(a)(i) through (iv); (4)(b)(iii)(C);	New, not in the SIP						X
	(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(v). N.B.: EFSEC adopted by reference the WAC 173-400-720(4)(a)(vi) as existed on May 1, 2015 for the purpose of incorporating 40 CFR 52.21 that has corrected court vacated provision related to PM2.5 significant impact level (SILs) and significant monitoring concentrations (SMCs) .	New, not in the SIP						X
730	Prevention of significant deterioration application processing procedures, except	New, in the SIP			X			
	(4)	Not adopted by reference						X
740	PSD permitting public involvement requirements.	New, in the SIP			X			
750	Revisions to PSD permits, except:	New, in the SIP			X			
	(2), second sentence	Not adopted by reference						

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800	Major stationary source and major modification in a nonattainment area.	New, in the SIP			X			
810	Major stationary source and major modification definitions.	New, in the SIP			X			
820	Determining if a new stationary source or modification to a stationary source is subject to these requirements.	New, in the SIP			X			
830	Permitting requirements.	New, in the SIP			X			
840	Emission offset requirements.	New, in the SIP			X			
850	Actual emissions plantwide applicability limitation (PAL).	New, in the SIP			X			
860	Public involvement procedures.	New, in the SIP			X			

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WAC 463-39 -- GENERAL AND OPERATING PERMIT REGULATIONS FOR AIR POLLUTION SOURCES

WAC 463-39-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-400 WAC, as it existed on December 29, 2012, with the exceptions that (a) WAC 173-400-111 (5)(a) (last six words), (6), (9), and WAC 173-400-720 is adopted except the date in WAC 173-400-720 (4)(a)(vi) is May 1, 2015, and WAC 173-400-730 (4) and 173-400-750(2) by reference, and (b) the terms "ecology," "authority," "director," and "permitting authority" in WAC 173-400-030 shall mean "the energy facility site evaluation council" unless a different meaning is plainly required by the context.

WAC 173-400-030:	Definitions.
WAC 173-400-036:	Relocation of portable sources.
WAC 173-400-040:	General standards for maximum emissions.
WAC 173-400-050:	Emission standards for combustion and incineration units.
WAC 173-400-060:	Emission standards for general process units.
WAC 173-400-070 (5) and (7) only:	Emission standards for certain source categories
WAC 173-400-075:	Emission standards for sources emitting hazardous air pollutants.
WAC 173-400-081:	Startup and shutdown.
WAC 173-400-091:	Voluntary limits on emissions.
WAC 173-400-105:	Records, monitoring and reporting.
WAC 173-400-107:	Excess emissions.
WAC 173-400-110:	New source review (NSR).
WAC 173-400-111:	Processing notice of construction applications for sources, stationary sources and portable sources.
WAC 173-400-112:	Requirements for new sources in nonattainment areas.
WAC 173-400-113:	Requirements for new sources in attainment or unclassifiable areas.
WAC 173-400-114:	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
WAC 173-400-116:	Increment protection.
WAC 173-400-120:	Bubble rules.
WAC 173-400-131:	Issuance of emission reduction credits.
WAC 173-400-136:	Use of emission reduction credits.
WAC 173-400-161:	Compliance schedules.
WAC 173-400-171:	Public involvement.
WAC 173-400-180:	Variance.
WAC 173-400-190:	Requirements for nonattainment areas.
WAC 173-400-200:	Creditable stack height and dispersion techniques.
WAC 173-400-205:	Adjustment for atmospheric conditions.

WAC-173-400-700:	Review of major stationary sources of air pollution.
WAC-173-400-710:	Definitions.
WAC-173-400-720:	Prevention of significant deterioration (PSD).
WAC-173-400-730:	Prevention of significant deterioration application processing procedures.
WAC-173-400-740:	PSD permitting public involvement requirements.
WAC-173-400-750:	Revisions to PSD permits.
WAC-173-400-800:	Major stationary source and major modification in a nonattainment area.
WAC-173-400-810:	Major stationary source and major modification definitions.
WAC-173-400-820:	Determining if a new source or modification to a stationary source is subject to these requirements.
WAC-173-400-830:	Permitting requirements.
WAC-173-400-840:	Emission offset requirements.
WAC-173-400-850:	Actual emissions plantwide applicability limitation (PAL).
WAC-173-400-860:	Public Involvement procedures.

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

WAC 463-78-020 Applicability. The provisions of this chapter shall apply statewide for those sources under the jurisdiction of the energy facility site evaluation council. The provisions of this chapter shall not apply to those facilities incorporated by reference in chapters 173-400, 173-401, 173-406, and 173-460 WAC which are not under the jurisdiction of the energy facility site evaluation council.

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

(2) In addition to the definitions contained

in WAC 173-400-030, 173-400-710, 173-400-810, 173-401-200, 173-406-101, "ecology," “authority,” “director,” and "permitting authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

WAC 463-78-095 Permit Issuance. (1) Permit(s) issued for air emissions in accordance with chapters 463-78 WAC shall become an attachment(s) to a site certification agreement.

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

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

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

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide. . . .	5.0
Nitrogen oxides. . . .	2.0
Sulfur dioxide. . . .	2.0
Particulate Matter (PM). . . .	1.25
Fine Particulate (PM10). . . .	0.75
Volatile Organic Compounds (VOC). . . .	2.0
Lead. . . .	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within ninety days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15 of each year. The reregistration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(a) Name of the source and the nature of the business;

(b) Street address, telephone number, facsimile number, and e-mail address of the source;

(c) Name, mailing address, telephone number, facsimile number and e-mail address of the owner or operator;

(d) Name, mailing address, telephone number, facsimile number and e-mail address of the local individual responsible for compliance with this rule;

(e) Name, mailing address, telephone number, facsimile number and e-mail address of the individual authorized to receive requests for data and information;

(f) A description of the production processes and a related flow chart;

(g) Identification of emission units and air pollutant generating activities;

(h) A plot plan showing the location and height of all emission units and air pollutant

generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;

(i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;

(j) Type and quantity of raw materials used on a daily and annual basis;

(k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM10 emissions, sulfur dioxide (SO2), nitrogen oxides (NOX), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H2S), total reduced sulfur (TRS), and reduced sulfur compounds;

(l) Calculations used to determine the estimated emissions in (k) of this subsection;

(m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and

(n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(a) Source-specific emission tests;

(b) Mass balance calculations;

(c) Published, verifiable emission factors that are applicable to the source;

(d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than ninety days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ninety days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a

certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(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.

WAC 463-78-120 Monitoring and special report. The department of ecology or its designee shall conduct a surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants in accordance with the requirements of chapters 173-400, 173-401, 173-406, and 173-460 WAC.

As a part of this program, the director of the department of ecology or an authorized representative of the director may recommend that any source under the jurisdiction of the council conduct stack and/or ambient air monitoring, and to report the results to the council and department of ecology.

WAC 463-78-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW 70.94.422.

WAC 463-78-140 Appeals procedure. (1) Appeal of permits issued pursuant to WAC 173-400-110.

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) Appeal of operating permits issued pursuant to chapter 173-401 WAC.

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) 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 federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council 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.

(4) Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and

section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4)(c).

WAC 463-78-170 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of his income" shall

mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

WAC 463-78-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

(1) Enforcement actions—Notice of violation. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing information to the council pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431(1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

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

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

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

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same

penalty. The penalties provided in this section shall be imposed pursuant to RCW 70.94.422.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

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

(3) Assurance of discontinuance. The chair, or his/her authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

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

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

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

To: Hunt, Jeff[Hunt.Jeff@epa.gov]
From: Hulse-Moyer, Laurie (ECY)
Sent: Wed 5/4/2016 10:54:59 PM
Subject: FW: Standards_and_Plans
InstructionsForAccessingPartnerWeb.pdf
SIP_In_and_Out_Table_fro_Ecology_12_2014 w EPA commentsdd JE 3-2-15.xlsx

My response to Jim LaSpina

From: Hulse-Moyer, Laurie (ECY)
Sent: Wednesday, March 09, 2016 3:29 PM
To: LaSpina, Jim (UTC)
Cc: Caudill, Anya (ECY); Alberich, Jason (ECY); Jimenez, David (ECY); Guilfoil, Elena (ECY); Dererie, Debebe (ECY); Newman, Alan (ECY); Ekrem, Joanna (ECY)
Subject: RE: Standards_and_Plans

Hello, Jim, Thanks for the call today. I wanted to update you before I sent the info you requested.

1. I am the lead for the 400 corollary rules SIP project now. We've submitted the core rules corresponding to the core/specific 400 rules in the SIP for Ecology and Benton Clean Air Agency.

See: Updating the 400 rules; Infrastructure, Rules and Program SIPs (scroll down to Rules section to see the Benton Rules)to refresh yourself on the project and see Benton's rules that were submitted to the SIP.

2. For SSM, Elena Guilfoil and Debebe Dererie are leading this effort. They are working on the timeline and plan to include you in early meetings. You should hear from them some time in the next week or so.(Elena – (360) 407-6855; Debebe (360) 407-7558.

3. The SAW account info is attached. We have upgraded to Share Point 2013. If you need any help getting in, contact David Jimenez at 360-407-6874. Once you get in, look at the BCAA section and the Ecology section to review the process.

4. The most current spreadsheet here from February 2014 in the SharePoint site is attached.

Feel free to call me. Thanks, Laurie

Laurie Hulse-Moyer / Air Quality Planner / WA State Department of Ecology / lahu461@ecy.wa.gov / (360) 407-6783

From: LaSpina, Jim (UTC)
Sent: Wednesday, February 24, 2016 1:08 PM
To: Ekrem, Joanna (ECY); Hulse-Moyer, Laurie (ECY); Caudill, Anya (ECY); Callaway, Stacey (ECY)
Subject: Standards_and_Plans

Hello,

This is Jim La Spina with EFSEC and I am the caretaker of EFSEC's AQ rules (and likely the coordinator of EFSEC's SIP submittal). I have been very busy with many tasks, but now I need to get reengaged with the SIP process and the associated AQ rulemaking.

First, who is the current lead on the SIP development process. Is it still Joanna?

Second, I need to update my account to access the SIP Sharepoint site. None of my old hyperlinks to my SAW account work any more; I believe Ecology revamped its Sharepoint sites some time ago, so I may need to start over setting up my SAW account for access to the Sharepoint site. Please tell me who I need to talk to do this.

Second, it would be good to know the status of the schedule to revise chapter 173-400 WAC to incorporate EPA's recent SSM regulations. I saw a schedule on the rulemakaing webpage that looks like the rule revision is scheduled to be completed only a couple months prior to the deadline for submitting the SIP update to EPA.

•□□□□□□□□ Has the schedule to update the state's SSM rules slipped at all?

•□□□□□□□□ Is the SIP still scheduled for submittal to EPA by November, 2016?

Thanks,

Jim

Jim La Spina

Energy Facility Siting Specialist

Energy Facility Site Evaluation Council

Utilities and Transportation Commission

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360.664.1362

To: Hulse-Moyer, Laurie (ECY)[lahu461@ECY.WA.GOV]
From: Hunt, Jeff
Sent: Tue 5/3/2016 4:06:27 PM
Subject: RE: ORCAA and EFSEC

I think the theme for Jason is that we want all the non-SSM provisions in good shape and ready to go (since it usually takes much longer than anyone would normally anticipate). That way when Ecology addresses 400-107, EFSEC's next step will be a simple incorporation by reference of the fix to SSM. Jason is also welcome to call me directly if the timeline is confusing.

From: Hulse-Moyer, Laurie (ECY) [mailto:lahu461@ECY.WA.GOV]
Sent: Tuesday, May 03, 2016 8:32 AM
To: Hunt, Jeff <Hunt.Jeff@epa.gov>
Subject: RE: ORCAA and EFSEC

I thought we realized that the locals named in the suit wouldn't make the November deadline. Last I heard, the locals wanted to wait to be sure our language is approved before the change and submit theirs. Since there is now a delay for Ecology, has this changed for the locals? I may not have the most recent info, as I'm not in the main loop.
L

From: Hunt, Jeff [mailto:Hunt.Jeff@epa.gov]
Sent: Tuesday, May 03, 2016 7:58 AM
To: Hulse-Moyer, Laurie (ECY)
Subject: ORCAA and EFSEC

Hi Laurie – I have a bit of time this week between projects. So if you send me what you have so far for ORCAA I can take a look. I also plan on looking at EFSEC. As we discussed during our last check in call, the Nov 2016 SSM deadline is coming soon. So we would be wise to have EFSEC in the pipeline sooner rather than later ….. jh

Jeff Hunt

Air Quality Planner (or as my 7-year old daughter says "My daddy is an air janitor. He cleans the air.")

EPA Region 10

Office of Air, Waste and Toxics

(206) 553-0256

To: Hunt, Jeff[Hunt.Jeff@epa.gov]
From: Dererie, Debebe (ECY)
Sent: Tue 9/27/2016 3:25:10 PM
Subject: Public Review Draft of the EFSEC SIP
EFSEC SIP Revision_ Public review draft_ 091916.pdf

Good morning Jeff,

I have attached the final EFSEC SIP document that we have posted for public review. The public comment period started on September 22 and will extend to November 8, 2016. If requested the hearing will be held on November 1, 2016 at 1pm.

Thank you

Debebe Dererie,

Air Quality Planner, EP3,

Program Development Section,

Air Quality Program

360-407-7558 debebe.dererie@ECY.WA.GOV

DEPARTMENT OF
ECOLOGY
State of Washington

State Implementation Plan (SIP) Revision

Including EFSEC's Revised Chapter 463-78 Washington Administrative Code (WAC)

Rule SIP Revision

September 2016
Public Review Draft

Publication and Contact Information

The report is available on the Department of Ecology's website at http://www.ecy.wa.gov/programs/air/sips/pdfs/EFSEC_SIP_Revision_Document_for_Public_Review_9-16-16.pdf

For more information contact:

Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-6800

Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Olympia 360-407-6000
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- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

For special accommodations or documents in alternate format, call (360) 407-6800, 711 (relay service), or 877-833-6341 (TTY).

State Implementation Plan (SIP) Revision

Including EFSEC's Revised Chapter 463-78 WAC

Rule SIP Revision

Air Quality Program
Washington State Department of Ecology
Olympia, Washington

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Acronyms and Abbreviations

CAA	Federal Clean Air Act
Ecology	Washington State Department of Ecology
EFSEC	Energy Facility Site Evaluation Council
EPA	U.S. Environmental Protection Agency
FIP	Federal Implementation Plan
LCAA	Local Clean Air Agency
NAAQS	National Ambient Air Quality Standards
NSPS	New Source Performance Standards
NSR	New Source Review
ORCAA	Olympic Region Clean Air Agency
PSD	Prevention of Significant Deterioration
RCW	Revised Code of Washington
SIP	State Implementation Plan
SWCAA	Southwest Clean Air Agency
WAC	Washington Administrative Code

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Executive Summary

The federal Clean Air Act (CAA) authorizes the Environmental Protection Agency (EPA) to adopt National Ambient Air Quality Standards (NAAQS) to protect the public health and welfare. The act requires states to adopt state implementation plans (SIPs) to attain and maintain the latest national air quality standards. When EPA approves including state and local agency regulations in a SIP those regulations become federally enforceable. SIP revisions update EPA approved state rules and programs.

Scope and Purpose

Federal and state regulations authorize the Energy Facility Site Evaluation Council (EFSEC) to implement an air quality permitting program for certain energy facilities in Washington. This SIP revision requests that EPA incorporate revisions of the EFSEC's General and Operating Permit Regulations for Air Pollution Sources (Chapter 463-78 WAC) into the Washington's SIP. EFSEC updated its Chapter 463-78 WAC on July 27, 2015 to get a SIP-approved major New Sources Review (NSR) permitting program. This SIP revision replaces the outdated provisions in Chapter 463-39 WAC currently in the SIP. EFSEC adopted by reference Ecology's Chapter 173-400 WAC as it existed on December 29, 2012, into WAC 463-78-005(1). EPA approved including that regulation into the Washington's SIP applicable in Ecology's jurisdiction. Thus, Ecology requests EPA to approve including it in the SIP applicable sources under EFSEC's jurisdiction.

Currently, EFSEC implements a Prevention of Significant Deterioration (PSD) program through partial delegation of authority from EPA under a Federal Implementation Plan (FIP) that applies in the absence of an approved SIP. Partial delegation requires EPA's final decision on each permit application, after EFSEC reviews the permit application. The PSD permitting program prevents significant deterioration of air quality from new large industrial sources of air pollution to be located in areas that meet the federal air quality standards.

State law (Chapter 80.50 RCW) authorizes EFSEC to monitor compliance and recover the entire cost of processing permit applications. EFSEC maintains the staff resources to implement its air quality program through the ongoing agreements and contracts with Washington State Department of Ecology (Ecology), Olympic Region Clean Air Agency (ORCAA) and Southwest Clean Air Agency (SWCAA).

EPA's approval of this SIP revision will grant EFSEC full authority to issue permits to energy facilities (major and minor sources) under its jurisdiction. EFSEC will accomplish this through their contracts with Ecology and local clean air agencies (LCAAs). This SIP revision will enable the agency to implement a SIP-approved PSD permitting program instead of a delegated PSD program. EFSEC will have more control over the contents and timing of permits for these facilities. This will result in faster permitting than under the current partial delegation agreement. This request also includes transfer of the existing PSD permits issued to energy facilities under EFSEC jurisdiction since August 1977, under terms of a delegation agreement between EPA and EFSEC.

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Public Involvement

Ecology invites public comment and offers an opportunity to request a hearing on the proposed SIP revision from September 22, 2016 through November 8, 2016. If requested by 5:00 pm October 24, 2016, Ecology will hold a public hearing on the proposed SIP revision at Ecology Headquarters in Lacey on November 1, 2016 at 1:00 pm. Ecology also offers the hearing via webinar.

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Introduction

Background

The federal Clean Air Act (CAA), under Title I, Part A, section 109, authorizes EPA to adopt national ambient air quality standards (NAAQS) for six criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matters, and sulfur dioxide) to protect public health and welfare. Title I, Part A, Section 110 requires states to adopt the latest NAAQS and submit state implementation plans (SIP) to attain and maintain the NAAQS in their jurisdictions, after notice and public hearing. The SIP is a comprehensive set of documents that the state must update when federal requirements change and/or when the state decides to change its air pollution control strategies to meet the NAAQS. Washington's SIP is composed of the air quality programs and rules of multiple agencies (Ecology, seven local clean air agencies and the Energy Facilities Site Evaluation Council (EFSEC)) that EPA approves as necessary to attain and maintain compliance with the NAAQS. State and local agency regulations which EPA approves into SIPs are federally enforceable. Ecology, as the Governor's designee, submits to EPA these revisions to the Washington SIP and requests EPA approval of the revisions to the Washington SIP.

EFSEC updated its General Regulations for Air Pollution Sources (Chapters 463-78 Washington Administrative Code (WAC)) on July 27, 2015. In its rule, EFSEC adopted by reference many parts of Ecology's Chapter 173-400 WAC that Ecology updated on December 29, 2012. EPA has approved this version of Ecology's rule into the SIP applicable in Ecology's jurisdiction. Therefore, Ecology requests EPA to approve the provisions in Chapter 173-400 WAC that EFSEC adopted by reference for EFSEC's air quality program.

Chapters 70.94 and 80.50 Revised Code of Washington (RCW) authorize EFSEC to implement a statewide air quality program for certain energy facilities in Washington State. Based on the version of EFSEC's regulation approved into the SIP and the terms of the current Prevention of Significant Deterioration (PSD) delegation agreement, EFSEC has a partial delegation of the federal PSD program from EPA. PSD permitting applies to new large industrial sources of air pollution to prevent significant deterioration of air quality due to emissions from these sources located in areas that meet the federal air quality standards. The current partial delegation agreement requires EPA to review permit applications, make Best Available Control Technology (BACT) decisions for most air pollutants, draft permits, and co-sign the final permits. EFSEC and Ecology expect the recently revised EFSEC's rule to meet the CAA requirements and federal regulations, so EPA can approve them into the Washington SIP. This approval will allow EFSEC to implement a SIP-approved PSD permitting program.

RCW 80.50 and 70.94 authorize EFSEC to implement its air quality program, including all air quality permitting, for energy facilities specified in chapter 80.50 RCW. RCW 80.50.071 and RCW 80.50.175 authorize EFSEC to recover the entire cost of processing permit applications and monitoring compliance. EFSEC has ongoing agreements and contracts with Washington State Department of Ecology (Ecology) to conduct new source reviews, provide technical services in rulemaking, and develop SIP submittals applicable to sources under EFSEC's jurisdiction. EFSEC contracts with the Olympic Region Clean Air Agency (ORCAA) and

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Southwest Clean Air Agency (SWCAA) to develop Air Operating Permits, and monitor compliance for sources regulated by EFSEC and located in their respective jurisdiction

Scope and Purpose of SIP Revision

Ecology requests EPA to approve portions of EFSEC's revised Chapter 463-78 WAC in the Washington SIP applicable to EFSEC sources. EFSEC updated Chapter 463-78 WAC on July 27, 2015 to be consistent with Ecology's and federal rules in order to receive EPA's approval to implement a SIP-approved PSD permitting program. This SIP revision will:

- Replace portions of EFSEC's Chapters 463-39 WAC in the current Washington SIP with the current provisions in Chapter 463-78 that EFSEC updated in July 27, 2015.
- Enable EFSEC to implement a SIP approved major and minor source new source review permitting program (as required under Title I parts C and D of the CAA) for energy facilities under EFSEC jurisdiction.

Public Involvement

Ecology invites public comment and offers an opportunity to request a hearing on the proposed SIP revision. Ecology will accept comments on this SIP revision from September 22, 2016 through November 8, 2016. Ecology will hold a public hearing on November 1, 2016 to receive comments on the proposed SIP revisions, if requested by October 24, 2016.

What Ecology would like EPA to do?

Ecology requests EPA to approve the portions of revised Chapter 463-78 WAC (updated in July 27, 2015) included in this submittal and replace the provisions of Chapter 463-39 WAC (updated in 1995) that are currently in the Washington SIP applicable to sources under EFSEC.

Specifically, Ecology requests EPA to take the following actions:

- Approve the proposed portions of the revised Chapter 463-78 WAC in the Washington SIP applicable to sources under EFSEC jurisdiction;
- Remove the outdated provisions from the Washington SIP applicable to sources under EFSEC jurisdiction;
- Approve EFSEC's major source, minor source and nonattainment permitting program into the SIP.

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Proposed Revision to Washington State Implementation Plan

Energy Facility Site Evaluation Council's (EFSEC's) General and Operating Permit Regulation for Air Pollution Sources (Chapter 463-39 WAC) was last approved by EPA as part of the SIP in 1996. This EPA approved version of EFSEC rule was adopted on August 21, 1995. Since then, EFSEC replaced Chapter 463-39 WAC with Chapter 463-78 WAC. This replacement regulation has not been submitted to EPA for inclusion in the SIP.

This SIP revision requests EPA to include portions of the current Chapter 463-78 WAC (last revised on 7/27/15) in the Washington SIP applicable to the sources under EFSEC's jurisdiction. As part of its Chapter 463-78 WAC, EFSEC adopted by reference portions of Ecology's Chapter 173-400 WAC as it existed on December 29, 2012, with some exceptions. These exceptions are mainly provisions that are not applicable to sources under EFSEC authority or procedures where EFSEC has different requirements under Chapter 80.50 RCW to be met. This chapter provides the details on which parts of the Chapter 463-39 WAC, as it appears in the SIP, need to be updated with parts of Chapter 463-78 WAC. It also briefly explains the reasons for removing, adding or revising the provisions in the Washington SIP applicable to sources under EFSEC's jurisdiction.

In order to show the proposed changes in the SIP, this chapter is organized into two parts. The first part provides details of the provisions of Chapter 463-78 WAC that Ecology proposes to include or not include in the Washington SIP. All the sections of EFSEC's Chapter 463-78 WAC are analyzed to explain why they are proposed to be included or excluded from the Washington SIP applicable in EFSEC's jurisdiction to meet the NAAQS and other requirements of CAA section 110.

The second part provides details on which provisions of Ecology's Chapter 173-400 WAC, EFSEC adopted by reference in WAC 463-78-005, are to be included in the Washington SIP applicable to sources under EFSEC's jurisdiction. EPA has analyzed and approved the current Ecology's Chapter 173-400 WAC and included the required provisions in the SIP applicable in Ecology's jurisdiction. Therefore, the second part is limited to identifying provisions of Chapter 173-400 WAC that have been revised since EPA approved Chapter 463-39 WAC in 1996. Ecology is not proposing to submit provisions that are not required to attain and maintain the NAAQS under title I of the federal Clean Air Act.

Summary of Changes in EFSEC's Chapter 463-78 WAC

- **WAC 463-78-005 Adoption by reference.**
  - This section has five subsections that adopted by reference different Ecology rules. Only the first section, WAC 463-78-005(1), adopts by reference Ecology's Chapter 173-400 WAC and relates to the attainment and maintenance of the NAAQS. The SIP includes WAC 463-39-005(1). Ecology proposes to include only the amendments to WAC 463-78-005(1) in the SIP. The specific provisions of Chapter 173-400 WAC that EFSEC has adopted by reference in this section that Ecology proposes to include in the SIP are explained in the next part of this chapter.

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- **WAC 463-78-010 Purpose.**
  - This section is in the SIP. The main change in this section is that EFSEC replaced the reference to 40 C.F.R Part 52 by Chapter 70.94 RCW, as EFSEC's state authority stems from Chapters 80.50 and 70.94 RCW. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-020 Applicability**.
  - This section is in the SIP. There is no substantive change. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-030 Additional definitions.**
  - The main change in this section is that it clarifies EFSEC as the implementing agency for the adopted regulations. Ecology proposes to include this clarification in the SIP, except the definitions in WAC 173-401-200 and WAC 173-406-101.
- **WAC 463-78-070 Radioactive emissions.**
  - This section is not currently in the SIP. Ecology does not propose to include it in the SIP, as the provisions are not related to protecting and attaining the NAAQS or meeting other requirements of Title I section 110 of the federal Clean Air Act.
- **WAC 463-78-90 Permit application form.**
  - This section is related to the Title V permitting program and is not in the SIP. Ecology does not propose to include it in the SIP as this provision is not related to the requirements of Title I of the federal Clean Air Act.
- **WAC 463-78-095 Permit issuance.**
  - The main change in this section is that it now includes additional provisions requiring compliance with the EPA approved SIP before permit issuance. It also include provisions on handling changes in permit and site certification agreement. This section addresses the effective date of permits when issued to new facilities and modifications. This section is in the SIP, and Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-100 Registration.**
  - This section is currently in the SIP. Ecology proposes removing this section from the SIP because the provision is not linked to EFSEC's new source review (NSR) provisions, and it does not set requirements for pollution control. WAC 173-400-105, which is adopted by reference, establishes the SIP requirement to submit emissions information.
- **WAC 463-78-105 Fees and costs.**
  - This section is not in the SIP. Ecology does not propose to include it in the SIP as the provision is not related to the attainment and maintenance of the NAAQS, or other requirements of section 110 of the federal Clean Air Act.

- **WAC 463-78-115 Standards of performance for new stationary sources (NSPS).**

- This section adopts by reference federal regulation 40 CFR Part 60 that regulate criteria and other non-hazardous air pollutants. The section is not in the SIP. Ecology does not propose to include it in the SIP as the provisions are not required for SIP approval.

- **WAC 463-78-120 Monitoring and special report.**
  - This section is in the SIP. The only changes in the provisions of this section are that EFSEC re-codified the rule and changed the capitalization in the section title. Ecology proposes to include this section in the SIP to replace WAC 463-39-120 that was re-coded without change in the rule language.

- **WAC 463-78-135 Criminal penalties.**
  - This section is in the SIP. EFSEC has amended this section to reference the criminal penalties in RCW 70.94.422. Ecology proposes to include the amendments to this section in the SIP.

- **WAC 463-78-140 Appeals procedure.**
  - This section includes four new sub-sections (1) to (4) setting new detailed appeal requirements for each of the different types of permits issued pursuant to WAC 173-400-110, WAC 173-400-730, WAC 173-401, and WAC 173-406. This section is not in the SIP. Ecology proposes to include subsections (1) and (2) of this section in the SIP because the provisions in WAC 173-400-110 (new source review (NSR) for sources and portable sources) and WAC 173-400-730 (Prevention of Significant Deterioration application processing procedures) are related to the attainment and maintenance of NAAQS.

- **WAC 463-78-170 Conflict of interest.**
  - This section is in the SIP. There are no substantive changes. The council is comprised solely of members that represent the public interest, according to RCW 80.50.30; therefore EFSEC meets the CAA requirements of Title I section 128. Ecology proposes to include this section in the SIP.

- **WAC 463-78-230 Regulatory actions.**
  - This section is in the SIP. There are no substantive changes. Ecology proposes to include the amendments to this section in the SIP.

Changes in Chapter 173-400 WAC adopted by reference in WAC 463-78-005

As part of its General and Permitting Regulation for Air Pollution Sources (Chapter 463-78 WAC), EFSEC adopted by reference portions of Ecology's General Regulation for Air Pollution Sources (Chapter 173-400 WAC) as it existed on December 29, 2012, with some exceptions. These exceptions were made mainly because the provisions are outside of EFSEC's authority (examples: designation of areas into class I, II and III), or EFSEC has an alternative authority under RCW 80.50 (examples: appeals, council members, fees, enforcement actions, etc.), or do not apply to the sources in EFSEC's jurisdiction (example: retrofit requirements for visibility protection).

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EPA recently analyzed and approved into the SIP provisions in Ecology's Chapter 173-400 WAC (updated on 12/29/12) as applicable in Ecology's jurisdiction. That proposed SIP revision request is available at: https://fortress.wa.gov/ecy/publications/SummaryPages/1302039.html. It can also be found using its publication no. 13-02-039 at: https://fortress.wa.gov/ecy/publications/UIPages/Home.aspx.

EPA's approval of Ecology's request was published in federal register in three parts: General Regulations for Air Pollution Sources on FR 59653 of October 3, 2014; Nonattainment New Source Review on FR 66291 of November 7, 2014; and Prevention of Significant Deterioration and Visibility Protection 23721 of April 29, 2015. Summary of these EPA approved provisions is available in table 2 of 40 CFR 52.2470(c) table 2 and (e) table 1 at http://www.ecfr.gov/cgi-bin/text-idx?SID=998e9092d5d7235b7b96b36baef5e9f1&mc=true&node=se40.5.52_12470&rgn=div8.

This section identifies provisions of Ecology's Chapter 173-400 WAC that EFSEC adopted by reference and that differ from provisions in the EPA approved Chapter 463-39 WAC from 1996. Ecology, proposes including the following changes in WAC 463-78-005 in the Washington SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-030: Definitions.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction. The section expands the number of definitions from 81 to 97. The section also amends some of the 81 original definitions. All the definitions, except definition # 91 (toxic air pollutant), are in the SIP applicable in Ecology's jurisdiction. Ecology proposes to EPA to include the amendments in this section into the SIP applicable to sources under EFSEC's jurisdiction, except WAC 173-400-030 (91).
- **WAC 173-400-036: Relocation of portable sources. (New section)**
  - EFSEC newly adopted this section by reference. EPA approved it to be in the SIP applicable in Ecology's jurisdiction. Ecology proposes to include it in the SIP applicable to sources under EFSEC's jurisdiction.
- **WAC 173-400-040: General standards for maximum emissions**.
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction. Ecology revised the section. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction with some exceptions. EFSEC has adopted Ecology's revised section 040. Ecology proposes EPA include the amended section into the SIP, except WAC 173-400-040(2)(c) and (d), (3), (5), and the second paragraph in (7). These exceptions are the same in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-050: Emission standards for combustion and incineration units.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has revised it. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction except WAC 173-400-040(2), (4), and (5). Therefore, Ecology proposes EPA include the amendments in this section into the SIP,

except WAC 173-400-050(2), (4) and (5). These exceptions are the same as in the SIP applicable in Ecology's jurisdiction.

- **WAC 173-400-060: Emission standards for general process units.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has revised it. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Ecology proposes EPA include the amendments in this section into the SIP.
- **WAC 173-400-070: Emission standards for certain source categories.**
  - EFSEC newly adopted this section; specifically sub-section (5) and (7). EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction except WAC 173-400-070(7) and (8). Ecology proposes to include **only WAC 173-400-070(5) (Catalytic Cracking Unit)** in the SIP.
- **WAC 173-400-081: Startup and shutdown.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has revised it with no substantive change. Ecology proposes EPA include the revision to this section into the SIP.
- **WAC 173-400-091: Voluntary limits on emissions.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has revised it with no substantive change. Ecology proposes EPA include the revision to this section into the SIP.
- **WAC 173-400-105: Records, monitoring, and reporting.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has revised it. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore Ecology proposes to EPA to include the amendments in this section into the SIP.
- **WAC 173-400-107: Excess emissions.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and it has not been revised. Ecology proposes not to submit any changes to this section in the SIP, until Ecology has revised WAC 173-400-107 to 109 according to the startup, shutdown and malfunction (SSM) SIP call by EPA. Then, EFSEC can adopt Ecology's revised sections by reference, and another SIP submittal can be proposed to include these sections in the SIP applicable to EFSEC jurisdiction.
- **WAC 173-400-110: New Source Review (NSR) for sources and portable sources.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and has been substantially revised since that time. The main change is that this section sets the criteria (de minimus emission unit, activity and annual emission threshold) for the applicability of the NSR permitting program. The criteria for the NSR permitting program was changed from requiring minor NSR permitting of sources on a list to requiring minor NSR for all new or modified sources unless they are listed as de minimis sources and not subject to permitting.

- EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction with some exceptions. Therefore, Ecology proposes EPA include the amendments in this section into the SIP for sources under EFSEC's jurisdiction, except 173-400-110(1)(c)(ii)(C), 173-400-110(1)(e) and 173-400-110(2)(d) and all references to "toxic air pollutants" and "Chapter 173-460". Specifically, these phrases are in WAC 173-400-100(4)(b)(vi), 173-400-110(4)(e)(iii), 173-400-110(4)(f)(i), 173-400-110(4)(h)(xviii), 173-400-110(4)(h)(xxxiii) to (xxxvi), 173-400-110(4)(h)(xl) the second sentence, and the last row of the table in 173-400-110(5)(b) regarding exemption levels for toxic air pollutants. All these exceptions are the same as in the SIP applicable in Ecology's jurisdiction.

- **WAC 173-400-111: Processing notice of construction applications for sources, stationary sources and portable sources.**
  - This section did not exist when EPA approved Chapter 463-39 WAC. It was part of section 110 which was approved by EPA in the SIP.EFSEC adopted by reference this section in its Chapter 463-78 WAC, except the last six words in (5)(a) and sub-sections (6) and (9). These exceptions refers to: 1) "pollution control hearings board", which does not hear appeals of permits issued to sources under EFSEC's jurisdiction; and 2) Chapter 173-455 WAC, which is Ecology's version of WAC 463-78-105.
  - EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, except 111(3)(h), (9), and the part that says "and 173-460-040" in 111(8)(a)(v), because these exceptions refer to "toxic air pollutant" or "Chapter 173-460", which are not related to criteria pollutants. Therefore, Ecology proposes EPA include this section in the SIP applicable to sources under EFSEC's jurisdiction, except (3)(h); (5)(a), the last six words; (6); (9); and the part of 173-400-111(8)(a)(v) that says "and 173-460-040".

- **WAC 173-400-112: Requirements for new sources in nonattainment areas.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and has been substantially revised to remove the nonattainment NSR permitting requirements to new sections 800-850. EPA has approved the revised section as part of the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include the amendments in this section into the SIP.

- **WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and has been revised. EPA has approved the revised section to be in the SIP applicable in Ecology's jurisdiction, except the second sentence in subsection 113(3). Ecology proposes EPA include the amendments in this section into the SIP, **except the second sentence in 173-400-113(3).** This exception is the same in the SIP applicable in Ecology's jurisdiction.

- **WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.**

- EFSEC adopted by reference this section in its Chapter 463-39 WAC (equivalent to the current Chapter 463-78 WAC), but it is not in the SIP. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** proposes EPA include this section in the SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-116: Increment protection.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Thus, Ecology proposes EPA include this section into the SIP applicable to sources under EFSEC jurisdiction.

- **WAC 173-400-117: Special protection requirements for federal Class I areas.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC; and Ecology proposes EPA include this section into the SIP.

- **WAC 173-400-120: Bubble rules.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95, but it is not in the SIP applicable to sources under EFSEC's jurisdiction. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** propose EPA include this section in the SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-131: Issuance of emission reduction credits.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95, but it is not in the SIP applicable to sources under EFSEC's jurisdiction. Ecology has revised the section and EPA has approved the revised section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include this revised section into the SIP applicable to sources under EFSEC jurisdiction.

- **WAC 173-400-136: Use of emission reduction credits.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95, but it was not in the SIP. Ecology has revised the section and EPA has approved the revised section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.

- **WAC 173-400-151 Retrofit Requirements for Visibility Protection.**
  - This section is in the EPA approved SIP applicable to sources under EFSEC jurisdiction. Ecology has revised the section since this SIP approval, but EFSEC did not adopt the revision into its rule. This section is to establish Best Available Retrofit Technology (BART) for existing facilities (operational after August 7, 1962 and in existence in August 7, 1977) that meets specific criteria. Ecology and EFSEC have confirmed that there are no sources under EFSEC jurisdiction that meet the statutory definition of existing facility for BART. Therefore, Ecology proposes EPA **remove** this section from EFSEC's portion of the SIP.

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- **WAC 173-400-161: Compliance schedules.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has not revised the section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.
- **WAC 173-400-171: Public involvement.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and has been revised substantially since approval into the SIP. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, with some exceptions. Ecology proposes EPA include the revised section into the SIP, **except for WAC 173-400-171(12) and the part of WAC 173-400-171(3)(b) that says** "any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC". These exceptions are the same as for Ecology's jurisdiction and are related to "toxic air pollutants" or special requirements that are applicable to Ecology only.
- **WAC 173-400-175: Public information.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include this section into the SIP applicable to sources under EFSEC jurisdiction.
- **WAC 173-400-180: Variance.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP applicable in EFSEC's jurisdiction. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** propose EPA include this section in the SIP applicable in EFSEC's jurisdiction.
- **WAC 173-400-190: Requirements for nonattainment areas.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has not revised the section. Therefore, Ecology does not propose to re-submit EFSEC's adoption of this section in this SIP revision.
- **WAC 173-400-200: Creditable stack height and dispersion techniques.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and has been revised by Ecology. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include this section in the SIP applicable to sources under EFSEC jurisdiction.
- **WAC 173-400-205: Adjustment for atmospheric conditions.**
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction, and Ecology has not revised this section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.

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Provisions for Permitting of Major Stationary Sources and Major Modifications to Major Stationary Sources:

EFSEC adopted by reference the following sections from Ecology's Chapter 173-400 WAC to provide permitting criteria and processes for new major stationary sources and major modifications at existing stationary sources under its jurisdiction that are located in attainment or unclassifiable areas, or in nonattainment areas. When these sources are located in areas in attainment or unclassifiable with the National Ambient Air Quality Standards (NAAQS), EFSEC will be using WAC 173-400-700 through WAC 173-400-750 as its program to prevent significant deterioration of ambient air quality so that the NAAQS are not violated. Similarly, when such sources are located in non-attainment areas with NAAQS, EFSEC will be regulating them according to WAC 173-400-800 through WAC 173-400-860 for the pollutants and precursors for which the area is classified nonattainment.

There are specific Ecology PSD program provisions that EFSEC did not adopt by reference, or provisions that were adopted by reference with some modification are the following:

- WAC 173-400-720(4)(a)(vi): This provision is adopted by reference except that the effective date of incorporating by reference the federal regulation 40 CFR 52.21 was changed to May 1, 2015. This change was made to incorporate EPA's action to resolve court decisions to vacate provisions related the significant impact levels (SILs) of PM2.5 (40 CFR 52.21(k)(2)) and significant monitoring concentrations (SMCs) of PM2.5 (40CFR 52.21(i)(5)(i)).
- WAC 173-400-730 (4): Appeals. This provision was not adopted by reference because the sources under EFSEC's jurisdiction are not required to appeal to "pollution control hearing board", as stated in this provision.
- WAC 173-400-750(2), second sentence: This provision was not adopted by reference because the fee schedule in Chapter 173-455 WAC is not applicable to sources under EFSEC's jurisdiction.

EPA has approved the following sections of Chapter 173-400 WAC to be in the SIP applicable in Ecology's jurisdiction with some exceptions that are identified below. Therefore, Ecology proposes EPA include all these sections, other than the change and exceptions explained in the previous paragraph, in the SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-700: Review of major stationary sources of air pollution.**
- **WAC 173-400-710: Definitions.**
- **WAC 173-400-720: Prevention of significant deterioration (PSD).** The exceptions that Ecology does not propose EPA include in the SIP are 173-400-720(4)(a)(i through iv); 173-400-720(4)(b)(iii)(C); and 173-400-720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v).
- **WAC 173-400-730: Prevention of significant deterioration application processing procedures, except sub-section (4).**
- **WAC 173-400-740: PSD permitting public involvement requirements.**

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- **WAC 173-400-750: Revisions to PSD permits, except the second sentence in subsection (2).**
- **WAC 173-400-800: Major stationary source and major modification in a nonattainment area.**
- **WAC 173-400-810: Major stationary source and major modification definitions.**
- **WAC 173-400-820: Determining if a new stationary source or modification to a stationary source is subject to these requirements.**
- **WAC 173-400-830: Permitting requirements.**
- **WAC 173-400-840: Emission offset requirements.**
- **WAC 173-400-850: Actual emissions plantwide applicability limitation (PAL).**
- **WAC 173-400-860: Public involvement procedures.**

Appendices

Appendix A. SIP Revision Overview Table – Chapter 463-78 WAC

Appendix B. Strikeout Rule Language in Chapter 463-78 WAC proposed for inclusion in SIP

Appendix C. EFSEC's SIP Submittal Request Letter

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Appendix A. SIP Revision Overview Table

Table 1. General overview of the status of sections in Chapter 463-78 WAC and SIP submittal.

Sections of Chapter 463-78 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?					
Section	Section Title		Revise	Remove	New	Unchanged	This provision is already in the SIP. No revisions.	Not being submitted in the SIP
005	Adoption by reference. Except		X					
	(2), (3), (4), and (5)							X
010	Purpose.	Revised, in the SIP	X					
020	Applicability.	Revised, in the SIP	X					
030	Additional definitions, except	Revised, in the SIP	X					
	(2) the part that says "173-401-200, 173-406-101"	Revised, not in the SIP						X
070	Radioactive emissions.	Not in the SIP						X
090	Permit application form	Not in the SIP						X
095	Permit issuance.	Revised, in SIP	X					
100	Registration.	Remove from SIP		X				
105	Fees and cost.	Not in the SIP						X
115	Standards of performance for new stationary sources	Not in the SIP						X
120	Monitoring and special report	In the SIP	X					
135	Criminal penalties.	In the SIP	A					
140	Appeals procedure.	Revised, in SIP	A					
170	Conflict of interest.	In the SIP	A					
230	Regulatory actions.	In the SIP	A					

N.B.: Sections marked X are proposed to be adopted by reference (ABR) by EPA, while those marked A are to be approved, not ABR.

Table 2. General overview of the status of sections in Chapter 173-400 WAC adopted by reference in Chapter 463-78 WAC and SIP submittal.

Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?					
Section	Section Title		Revise	Remove	New	Unchange	This provision is already in the SIP. No revisions.	Not being submitted in the SIP
030	Definitions, except	Revised, in the SIP	X					
	(91)	New, not in the SIP						X
036	Relocation of portable sources.	New, in the SIP			X			
040	General standards for maximum emissions, except	Revised, in the SIP	X					
	(2)(c) and (d); (3); (5); (7), second paragraph	Revised, not in the SIP						X
050	Emission standards for combustion and incineration units. except	Revised, in the SIP	X					
	(2)	Remove, not in the SIP		X				
	(4), (5)	New, not in the SIP						X
060	Emission standards for general process units.	Revised, in the SIP	X					
070	Emission standards for certain source categories, except:	New, in the SIP			X			
	(1); (2); (3); (4); (6); (7) and (8)	New, not in the SIP						X
075	Emission standards for sources emitting hazardous air pollutants.	Revised, not in the SIP						X
081	Startup and shutdown.	Revised, in the SIP	X					
091	Voluntary limits on emissions.	Revised, in the SIP	X					
105	Records, monitoring, and reporting.	Revised, in the SIP	X					
107	Excess emissions.	Revised, not in the SIP					X	

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Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?					
Section	Section Title		Revise	Remove	New	Unchange	This provision is already in the SIP. No revisions.	Not being submitted in the SIP
110	New source review (NSR) for sources and portable sources, except:	Revised, in the SIP	X					
	(1)(c)(ii)(C); (1)(e); (2)(d); and	Revised, not in the SIP						X
	The following parts of sub-section (4) and (5) that refer to "toxic air pollutants and/or "chapter 173-460 WAC"							
	(4)(b)(vi) that says, "not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,";	Revised, not in the SIP						X
	(4)(e)(iii) that says, "where toxic air pollutants as defined in chapter 173-460 WAC are not emitted";	Revised, not in the SIP						X
	(4)(f)(i) that says, "that are not toxic air pollutants listed in chapter 173-460 WAC";	Revised, not in the SIP						X
	(4)(h)(xviii) that says, ", to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted";	Revised, not in the SIP						X
	(4)(h)(xxxiii) that says, "where no toxic air pollutants as listed under chapter 173-460 WAC are emitted";	Revised, not in the SIP						X

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Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
Section	Section Title		What is different since the last SIP approval?				This provision is already in the SIP. No revisions.	Not being submitted in the SIP
			Revise	Remove	New	Unchange		
	(4)(h)(xxxiv) that says, “, or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”;	Revised, not in the SIP						X
	(4)(h)(xxxv) that says, “or ≤ 1% (by weight) toxic air pollutants”;	Revised, not in the SIP						X
	(h)(xxxvi) that says, “or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”;	Revised, not in the SIP						X
	(4)(h)(xl) , second sentence;	Revised, not in the SIP						X
	The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.	Revised, not in the SIP						X
111	Processing notice of construction applications for sources, stationary sources and portable sources.	Revised, in the SIP	X					
	(5)(a)(last six words); (6); and (9)	Not adopted by reference						X
	(3)(h); (8)(a)(v) that says , “and 173-460-040”.	Revised, not in the SIP						X
112	Requirements for new sources in nonattainment areas.	Revised, in the SIP	X					
113	Requirements for new sources in attainment or unclassifiable areas.		X					
	Second sentence in (3)	Revised, not in the SIP						X

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Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?					
Section	Section Title		Revise	Remove	New	Unchange	This provision is already in the SIP. No revisions.	Not being submitted in the SIP
114	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.	Revised, not in the SIP						X
116	Increment protection.	New, in the SIP			X			
117	Special protection requirements for federal Class I areas.	New, in the SIP			X			
120	Bubble rules.	Revised, out of the SIP						X
131	Issuance of emission reduction credits.	New, in the SIP			X			
136	Use of emission reduction credits.	New, in the SIP			X			
151	Retrofit requirements for visibility protection.	Remove from the SIP		X				
161	Compliance schedules.	Unchanged, in the SIP					X	
171	Public involvement, except	Revised, in the SIP		X				
	(3)(b) that says "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC"; (12)	Revised, out of the SIP						X
175	Public information.	New, in the SIP			X			
180	Variance.	New, not in the SIP						X
190	Requirements for nonattainment areas.	Unchanged, in the SIP					X	
200	Creditable stack height and dispersion techniques.	Revised, in the SIP	X					
205	Adjustment for atmospheric conditions.	Unchanged, in the SIP					X	

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Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
Section	Section Title		What is different since the last SIP approval?				This provision is already in the SIP. No revisions.	Not being submitted in the SIP
			Revise	Remove	New	Unchange		
700	Review of major stationary sources of air pollution.	New, in the SIP			X			
710	Definitions.	New, in the SIP			X			
720	Prevention of significant deterioration (PSD), except:	New, in the SIP			X			
	(4)(a)(i) through (iv); (4)(b)(iii)(C);	New, not in the SIP						X
	(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(v). **N.B.:** EFSEC adopted by reference the WAC 173-400-720(4)(a)(vi) as existed on May 1, 2015 for the purpose of incorporating 40 CFR 52.21 that has corrected court vacated provision related to PM2.5 significant impact level (SILs) and significant monitoring concentrations (SMCs) .	New, not in the SIP						X
730	Prevention of significant deterioration application processing procedures, except	New, in the SIP			X			
	(4)	Not adopted by reference						X
740	PSD permitting public involvement requirements.	New, in the SIP			X			
750	Revisions to PSD permits, except:	New, in the SIP			X			
	(2), second sentence	Not adopted by reference						
800	Major stationary source and major modification in a nonattainment area.	New, in the SIP			X			

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Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
Section	Section Title		What is different since the last SIP approval?				This provision is already in the SIP. No revisions.	Not being submitted in the SIP
			Revise	Remove	New	Unchange		
810	Major stationary source and major modification definitions.	New, in the SIP			X			
820	Determining if a new stationary source or modification to a stationary source is subject to these requirements.	New, in the SIP			X			
830	Permitting requirements.	New, in the SIP			X			
840	Emission offset requirements.	New, in the SIP			X			
850	Actual emissions plantwide applicability limitation (PAL).	New, in the SIP			X			
860	Public involvement procedures.	New, in the SIP			X			

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Appendix B. Strikeout Rule Language of Chapter 463-78 WAC proposed for inclusion in Washington SIP

WAC 463-~~39~~78 -- GENERAL AND OPERATING PERMIT REGULATIONS FOR AIR POLLUTION SOURCES

WAC 463-~~39~~78-005 Adoption by ~~Reference~~reference. **(1)** The energy facility site evaluation council adopts the following sections or subsections of chapter 173-400 WAC, as it existed on December 29, 2012, with the exceptions that (a) WAC 173-400-111 (5)(a) (last six words), (6), (9), and WAC 173-400-720 is adopted except the date in WAC 173-400-720 (4)(a)(vi) is May 1, 2015, and WAC 173-400-730 (4) and 173-400-750(2) by reference, and (b) the terms "ecology," "authority," "director," and "permitting authority" in WAC 173-400-030 shall mean "the energy facility site evaluation council" unless a different meaning is plainly required by the context.

WAC 173-400-030:	Definitions.
WAC 173-400-036:	Relocation of portable sources.
WAC 173-400-040:	General standards for maximum emissions.
WAC 173-400-050:	Emission standards for combustion and incineration units.
WAC 173-400-060:	Emission standards for general process units.
WAC 173-400-070 (5) and (7) only:	Emission standards for certain source categories
WAC 173-400-075:	Emission standards for sources emitting hazardous air pollutants.
WAC 173-400-081:	Startup and shutdown.
WAC 173-400-091:	Voluntary limits on emissions.
WAC 173-400-105:	Records, monitoring and reporting.
WAC 173-400-107:	Excess emissions.
WAC 173-400-110:	New source review (NSR).
WAC 173-400-111:	Processing notice of construction applications for sources, stationary sources and portable sources.
WAC 173-400-112:	Requirements for new sources in nonattainment areas.
WAC 173-400-113:	Requirements for new sources in attainment or unclassifiable areas.
WAC 173-400-114:	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
WAC 173-400-116:	Increment protection.
WAC 173-400-120:	Bubble rules.
WAC 173-400-131:	Issuance of emission reduction credits.
WAC 173-400-136:	Use of emission reduction credits.
~~WAC 173-400-141:~~	~~Prevention of significant deterioration (PSD).~~
~~WAC 173-400-151~~	~~Retrofit requirements for visibility protection.~~
WAC 173-400-161:	Compliance schedules.
WAC 173-400-171:	Public involvement.

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WAC 173-400-180:	Variance.
WAC 173-400-190:	Requirements for nonattainment areas.
WAC 173-400-200:	Creditable stack height and dispersion techniques.
WAC 173-400-205:	Adjustment for atmospheric conditions.
WAC-173-400-700:	Review of major stationary sources of air pollution.
WAC-173-400-710:	Definitions.
WAC-173-400-720:	Prevention of significant deterioration (PSD).
WAC-173-400-730:	Prevention of significant deterioration application processing procedures.
WAC-173-400-740:	PSD permitting public involvement requirements.
WAC-173-400-750:	Revisions to PSD permits.
WAC-173-400-800:	Major stationary source and major modification in a nonattainment area.
WAC-173-400-810:	Major stationary source and major modification definitions.
WAC-173-400-820:	Determining if a new source or modification to a stationary source is subject to these requirements.
WAC-173-400-830:	Permitting requirements.
WAC-173-400-840:	Emission offset requirements.
WAC-173-400-850:	Actual emissions plantwide applicability limitation (PAL).
WAC-173-400-860:	Public Involvement procedures.

WAC 463-~~39~~78-010 Purpose. The energy facility site evaluation council, under the authority vested in it by ~~chapter~~ chapters 80.50 and ~~40 C.F.R. Part 52~~ 70.94 RCW, is charged with responsibilities for the conduct of a ~~state wide~~statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution.

WAC 463-~~39~~78-020 Applicability. The provisions of this chapter shall apply ~~state wide~~statewide for those sources under the jurisdiction of the energy facility site evaluation council. The provisions of this chapter shall not apply to those facilities incorporated by reference in chapters 173-400, 173-401, 173-406, and 173-460 WAC which are not under the jurisdiction of the energy facility site evaluation council.

WAC 463-~~39~~78-030 Additional Definitions. (1) "Council" means the energy facility site evaluation council.

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

WAC 463-~~39~~78-095 Permit Issuance. (1) Permit(s) issued for air emissions in accordance with chapters ~~173-400, 173-401, 173-406, and 173-460~~463-78 WAC shall become an attachment(s) to a site certification agreement.

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

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

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

WAC 463-~~39~~78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(~~1~~2) Requirement to register. Except as provided in subsection (3) of this section, ~~The~~ the owner or operator of each ~~stationary~~ source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

~~Registration shall be on forms which have been adopted for use by the department of ecology within the time specified thereon.~~

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide. . . .	5.0
Nitrogen oxides. . . .	2.0
Sulfur dioxide. . . .	2.0
Particulate Matter (PM). . . .	1.25
Fine Particulate (PM10). . . .	0.75
Volatile Organic Compounds (VOC). . . .	2.0
Lead. . . .	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within ninety days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15 of each year. The reregistration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(a) Name of the source and the nature of the business;

(b) Street address, telephone number, facsimile number, and e-mail address of the source;

(c) Name, mailing address, telephone number, facsimile number and e-mail address of the owner or operator;

(d) Name, mailing address, telephone number, facsimile number and e-mail address of the local individual responsible for compliance with this rule;

(e) Name, mailing address, telephone number, facsimile number and e-mail address of the individual authorized to receive requests for data and information;

(f) A description of the production processes and a related flow chart;

(g) Identification of emission units and air pollutant generating activities;

(h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;

(i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;

(j) Type and quantity of raw materials used on a daily and annual basis;

(k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM10 emissions, sulfur dioxide (SO2), nitrogen oxides (NOX), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H2S), total reduced sulfur (TRS), and reduced sulfur compounds;

(l) Calculations used to determine the estimated emissions in (k) of this subsection;

(m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and

(n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(a) Source-specific emission tests;

(b) Mass balance calculations;

(c) Published, verifiable emission factors that are applicable to the source;

(d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than ninety days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ninety days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(~~2~~10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(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.

WAC 463-~~39~~78-120 Monitoring and ~~Special~~ special ~~Report~~report. The department of ecology or its designee shall conduct a surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants in accordance with the requirements of chapters 173-400, 173-401, 173-406, and 173-460 WAC.

As a part of this program, the director of the department of ecology or an authorized representative of the director may recommend that any source under the jurisdiction of the council conduct stack and/or ambient air monitoring, and to report the results to the council and department of ecology.

WAC 463-~~39~~78-135 Criminal ~~Penalties~~ penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW 70.94.422.

WAC 463-78-140 Appeals procedure. (1) Appeal of permits issued pursuant to WAC 173-400-110.

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) Appeal of operating permits issued pursuant to chapter 173-401 WAC.

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) 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 federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council 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.

(4) Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4)(c).

WAC 463-~~39~~78-170 Conflict of ~~Interest~~interest. No member of the council shall have received, or has during the previous two years received, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of his or her income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

WAC 463-~~39~~78-230 Regulatory ~~Actions~~actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

(1) Enforcement ~~Actions~~actions —Notice of ~~Violation~~violation. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing ~~the council~~ information to the council pertaining to the violation or the charges complained of. Every

notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil ~~Penalty~~penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431(1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

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

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

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

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 70.94.422.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

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

(3) Assurance of ~~Discontinuance~~discontinuance. The chair, or his/her authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

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

(5) Emergency ~~Episodes~~episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

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

Appendix C. EFSEC's request to include Chapter 463-78 WAC in the SIP

STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

September 15, 2016

Maia D. Bellon, Director,
Washington Department of Ecology

Subject: Request to Ecology Concerning EFSEC's Regulation of Pollution Sources in Washington State Implementation Plan

Dear Maia Bellon,

The Energy Facility Site Evaluation Council (EFSEC) requests Ecology submit portions of our agency rule Chapter 463-78 WAC to the Environmental Protection Agency (EPA) to include in the Washington State Implementation Plan (SIP). EFSEC's regulations include portions of Ecology's Chapter 173-400 WAC, which EFSEC has adopted by reference.

EPA's approval of EFSEC's' rule into the SIP will allow EFSEC to implement a SIP approved Prevention of Significant Deterioration (PSD) permitting program. EPA's approval will expedite EFSEC's issuance of PSD permits than under its current partial delegation agreement. EFSEC also requests Ecology include in the SIP approval request EPA transfer regulatory authority. This would cover existing PSD permits that were issued to EFSEC regulated facilities by EPA, or EPA and EFSEC under PSD program delegation agreements, since August, 1977.

EFSEC is authorized by Chapters 80.50 and 70.94 Revised Code of Washington (RCW) to implement a statewide air quality program for certain types of energy facilities in Washington. EFSEC has adopted several revisions to its General and Operating Permit Regulations for Air Pollution Sources (Chapter 463-78 WAC) since it was approved in the 1996 Washington SIP. As these revisions were not submitted to EPA, EFSEC's rules are not consistent with the rules in the SIP.

EFSEC proposes to update rules in the SIP to match our current rules. In 2015, EFSEC revised its Chapter 463-78 WAC to:

- Align our rules with the current Ecology regulations.
- Allow Ecology to complete actions on infrastructure SIPs for the attainment of NAAQS.
- Acquire either a SIP-approved PSD program or a full PSD program delegation.

Maia D. Bellon, Director,
Washington State Department of Ecology

EFSEC met the requirements of Administrative Procedure Act, Chapter 34.05 RCW, throughout the process of updating its Chapter 463-78 WAC. EFSEC aligned its rule with Ecology's rule through adopting by reference relevant provisions in Ecology's General Regulations for Air Pollution Sources (Chapter 173-400 WAC) as it existed on December 29, 2012. EPA had already approved this version of Chapter 173-400 WAC in the Washington SIP for Ecology's jurisdiction.

EFSEC has the authority to recover the entire cost of processing permit applications and monitoring compliance services for EFSEC permitted facilities. These resources are used to fund Ecology and local air pollution control agency permitting and compliance services.

EFSEC has worked closely with Ecology's Air Quality Program and EPA Region 10 to prepare the attached SIP revision document. A copy of this SIP submittal request letter, including the attachment, is copied to Stu Clark, Air Quality Program Manager

Thank you for your assistance in this matter. If you have any questions, please contact Jim LaSpina at jlaspina@utc.wa.gov or (360) 664-1362, or Alan Newman at Alan.Newman@ecy.wa.gov or 360-407-6810.

Sincerely,

Stephen Posner
EFSEC Manager

cc: Stu Clark, Ecology, with attachments

Alan Newman, AQP - Ecology

Jim LaSpina, EFSEC

Debebe Dererie, Ecology

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To: Hunt, Jeff[Hunt.Jeff@epa.gov]
Cc: Hulse-Moyer, Laurie (ECY)[lahu461@ECY.WA.GOV]
From: Dererie, Debebe (ECY)
Sent: Mon 9/12/2016 11:45:55 PM
Subject: EFSEC's SIP submittal doc
Draft_EFSEC SIP Revision Document_ Sep 12 2016.docx

Hi Jeff,

I wish and hope you are well.

We are close to open the public comment period (Sep 22 - Nov 8) for EFSEC and SWCAA SIP. We are submitting the EFSEC SIP document to the outreach team so that they post it on our website for public review.

I would like to request you review the attached EFSEC's SIP document.

Thank you,

Debebe Dererie,

Air Quality Planner, EP3,

Program Development Section,

Air Quality Program

360-407-7558 debebe.dererie@ECY.WA.GOV

DEPARTMENT OF
ECOLOGY
State of Washington

State Implementation Plan (SIP) Revision

Including Revised EFSEC's Chapter 463-78 Washington Administrative Code (WAC)

Rule SIP Revision

September 2016
Public Review Draft

Publication and Contact Information

This report is available on the Department of Ecology's website at
https://fortress.wa.gov/ecy/publications/SummaryPages/xxxxxxx.html

For more information contact:

Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-6800

Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Accommodation Requests:
To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-6800 or visit http://www.ecy.wa.gov/accessibility.html. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

State Implementation Plan (SIP) Revision

Including EFSEC's Revised Chapter 463-78 WAC

Rule SIP Revision

Air Quality Program
Washington State Department of Ecology
Olympia, Washington

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Acronyms and Abbreviations

CAA	Federal Clean Air Act
Ecology	Washington State Department of Ecology
EFSEC	Energy Facility Site Evaluation Council
EPA	U.S. Environmental Protection Agency
FIP	Federal Implementation Plan
LCAA	Local Clean Air Agency
NAAQS	National Ambient Air Quality Standards
NSPS	New Source Performance Standards
NSR	New Source Review
ORCAA	Olympic Region Clean Air Agency
PSD	Prevention of Significant Deterioration
RCW	Revised Code of Washington
SIP	State Implementation Plan
SWCAA	Southwest Clean Air Agency
WAC	Washington Administrative Act

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Executive Summary

The federal Clean Air Act (CAA) authorizes the Environmental Protection Agency (EPA) to adopt National Ambient Air Quality Standards (NAAQS) to protect the public health and welfare. The Act requires states to adopt and submit to EPA their state implementation plans (SIPs) to attain and maintain the latest national air quality standards and relevant federal rules, after reasonable notice and public hearing. State and local agency regulations which EPA approves into SIPs are federally enforceable. SIP revisions are to update EPA approved state rules and programs.

Federal and state regulations authorize the Energy Facilities Site Evaluation Council (EFSEC) to implement an air quality permitting program for certain energy facilities in Washington. This SIP revision requests that EPA incorporate revisions of the EFSEC's General and Operating Permit Regulations for Air Pollution Sources (Chapters 463-78 WAC) into the Washington's SIP to replace outdated provisions in Chapter 463-39 WAC. EFSEC updated its Chapters 463-78 WAC on July 27, 2015, with the goal of getting a SIP-approved major New Sources Review (NSR) permitting program. EFSEC has adopted by reference Ecology's Chapter 173-400 WAC as it existed on December 29, 2012, into WAC 463-78-005(1). EPA approved that regulation into the Washington's SIP applicable in Ecology's jurisdiction. Thus, Ecology expects EPA to approve it into the SIP applicable sources under EFSEC's jurisdiction.

Currently, EFSEC implements a Prevention of Significant Deterioration (PSD) program through partial delegation of authority given by EPA under a Federal Implementation Plan (FIP) that applies in the absence of approved SIP. Partial delegation requires EPA's final decision on each permit application, after EFSEC reviews the permit application. The PSD permitting program is to prevent significant deterioration of air quality from new large industrial sources of air pollution to be located in areas that meet the federal air quality standards.

State law (Chapter 80.50 RCW) authorizes EFSEC to monitor compliance and recover the entire cost of processing permit applications. EFSEC maintains the staff resources to implement its air quality program through the ongoing agreements and contracts with Washington State Department of Ecology (Ecology), Olympic Region Clean Air Agency (ORCAA) and Southwest Clean Air Agency (SWCAA).

EPA's approval of this SIP revision will allow EFSEC to have full authority to issue permits to energy facilities (major and minor sources) under its jurisdiction through the contracts with Ecology and local clean air agencies (LCAAs).. It will enable the agency implement a SIP-approved PSD permitting program instead of a delegated PSD program. This will allow EFSEC to have more control over the contents and timing of permits for these facilities; and that will result in faster permitting than under the current partial delegation agreement. This request also includes transfer of the existing PSD permits issued to energy facilities under EFSEC jurisdiction since August 1977, under terms of a delegation agreement between EPA and EFSEC.

Ecology invites public comment and offers an opportunity to request a hearing on the proposed SIP revision from September 22, 2016 through November 8, 2016. If requested by 5:00 pm October 24, 2016, Ecology will hold a public hearing on the proposed SIP revision at Ecology Headquarters in Lacey and via webinar on November 1, 2016 at 1:00 pm.

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Introduction

Background

The federal Clean Air Act (CAA), under Title I, Part A, section 109, authorizes EPA to adopt national ambient air quality standards (NAAQS) for six criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matters, and sulfur dioxide) to protect public health and welfare,. Title I, Part A, Section 110 requires states to adopt the latest NAAQS and submit state implementation plans (SIP) to attain and maintain the NAAQS in their jurisdictions, after notice and public hearing. The SIP is a comprehensive set of documents that the state must update when federal requirements change and/or when the state decides to change its air pollution control strategies to meet the NAAQS. Washington's SIP is composed of the air quality programs and rules of multiple agencies (Ecology, seven local clean air agencies and the Energy Facilities Site Evaluation Council (EFSEC)) that EPA approves as necessary to attain and maintain compliance with the NAAQS. State and local agency regulations which EPA approves into SIPs are federally enforceable. Ecology, as the Governor's designee, submits to EPA these revisions to the Washington State Implementation Plan (SIP) and requests EPA approval of the revisions to the Washington SIP.

EFSEC updated its General Regulations for Air Pollution Sources (Chapters 463-78 Washington Administrative Code (WAC)) on July 27, 2015. In its rule, EFSEC has adopted by reference Ecology's Chapter 173-400 WAC that was updated on December 29, 2012. EPA has approved this version of Ecology's rule into the SIP applicable in Ecology's jurisdiction. Therefore, Ecology expects EPA to approve the provisions in Chapter 173-400 WAC that EFSEC adopted by reference for EFSEC's air quality program.

Chapters 70.94 and 80.50 Revised Code of Washington (RCW) authorize EFSEC to implement a statewide air quality program for certain energy facilities in Washington State. Based on the version of EFSEC's regulation approved into the SIP and the terms of the current Prevention of Significant Deterioration (PSD) delegation agreement, EFSEC has a partial delegation of the federal PSD program from EPA. PSD permitting applies to new large industrial sources of air pollution to prevent significant deterioration of air quality due to emissions from these sources located in areas that meet the federal air quality standards. The current partial delegation agreement requires EPA to review permit applications, make Best Available Control Technology (BACT) decisions for most air pollutants, draft permits, and co-sign the final permits. The recently revised EFSEC's rule are expected to meet the CAA requirements and federal regulations so EPA can approve them into the Washington SIP. This approval will allow EFSEC implement SIP-approved PSD permitting program.

RCW 70.94 and 80.50 authorize EFSEC to implement its air quality program, including all air quality permitting, for energy facilities specified in chapter 80.50 RCW. RCW 80.50.071 and RCW 80.50.071 authorize EFSEC to recover the entire cost of processing permit applications and monitoring compliance. EFSEC has ongoing agreements and contracts with Washington State Department of Ecology (Ecology) to conduct new source reviews, provide technical services in rulemaking and develop state implementation plan submittals, applicable to sources under EFSEC's jurisdiction. EFSEC contracts with the Olympic Region Clean Air Agency (ORCAA) and Southwest Clean Air Agency (SWCAA) to develop Air Operating Permits, and monitor compliance for sources regulated by EFSEC and located in their respective jurisdictions.

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Scope and Purpose of SIP Revision

Ecology requests EPA to approve portions of EFSEC's revised Chapter 463-78 WAC in the Washington SIP applicable to EFSEC sources. EFSEC updated Chapter 463-78 WAC on July 27, 2015 to be consistent with Ecology's and federal rules, in order to receive EPA's approval to implement a SIP-approved PSD permitting program. Thus, the purposes of this proposed SIP revision are:

- To replace the portions of EFSEC's Chapters 463-39 WAC in the current Washington SIP with the current provisions in Chapter 463-78 that EFSEC updated in July 27, 2015.
- For EFSEC to have a SIP approved major and minor source new source review permitting program (as required under Title I parts C and D of the CAA) for energy facilities under EFSEC jurisdiction.

Public Involvement

Ecology invites public comment and offers an opportunity to request a hearing on the proposed SIP revision. Ecology will accept comment on this SIP revision from September 22, 2016 through November 8, 2016. Ecology will hold a public hearing on November 1, 2016 to receive comments on the proposed SIP revisions, if requested by October 24, 2016.

What Ecology would like EPA to do?

Ecology requests EPA to approve the portions of revised Chapter 463-78 WAC (updated in July 27, 2015) included in this submittal and replace the provisions of Chapter 463-39 WAC (updated in 1995) that are currently in the Washington SIP applicable to sources under EFSEC.

Specifically, Ecology requests EPA to take the following actions:

- Approve the proposed portions of the revised Chapter 463-78 WAC in the Washington SIP applicable to sources under EFSEC jurisdiction;
- Remove the outdated provisions from the Washington SIP applicable to sources under EFSEC jurisdiction;
- Approve EFSEC's major source, minor source and nonattainment permitting program into the SIP.

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Proposed Revision to Washington State Implementation Plan

Energy Facilities Site Evaluation Council's (EFSEC's) General and Operating Permit Regulation for Air Pollution Sources (Chapter 463-39 WAC) was last approved by EPA as part of the SIP in 1996. This EPA approved version of EFSEC rule was adopted on August 21, 1995. Since then, EFSEC replaced Chapter 463-39 WAC with Chapter 463-78 WAC. This replacement regulation has not been submitted to EPA for inclusion in the SIP.

This SIP revision requests EPA to include portions of the current Chapter 463-78 WAC (last revised on 7/27/15) in the Washington SIP applicable to the sources under EFSEC's jurisdiction. As part of its Chapter 463-78 WAC, EFSEC adopted by reference portions of Ecology's Chapter 173-400 WAC as it existed on December 29, 2012, with some exceptions. These exceptions are mainly provisions that are not applicable to sources under EFSEC authority or procedures where EFSEC has different requirements under Chapter 80.50 RCW to be met. This chapter provides the details of which parts of the Chapter 463-39 WAC, as it appears in the SIP, need to be updated with parts of Chapter 463-78 WAC. It also briefly explains the reasons for removing, adding or revising the provisions in the Washington SIP applicable to sources under EFSEC's jurisdiction.

In order to show the proposed changes in the SIP, this section is organized into two parts. The first part provides details of the provisions of Chapter 463-78 WAC that Ecology proposes to include or not include in the Washington SIP. All the sections of EFSEC's Chapter 463-78 WAC are analyzed to explain why they are proposed to be included or excluded from the Washington SIP applicable in EFSEC's jurisdiction to meet the NAAQS and other requirements of CAA section 110.

The second part provides details on which provisions of Ecology's Chapter 173-400 WAC, EFSEC adopted by reference in WAC 463-78-005, are to be included in the Washington SIP applicable to sources under EFSEC's jurisdiction. EPA has analyzed and approved the current Ecology's Chapter 173-400 WAC and included the required provisions in the SIP applicable in Ecology's jurisdiction. Therefore, the second part is limited to identifying provisions of Chapter 173-400 WAC that have been revised since EPA approved Chapter 463-39 WAC in 1996. Ecology is not proposing to submit provisions that are not required to attain and maintain the NAAQS under title I of the federal Clean Air Act.

Summary of Changes in EFSEC's Chapter 463-78 WAC

- **WAC 463-78-005 Adoption by reference.**
  - This section has five subsections that adopted by reference different Ecology rules. Only the first section, WAC 463-78-005(1), adopts by reference Ecology's Chapter 173-400 WAC and relates to the attainment and maintenance of the NAAQS. The SIP includes WAC 463-39-005(1). Ecology proposes to include only the amendments to WAC 463-78-005(1) in the SIP. The specific provisions of Chapter 173-400 WAC that EFSEC has adopted by reference in this section that Ecology proposes to include in the SIP are explained in the next part of this chapter.
- **WAC 463-78-010 Purpose.**

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- This section is in the SIP. The main change in this section is that EFSEC replaced the reference to 40 C.F.R Part 52 by Chapter 70.94 RCW, as EFSEC's state authority stems from Chapters 80.50 and 70.94. Ecology proposes to include the amendments to this section in the SIP.

- **WAC 463-78-020 Applicability**.
  - This section is in the SIP. There is no substantive change. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-030 Additional definitions.**
  - The main change in this section is that it clarifies EFSEC as the implementing agency for the adopted regulations. Ecology proposes to include this clarification in the SIP, except the definitions in WAC 173-401-200 and WAC 173-406-101.
- **WAC 463-78-070 Radioactive emissions.**
  - This section is not currently in the SIP. Ecology does not propose to include it in the SIP, as the provisions are not related to protecting and attaining the NAAQS or meeting other requirements of Title I section 110 of the federal Clean Air Act.
- **WAC 463-78-90 Permit application form.**
  - This section is related to the Title V permitting program and is not in the SIP. Ecology does not propose to include it in the SIP as this provision is not related to the requirements of Title I of the federal Clean Air Act.
- **WAC 463-78-095 Permit issuance.**
  - The main changes in this section is that it now includes additional provisions requiring compliance with the EPA approved SIP before permit issuance, and provisions required to handle changes in permit and site certification agreement. This section addresses the effective date of permits when issued to new facilities and modifications. This section is in the SIP, and Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-100 Registration.**
  - This section is currently in the SIP. Ecology proposes removing this section from the SIP because the provision is not linked to EFSEC's new source review (NSR) provisions, and it does not set requirements for pollution control. WAC 173-400-105, which is adopted by reference, establishes the SIP requirement to submit emissions information.
- **WAC 463-78-105 Fees and costs.**
  - This section is not in the SIP. Ecology do not propose to include it in the SIP as the provision is not related to the attainment and maintenance of the NAAQS, or other requirements of section 110 of the federal Clean Air Act.
- **WAC 463-78-115 Standards of performance for new stationary sources (NSPS).**
  - This section adopts by reference federal regulation 40 CFR Part 60 that regulate criteria and other non-hazardous air pollutants. The section is not in the SIP. Ecology does not propose to include it in the SIP as the provisions are not eligible for SIP approval.
- **WAC 463-78-120 Monitoring and special report.**

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- This section is in the SIP. The only changes in the provisions of this section is that EFSEC re-codified the rule and changed the capitalization in the section title. Ecology proposes to include this section in the SIP to replace WAC 463-39-120 that was re-coded without change in the rule language.

- **WAC 463-78-135 Criminal penalties.**
  - This section is in the SIP. EFSEC has amended this section to reference the criminal penalties in RCW 70.94.422. Ecology proposes to include the amendments to this section in the SIP.
- **WAC 463-78-140 Appeals procedure.**
  - This section includes four new sub-sections (1) to (4) setting new detailed appealing requirements for each of the different permits issued pursuant to WAC 173-400-110, WAC 173-400-730, WAC 173-401, and WAC 173-406. This section is not in the SIP. Ecology proposes to include subsections (1) and (2) of this section in the SIP because the provisions in WAC 173-400-110 (new source review (NSR) for sources and portable sources) and WAC 173-400-730 (Prevention of Significant Deterioration application processing procedures) are related to the attainment and maintenance of NAAQS.
- **WAC 463-78-170 Conflict of interest.**
  - This section is in the SIP. There are no substantive changes. The council is comprised solely of members that represent the public interest, according to RCW 80.50.30; therefore EFSEC meets the CAA requirements of Title I section 128. Ecology proposes to include this section in the SIP.
- **WAC 463-78-230 Regulatory actions.**
  - This section is in the SIP. There are no substantive changes. Ecology proposes to include the amendments to this section in the SIP.

Changes in Chapter 173-400 WAC adopted by reference in WAC 463-78-005

As part of its General and Permitting Regulation for Air Pollution Sources (Chapter 463-78 WAC), EFSEC adopted by reference portions of Ecology's General Regulation for Air Pollution Sources (Chapter 173-400 WAC) as it existed on December 29, 2012, with some exceptions. These exceptions were made mainly because the provisions are outside of EFSEC's authority (examples: designation of areas into class I, II and III), or EFSEC has an alternative authority under RCW 80.50 (examples: appeals, council members, fees, enforcement actions, etc.), or do not apply to the sources in EFSEC's jurisdiction (example: retrofit requirements for visibility protection).

EPA recently analyzed and approved into the SIP provisions in Ecology's Chapter 173-400 WAC (updated on 12/29/12) as applicable in Ecology's jurisdiction. That proposed SIP revision request is available at: https://fortress.wa.gov/ecy/publications/SummaryPages/1302039.html. It can also be found using its publication no. 13-02-039 at: https://fortress.wa.gov/ecy/publications/UIPages/Home.aspx.

EPA's approval of Ecology's request was published in federal register in three parts: General

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Regulations for Air Pollution Sources on FR 59653 of October 3, 2014; Nonattainment New Source Review on FR 66291 of November 7, 2014; and Prevention of Significant Deterioration and Visibility Protection 23721 of April 29, 2015. Summary of these EPA approved provisions is available in table 2 of 40 CFR 52.2470(c) table 2 and (e) table 1 at http://www.ecfr.gov/cgi-bin/text-idx?SID=998e9092d5d7235b7b96b36baef5e9f1&mc=true&node=se40.5.52_12470&rgn=div8.

This section identifies provisions of Ecology's Chapter 173-400 WAC that EFSEC adopted by reference and that differ from provisions in the EPA approved Chapter 463-39 WAC from 1996. Ecology, proposes including the following changes in WAC 463-78-005 in the Washington SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-030: Definitions.**
  - This section is in the SIP. The section expands the number of definitions from 81 to 97. The section also amends some of the 81 original definitions. All the definitions, except definition # 91 (toxic air pollutant), are in the SIP applicable in Ecology's jurisdiction. Ecology proposes to EPA to include the amendments in this section into the SIP applicable to sources under EFSEC's jurisdiction, **except WAC 173-400-030 (91)**.
- **WAC 173-400-036: Relocation of portable sources. (New section)**
  - EFSEC newly adopted this section by reference. EPA approved it to be in the SIP applicable in Ecology's jurisdiction. Ecology proposes to include it in the SIP applicable to sources under EFSEC's jurisdiction.
- **WAC 173-400-040: General standards for maximum emissions**.
  - This section is in the SIP applicable to sources under EFSEC's jurisdiction. Ecology revised the section. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction with some exceptions. EFSEC has adopted Ecology's revised section 040. Ecology proposes EPA include the amended section into the SIP, **except WAC 173-400-040(2)(c) and (d), (3), (5), and the second paragraph in (7).** These exceptions are the same in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-050: Emission standards for combustion and incineration units.**
  - This section is in the SIP, and Ecology has revised it. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction except WAC 173-400-040(2), (4), and (5). Therefore, Ecology proposes EPA include the amendments in this section into the SIP, **except WAC 173-400-050(2), (4) and (5).** These exceptions are the same as in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-060: Emission standards for general process units.**
  - This section is in the SIP, and Ecology has revised it. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Ecology proposes EPA include the amendments in this section into the SIP.
- **WAC 173-400-070: Emission standards for certain source categories.**
  - EFSEC newly adopted this section; specifically sub-section (5) and (7). EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction except

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WAC 173-400-070(7) and (8). Ecology proposes to include **only WAC 173-400-070(5) (Catalytic Cracking Unit)** in the SIP.

- **WAC 173-400-081: Startup and shutdown.**
  - This section is in the SIP, and Ecology has revised it with no substantive change. Ecology proposes EPA include the revision to this section into the SIP.
- **WAC 173-400-091: Voluntary limits on emissions.**
  - This section is in the SIP; and Ecology has revised it with no substantive change. Ecology proposes EPA include the revision to this section into the SIP.
- **WAC 173-400-105: Records, monitoring, and reporting.**
  - This section is in the SIP, and Ecology has revised it. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore Ecology proposes to EPA to include the amendments in this section into the SIP.
- **WAC 173-400-107: Excess emissions.**
  - This section is in the SIP, and it has not been revised. Ecology proposes not to submit any changes to this section in the SIP, until Ecology has revised WAC 173-400-107 to 109 according to the startup, shutdown and malfunction (SSM) SIP call by EPA. Then, EFSEC can adopt Ecology's revised sections by reference; and another SIP submittal can be proposed to include these sections in the SIP applicable to EFSEC jurisdiction.
- **WAC 173-400-110: New Source Review (NSR) for sources and portable sources.**
  - This section is in the SIP; and has been substantially revised since that time. The main change is that this section sets the criteria (de minimus emission unit, activity and annual emission threshold) for the applicability of the NSR permitting program. The criteria for NSR permitting program was changed from requiring minor NSR permitting of sources on a list to requiring minor NSR for all new or modified sources unless they are listed as de minimis sources and not subject to permitting.
  - EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction with some exceptions**.** Therefore, Ecology proposes EPA include the amendments in this section into the SIP for sources under EFSEC's jurisdiction, except 173-400-110(1)(c)(ii)(C), 173-400-110(1)(e) and 173-400-110(2)(d). and all references to "toxic air pollutants" and "Chapter 173-460". Specifically, these phrases are in WAC 173-400-100(4)(b)(vi), 173-400-110(4)(e)(iii), 173-400-110(4)(f)(i), 173-400-110(4)(h)(xviii), 173-400-110(4)(h)(xxxiii) to (xxxvi), 173-400-110(4)(h)(xl) the second sentence, and the last row of the table in 173-400-110(5)(b) regarding exemption levels for toxic air pollutants. All these exceptions are the same as in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-111: Processing notice of construction applications for sources, stationary sources and portable sources.**
  - This section did not exist when EPA approved Chapter 463-39 WAC. It was part of section 110 which was approved by EPA in the SIP.EFSEC adopted by reference this section in its Chapter 463-78 WAC, except the **last six words in**

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(5)(a) and sub-sections (6) and (9). These exceptions refers to: 1) "pollution control hearings board", which does not hear appeals of permits issued to sources under EFSEC's jurisdiction; and 2) Chapter 173-455 WAC, which is Ecology's version of WAC 463-78-105.

  - EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, except **111(3)(h), (9), and the part that says "and 173-460-040" in 111(8)(a)(v)**, because these exceptions refer to "toxic air pollutant" or "Chapter 173-460", which are not related to criteria pollutants. Therefore, Ecology proposes EPA include this section in the SIP applicable to sources under EFSEC's jurisdiction, except (3)(h); (5)(a), the last six words; (6); (9); **and the part of 173-400-111(8)(a)(v) that says "and 173-460-040,".**

- **WAC 173-400-112: Requirements for new sources in nonattainment areas.**
  - This section is in the SIP, and has been substantially revised to remove the nonattainment NSR permitting requirements to new sections 800-850. EPA has approved the revised section as part of the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include the amendments in this section into the SIP.
- **WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.**
  - This section is in the SIP, and has been revised. EPA has approved the revised section to be in the SIP applicable in Ecology's jurisdiction, except the second sentence in subsection 113(3). Ecology proposes EPA include the amendments in this section into the SIP, **except the second sentence in 173-400-113(3).** This exception is the same in the SIP applicable in Ecology's jurisdiction.
- **WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.**
  - EFSEC adopted by reference this section in its Chapter 463-39 WAC (equivalent to the current Chapter 463-78 WAC); but it is not in the SIP. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** proposes EPA include this section in the SIP applicable to sources under EFSEC's jurisdiction.
- **WAC 173-400-116: Increment protection.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Thus, Ecology proposes EPA include this section into the SIP applicable to sources under EFSEC jurisdiction.
- **WAC 173-400-117: Special protection requirements for federal Class I areas.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC; and Ecology proposes EPA include this section into the SIP.
- **WAC 173-400-120: Bubble rules.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it is not in the SIP applicable to sources under EFSEC's

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jurisdiction. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** propose EPA include this section in the SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-131: Issuance of emission reduction credits.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it is not in the SIP applicable to sources under EFSEC's jurisdiction. Ecology has revised the section and EPA has approved the revised section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include this revised section into the SIP applicable to sources under EFSEC jurisdiction.
- **WAC 173-400-136: Use of emission reduction credits.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP. Ecology has revised the section and EPA has approved the revised section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes to EPA to include this section into the SIP applicable in EFSEC jurisdiction.
- **WAC 173-400-151 Retrofit Requirements for Visibility Protection.**
  - This section is in the EPA approved SIP applicable to sources under EFSEC jurisdiction. Ecology has revised the section since this SIP approval, but EFSEC did not adopt the revision into its rule. This section is to establish Best Available Retrofit Technology (BART) for existing facilities (operational after August 7, 1962 and in existence in August 7, 1977) that meets specific criteria. Ecology and EFSEC have confirmed that there are no sources under EFSEC jurisdiction that meet the statutory definition of existing facility for BART. Therefore, Ecology proposes EPA **remove** this section from EFSEC's portion of the SIP.
- **WAC 173-400-161: Compliance schedules.**
  - This section is in the SIP; and Ecology has not revised the section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.
- **WAC 173-400-171: Public involvement.**
  - This section is in the SIP; and has been revised substantially since approval into the SIP. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction, with some exceptions. Ecology proposes EPA include the revised section into the SIP, **except for WAC 173-400-171(12) and the part of WAC 173-400-171(3)(b) that says** "any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC". These exceptions are the same as for Ecology's jurisdiction and are related to "toxic air pollutants" or special requirements that are applicable to Ecology only.
- **WAC 173-400-175: Public information.**
  - EFSEC newly adopted this section by reference in its Chapter 463-78 WAC. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include this section into the SIP applicable to

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sources under EFSEC jurisdiction.

- **WAC 173-400-180: Variance.**
  - This section was adopted by reference in the Chapter 463-39 WAC that was effective on 08/21/95; but it was not in the SIP applicable in EFSEC's jurisdiction. Ecology didn't request EPA to include this section in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology **does not** propose EPA include this section in the SIP applicable in EFSEC's jurisdiction.
- **WAC 173-400-190: Requirements for nonattainment areas.**
  - This section is in the SIP; and Ecology has not revised the section. Therefore, Ecology does not propose to re-submit EFSEC's adoption of this section in this SIP revision.
- **WAC 173-400-200: Creditable stack height and dispersion techniques.**
  - This section is in the SIP, and has been revised by Ecology. EPA has approved this section to be in the SIP applicable in Ecology's jurisdiction. Therefore, Ecology proposes EPA include this section in the SIP applicable to sources under EFSEC jurisdiction.
- **WAC 173-400-205: Adjustment for atmospheric conditions.**
  - This section is in the SIP; and Ecology has not revised this section. Therefore, Ecology does not propose to re-submit this section in this SIP revision.

Provisions for Permitting of Major Stationary Sources and Major Modifications to Major Stationary Sources:

EFSEC adopted by reference the following sections from Ecology's Chapter 173-400 WAC to provide permitting criteria and processes for new major stationary sources and major modifications at existing stationary sources under its jurisdiction that are located in attainment or unclassifiable areas, or in nonattainment areas. When these sources are located in areas in attainment or unclassifiable with the National Ambient Air Quality Standards (NAAQS), EFSEC will be using WAC 173-400-700 through WAC 173-400-750 as its program to prevent significant deterioration of ambient air quality so that the NAAQS are not violated. Similarly, when such sources are located in non-attainment areas with NAAQS, EFSEC will be regulating them according to WAC 173-400-800 through WAC 173-400-860 for the pollutants and precursors for which the area is classified nonattainment.

There are specific Ecology PSD program provisions that EFSEC did not adopt by reference, or provisions that were adopted by reference with some modification are the following:

- WAC 173-400-720(4)(a)(vi): This provision is adopted by reference except that the effective date of incorporating by reference the federal regulation 40 CFR 52.21 was changed to May 1, 2015. This change was made to incorporate EPA's action to resolve court decisions to vacate provisions related the significant impact levels (SILs) of PM2.5 (40 CFR 52.21(k)(2)) and significant monitoring concentrations (SMCs) of PM2.5 (40CFR 52.21(i)(5)(i)).
- WAC 173-400-730 (4): Appeals. This provision was not adopted by reference because the sources under EFSEC's jurisdiction are not required to appeal to "pollution control hearing board", as stated in this provision.

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- WAC 173-400-750(2), second sentence: This provision was not adopted by reference because the fee schedule in Chapter 173-455 WAC is not applicable to sources under EFSEC's jurisdiction.

EPA has approved the following sections of Chapter 173-400 WAC to be in the SIP applicable in Ecology's jurisdiction with some exceptions that are identified below. Therefore, Ecology proposes EPA include all these sections, other than the change and exceptions explained in the previous paragraph, in the SIP applicable to sources under EFSEC's jurisdiction.

- **WAC 173-400-700: Review of major stationary sources of air pollution.**
- **WAC 173-400-710: Definitions.**
- **WAC 173-400-720: Prevention of significant deterioration (PSD).** The exceptions that Ecology does not propose EPA include in the SIP are 173-400-720(4)(a)(i through iv); 173-400-720(4)(b)(iii)(C); and 173-400-720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v).
- **WAC 173-400-730: Prevention of significant deterioration application processing procedures, except sub-section (4).**
- **WAC 173-400-740: PSD permitting public involvement requirements.**
- **WAC 173-400-750: Revisions to PSD permits, except the second sentence in subsection (2).**
- **WAC 173-400-800: Major stationary source and major modification in a nonattainment area.**
- **WAC 173-400-810: Major stationary source and major modification definitions.**
- **WAC 173-400-820: Determining if a new stationary source or modification to a stationary source is subject to these requirements.**
- **WAC 173-400-830: Permitting requirements.**
- **WAC 173-400-840: Emission offset requirements.**
- **WAC 173-400-850: Actual emissions plantwide applicability limitation (PAL).**
- **WAC 173-400-860: Public involvement procedures.**

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Appendices

Appendix A. SIP Revision Overview Table – Chapter 463-78 WAC

Appendix B. Strikeout Rule Language in Chapter 463-78 WAC proposed for inclusion in SIP

Appendix C. EFSEC's SIP Submittal Request Letter

Appendix D. Public Involvement

- Appendix D.1. Affidavits of Publications
- Appendix D.2. Listserv message distributed for subscribers
- Appendix D 3. Notice on SIP website
- Appendix D.4. Public Involvement Calendar
- Appendix D.5. Hearing Summary Memo

Appendix A. SIP Revision Overview Table

Table 1. General overview of the status of sections in Chapter 463-78 WAC and SIP submittal.

Sections of Chapter 463-78 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?				This provision is already in the SIP. No revisions.	Not being submitted in the SIP
Section	Section Title		Revise	Remove	New	Unchanged		
005	Adoption by reference. Except		X					
	(2), (3), (4), and (5)							X
010	Purpose.	Revised, in the SIP	X					
020	Applicability.	Revised, in the SIP	X					
030	Additional definitions, except	Revised, in the SIP	X					
	(2) the part that says "173-401-200, 173-406-101"	Revised, not in the SIP						X
070	Radioactive emissions.	Not in the SIP						X
090	Permit application form	Not in the SIP						X
095	Permit issuance.	Revised, in SIP	X					
100	Registration.	Remove from SIP		X				
105	Fees and cost.	Not in the SIP						X
115	Standards of performance for new stationary sources	Not in the SIP						X
120	Monitoring and special report	In the SIP	X					
135	Criminal penalties.	In the SIP	A					
140	Appeals procedure.	Revised, in SIP	A					

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170	Conflict of interest.	In the SIP	A					
230	Regulatory actions.	In the SIP	A					

N.B.: Sections marked X are proposed to be adopted by reference (ABR) by EPA, while those marked A are to be approved, not ABR.

Table 2. General overview of the status of sections in Chapter 173-400 WAC adopted by reference in Chapter 463-78 WAC and SIP submittal.

Sections of Chapter 173-400 WAC Adopted by Reference in 463-78-005 WAC		Status of the Rule Section in the SIP	In this SIP Submittal				Not in this SIP Submittal	
			What is different since the last SIP approval?					
Section	Section Title		Revise	Remove	New	Unchanged	This provision is already in the SIP. No revisions.	Not being submitted in the SIP
030	Definitions, except	Revised, in the SIP	X					
	(91)	New, not in the SIP						X
036	Relocation of portable sources.	New, in the SIP			X			
040	General standards for maximum emissions, except	Revised, in the SIP	X					
	(2)(c) and (d); (3); (5); (7), second paragraph	Revised, not in the SIP						X
050	Emission standards for combustion and incineration units. except	Revised, in the SIP	X					
	(2)	Remove, not in the SIP		X				
	(4), (5)	New, not in the SIP						X
060	Emission standards for general process units.	Revised, in the SIP	X					
070	Emission standards for certain source categories, except:	New, in the SIP			X			

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	(1); (2); (3); (4); (6); (7) and (8)	New, not in the SIP						X
075	Emission standards for sources emitting hazardous air pollutants.	Revised, not in the SIP						X
081	Startup and shutdown.	Revised, in the SIP	X					
091	Voluntary limits on emissions.	Revised, in the SIP	X					
105	Records, monitoring, and reporting.	Revised, in the SIP	X					
107	Excess emissions.	Revised, not in the SIP					X	
110	New source review (NSR) for sources and portable sources, except:	Revised, in the SIP	X					
	(1)(c)(ii)(C); (1)(e); (2)(d); and	Revised, not in the SIP						X
	The following parts of sub-section (4) and (5) that refer to "toxic air pollutants and/or "chapter 173-460 WAC"							
	• (4)(b)(vi) that says, "not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,";	Revised, not in the SIP						X
	• (4)(e)(iii) that says, "where toxic air pollutants as defined in chapter 173-460 WAC are not emitted";	Revised, not in the SIP						X
	• (4)(f)(i) that says, "that are not toxic air pollutants listed in chapter 173-460 WAC";	Revised, not in the SIP						X
	• (4)(h)(xviii) that says, ", to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted";	Revised, not in the SIP						X
	• (4)(h)(xxxiii) that says, "where no toxic air pollutants as listed under chapter 173-460 WAC are emitted";	Revised, not in the SIP						X
	• (4)(h)(xxxiv) that says, ", or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC";	Revised, not in the SIP						X
	• (4)(h)(xxxv) that says, "or ≤ 1% (by weight) toxic air pollutants";	Revised, not in the SIP						X
	• (h)(xxxvi) that says, "or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC";	Revised, not in the SIP						X

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	• (4)(h)(xl) , second sentence;	Revised, not in the SIP						X
	• The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.	Revised, not in the SIP						X
111	Processing notice of construction applications for sources, stationary sources and portable sources.	Revised, in the SIP	X					
	(5)(a)(last six words); (6); and (9)	Not adopted by reference						X
	(3)(h); (8)(a)(v) that says , "and 173-460-040".	Revised, not in the SIP						X
112	Requirements for new sources in nonattainment areas.	Revised, in the SIP	X					
113	Requirements for new sources in attainment or unclassifiable areas.		X					
	Second sentence in (3)	Revised, not in the SIP						X
114	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.	Revised, not in the SIP						X
116	Increment protection.	New, in the SIP			X			
117	Special protection requirements for federal Class I areas.	New, in the SIP			X			
120	Bubble rules.	Revised, out of the SIP						X
131	Issuance of emission reduction credits.	New, in the SIP			X			
136	Use of emission reduction credits.	New, in the SIP			X			
151	Retrofit requirements for visibility protection.	Remove from the SIP		X				
161	Compliance schedules.	Unchanged, in the SIP					X	
171	Public involvement, except	Revised, in the SIP		X				
	(3)(b) that says "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC"; (12)	Revised, out of the SIP						X
175	Public information.	New, in the SIP			X			
180	Variance.	New, not in the SIP						X
190	Requirements for nonattainment areas.	Unchanged, in the SIP					X	
200	Creditable stack height and dispersion techniques.	Revised, in the SIP	X					
205	Adjustment for atmospheric conditions.	Unchanged, in the SIP					X	
700	Review of major stationary sources of air pollution.	New, in the SIP			X			

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710	Definitions.	New, in the SIP			X			
720	Prevention of significant deterioration (PSD), except:	New, in the SIP			X			
	(4)(a)(i) through (iv); (4)(b)(iii)(C);	New, not in the SIP						X
	(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(v). **N.B.:** EFSEC adopted by reference the WAC 173-400-720(4)(a)(vi) as existed on May 1, 2015 for the purpose of incorporating 40 CFR 52.21 that has corrected court vacated provision related to PM2.5 significant impact level (SILs) and significant monitoring concentrations (SMCs) .	New, not in the SIP						X
730	Prevention of significant deterioration application processing procedures, except	New, in the SIP			X			
	(4)	Not adopted by reference						X
740	PSD permitting public involvement requirements.	New, in the SIP			X			
750	Revisions to PSD permits, except:	New, in the SIP			X			
	(2), second sentence	Not adopted by reference						
800	Major stationary source and major modification in a nonattainment area.	New, in the SIP			X			
810	Major stationary source and major modification definitions.	New, in the SIP			X			
820	Determining if a new stationary source or modification to a stationary source is subject to these requirements.	New, in the SIP			X			
830	Permitting requirements.	New, in the SIP			X			
840	Emission offset requirements.	New, in the SIP			X			
850	Actual emissions plantwide applicability limitation (PAL).	New, in the SIP			X			
860	Public involvement procedures.	New, in the SIP			X			

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Appendix B. Strikeout Rule Language of Chapter 463-78 WAC proposed for inclusion in Washington SIP

WAC 463-78 -- GENERAL AND OPERATING PERMIT REGULATIONS FOR AIR POLLUTION SOURCES

WAC 463-39-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-400 WAC, as it existed on December 29, 2012, with the exceptions that (a) WAC 173-400-111 (5)(a) (last six words), (6), (9), and WAC 173-400-720 is adopted except the date in WAC 173-400-720 (4)(a)(vi) is May 1, 2015, and WAC 173-400-730 (4) and 173-400-750(2) by reference, and (b) the terms "ecology," "authority," "director," and "permitting authority" in WAC 173-400-030 shall mean "the energy facility site evaluation council" unless a different meaning is plainly required by the context.

WAC 173-400-030:	Definitions.
WAC 173-400-036:	Relocation of portable sources.
WAC 173-400-040:	General standards for maximum emissions.
WAC 173-400-050:	Emission standards for combustion and incineration units.
WAC 173-400-060:	Emission standards for general process units.
WAC 173-400-070 (5) and (7) only:	Emission standards for certain source categories
WAC 173-400-075:	Emission standards for sources emitting hazardous air pollutants.
WAC 173-400-081:	Startup and shutdown.
WAC 173-400-091:	Voluntary limits on emissions.
WAC 173-400-105:	Records, monitoring and reporting.
WAC 173-400-107:	Excess emissions.
WAC 173-400-110:	New source review (NSR).
WAC 173-400-111:	Processing notice of construction applications for sources, stationary sources and portable sources.
WAC 173-400-112:	Requirements for new sources in nonattainment areas.
WAC 173-400-113:	Requirements for new sources in attainment or unclassifiable areas.
WAC 173-400-114:	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
WAC 173-400-116:	Increment protection.
WAC 173-400-120:	Bubble rules.
WAC 173-400-131:	Issuance of emission reduction credits.
WAC 173-400-136:	Use of emission reduction credits.
WAC 173-400-161:	Compliance schedules.
WAC 173-400-171:	Public involvement.
WAC 173-400-180:	Variance.
WAC 173-400-190:	Requirements for nonattainment areas.
WAC 173-400-200:	Creditable stack height and dispersion techniques.
WAC 173-400-205:	Adjustment for atmospheric conditions.
WAC-173-400-700:	Review of major stationary sources of air pollution.

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WAC-173-400-710:	Definitions.
WAC-173-400-720:	Prevention of significant deterioration (PSD).
WAC-173-400-730:	Prevention of significant deterioration application processing procedures.
WAC-173-400-740:	PSD permitting public involvement requirements.
WAC-173-400-750:	Revisions to PSD permits.
WAC-173-400-800:	Major stationary source and major modification in a nonattainment area.
WAC-173-400-810:	Major stationary source and major modification definitions.
WAC-173-400-820:	Determining if a new source or modification to a stationary source is subject to these requirements.
WAC-173-400-830:	Permitting requirements.
WAC-173-400-840:	Emission offset requirements.
WAC-173-400-850:	Actual emissions plantwide applicability limitation (PAL).
WAC-173-400-860:	Public Involvement procedures.

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

WAC 463-78-020 Applicability. The provisions of this chapter shall apply statewide for those sources under the jurisdiction of the energy facility site evaluation council. The provisions of this chapter shall not apply to those facilities incorporated by reference in chapters 173-400, 173-401, 173-406, and 173-460 WAC which are not under the jurisdiction of the energy facility site evaluation council.

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

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

WAC 463-78-095 Permit Issuance. (1) Permit(s) issued for air emissions in accordance

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with chapters 463-78 WAC shall become an attachment(s) to a site certification agreement.

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

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

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

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide. . . .	5.0
Nitrogen oxides. . . .	2.0
Sulfur dioxide. . . .	2.0
Particulate Matter (PM). . . .	1.25
Fine Particulate (PM10). . . .	0.75
Volatile Organic Compounds (VOC). . . .	2.0
Lead. . . .	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

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(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within ninety days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15 of each year. The reregistration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(a) Name of the source and the nature of the business;

(b) Street address, telephone number, facsimile number, and e-mail address of the source;

(c) Name, mailing address, telephone number, facsimile number and e-mail address of the owner or operator;

(d) Name, mailing address, telephone number, facsimile number and e-mail address of the local individual responsible for compliance with this rule;

(e) Name, mailing address, telephone number, facsimile number and e-mail address of the individual authorized to receive requests for data and information;

(f) A description of the production processes and a related flow chart;

(g) Identification of emission units and air pollutant generating activities;

(h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;

(i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;

(j) Type and quantity of raw materials used on a daily and annual basis;

(k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM10 emissions, sulfur dioxide (SO2), nitrogen oxides (NOX), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H2S), total reduced sulfur (TRS), and reduced sulfur compounds;

(l) Calculations used to determine the estimated emissions in (k) of this subsection;

(m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and

(n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the

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absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(a) Source-specific emission tests;

(b) Mass balance calculations;

(c) Published, verifiable emission factors that are applicable to the source;

(d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than ninety days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ninety days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(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.

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WAC 463-78-120 Monitoring and special report. The department of ecology or its designee shall conduct a surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants in accordance with the requirements of chapters 173-400, 173-401, 173-406, and 173-460 WAC.

As a part of this program, the director of the department of ecology or an authorized representative of the director may recommend that any source under the jurisdiction of the council conduct stack and/or ambient air monitoring, and to report the results to the council and department of ecology.

WAC 463-78-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW 70.94.422.

WAC 463-78-140 Appeals procedure. (1) Appeal of permits issued pursuant to WAC 173-400-110.

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) Appeal of operating permits issued pursuant to chapter 173-401 WAC.

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site

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certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) 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 federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council 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.

(4) Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

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(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4)(c).

WAC 463-78-170 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

WAC 463-78-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

(1) Enforcement actions—Notice of violation. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that

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necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing information to the council pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431(1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

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

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

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

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 70.94.422.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

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

(3) Assurance of discontinuance. The chair, or his/her authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

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

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order.

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

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

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Appendix C. EFSEC's request to include portions of Chapter 463-78 WAC in the Washington SIP

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