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Division II  
State of Washington  
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No. 51451-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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BROOKS MANUFACTURING CO.

Appellant,

vs.

NORTHWEST CLEAN AIR AGENCY

Respondent.

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APPELLANT'S REPLY BRIEF

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## I. INTRODUCTION

Viewing and understanding the proverbial “forest” through the “trees” is vital to understanding the motives behind the Northwest Clean Air Agency’s arguments in this case. Those motives skew each of its arguments in a manner which carefully twists words as a means to justify one end: terminating Brooks’s continued operation of its wood fired boiler under the 1989 permit by requiring it to engage in a RACT analysis of its entire system.

The Air Agency admits that the Washington Clean Air Act allows “a source to continue operating indefinitely under the conditions of its most recent [permit] – until the owner or operator of the source proposes to make a change to the source” (Resp. Br. at 21). The issue in this case is whether the work done on Brooks’s Baghouse qualifies as such a “change.” The Air Agency acknowledges that it is using RCW 70.94.153 to circumvent this vested right, and require Brooks to engage in a RACT<sup>1</sup> review which is likely to impose more stringent regulations on Brooks: “what constitutes RACT changes over time...thus, as a result of the RACT review, [Brooks] may be required to meet a more stringent emission limit,

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<sup>1</sup> “Reasonably Available Control Technology.”

which in turn forces [Brooks] to install different emission controls from what it originally intended.” (Resp. Br. at 12).

The Air Agency has overstepped its statutory authority. Considering the entire statutory scheme of the Washington Clean Air Act, the plain language of RCW 70.94.153 did not require Brooks to file a Notice of Construction for the work it did in 2014. The Northwest Clean Air Agency’s Notice of Violation and Corrective Action Order were issued without authority and must be reversed.

## **II. REPLY ARGUMENT**

The Air Agency is unilaterally attempting to expand the powers delegated to it by the legislature, without legislative approval. It does this by crafting a homemade “definition” of the undefined phrase: “emission control technology” found in RCW 70.94.153. The Air Agency argues that the phrase “is used in different ways in different parts of the Washington Clean Air Act.” (Resp. Br. at 15). It attempts to expand its authority by arguing that “replace” really does not mean what it says, but instead, means “substantially replace,” or “partially replace,” or some other derivative which is less than “replace.” Throughout, the Air Agency insists it should be given deference in these strained interpretations.

The language of RCW 70.94.153 is what governs this case. Brooks did not “replace or substantially alter emission control technology” when it repaired the Baghouse in 2014.

**A. Agency Deference is Unwarranted.**

Regardless of whether the statutory language at issue is ambiguous, the Air Agency’s arguments effectively require this Court to give deference to the Air Agency’s opinions on what RCW 70.94.153 means. (Resp. Br. at 8-9). While Brooks previously touched on this issue (Opening Br. at 23-24), rebuttal is warranted.

The Air Agency agrees that this Court need not afford it deference if the statute, rule, or regulation being construed is unambiguous. (Resp. Br. at 8); *accord, Dot Foods, Inc. v. Dep’t of Revenue, State of Wash.*, 141 Wn. App. 874, 884-85, 173 P.3d 314 (2007), *rev’d sub nom, Dot Foods, Inc. v. Washington Dep’t of Revenue*, 166 Wn.2d 912, 215 P.3d 185 (2009). It even states the language at issue here is unambiguous. But it goes on to advance a “plain meaning” of “emission control technology” and other key words (such as “replace”) which, for all intents and purposes, required the PCHB to give deference to its interpretation.

Thus, while it is unclear from the express findings and conclusions whether the PCHB formally gave deference to the Agency’s interpretation

of RCW 70.94.153, it is undeniable that the PCHB in fact did, and wrongly so. Regulation 300.13, WAC 173-400-114(1), and the Agency's testimony on the record should not be given any deference by this Court when construing and applying RCW 70.94.153.

A legislative rule will be given deference, whereas an interpretive rule will not. *See generally, Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d 430, 120 P.3d 46 (2005). The Air Agency argues that NWCAA Reg. 300.13(a) is legislative, because a penalty can be imposed. However, the Supreme Court unequivocally held that a rule that can be enforced by imposing a penalty or consequence for a violation can still be an interpretive rule if it mimics the language of the underlying statute. *Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d at 446–47. Here, NWCAA Reg. 300.13(a) mimics RCW 70.94.153 word-for-word and merely adds the clarifying language regarding “routine maintenance, repair or similar parts replacement.”

Because NWCAA Reg. 300.13(a) is exactly the same as WAC 173-400-114(1), the legislative history of WAC 173-400-114(1) is instructive in demonstrating both are interpretive rules, not legislative.

The first version of the newly proposed WAC 173-400-114(1) was published in 1992, in WSR 92-18-096.<sup>2</sup> It was proposed by the Department of Ecology (“Ecology”) to “incorporate the new state and federal requirements into general regulation for sources of air pollution” and the new rule “does not change existing rules.” WSR 92-18-096 at pg. 51. The rule as originally proposed did not even include the language regarding “routine maintenance, repair or similar parts replacement.” WSR 92-18-096 at pg. 65.

About six months later, in WSR 93-05-048,<sup>3</sup> Ecology issued a “Supplemental Notice to WSR 92-18-096” stating that the new rules were intended to mimic new federal laws and are revisions “aimed at simplifying or clarifying the rule language.” WSR 93-05-048 at pg. 37. The comments to the new rules also state that “Those amendments incorporating new or revised federal requirements will have no effects beyond those that would have occurred in their absence.” *Id.* Significantly, this comment explains that the rules do not impose requirements other than the statutes would—indicating that they are interpretive, not legislative.

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<sup>2</sup> Attached as Appendix A (in pertinent part; highlights added).

<sup>3</sup> Attached as Appendix B (in pertinent part; highlights added).

WAC 173-400-114(1) was formally adopted a year after first being proposed, in September 1993, in WSR 93-18-007.<sup>4</sup> The phrase “routine maintenance, repair or similar parts replacement” (which is the only language of the WAC and NWCAA Reg. 300.13(a) that varies from RCW 70.94.153) first appeared in this final published (and adopted) version of WAC 173-400-114(1).

This legislative history documents that WAC 173-400-114(1) was adopted as an interpretive rule, which mimics and clarifies the already-adopted amendments to the Washington Clean Air Act. The “true difference” between a legislative rule and an interpretive rule is “its effect on the courts.” *Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d at 446. Interpretive rules are not binding on the courts at all. *Id.* at 447. The Air Agency’s interpretation of RCW 70.94.153—whether found in a rule or in its testimony—is not binding on this Court and should be given no deference.

**B. The Brooks Baghouse is Not “Emission Control Technology.”**

The Air Agency argues that if this Court applies its interpretation of “emission control technology,” RCW 70.94.153 is a “compliment” to the purpose of the Clean Air Act. To the contrary, as pointed out below,

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<sup>4</sup> Attached as Appendix C (in pertinent part; highlights added).

the Air Agency's strained interpretation causes confusion and conflict within the statutory scheme. This conflict begins with the crux of the Agency's argument: that "emission control technology" "is used in different ways in different parts of the Washington Clean Air Act." (Resp. Br. at 15).

The Air Agency boldly argues that the "fundamental flaw" in Brooks's argument is its failure to recognize that the definition of "emission control technology" differs depending on where the words appear in the statute. (Resp. Br. at 15). To the contrary, the "fundamental flaw" is not within Brooks's arguments, but rather, within the Air Agency's own analysis. The plain language of the statute does not support the chameleon-like interpretation of "emission control technology" that the Air Agency proposes, and the Agency is not to be afforded any deference in this regard.

Brooks's position in this appeal construes RCW 70.94.153 in accord with the entire Clean Air Act and does not require giving the phrase "emission control technology" multiple meanings depending on where it appears. The use of the phrase "control technology" is repeated throughout the definitional sections of the Clean Air Act and application of the single definition advanced by Brooks works. "BACT" is defined as

“an emission limitation” . . . that is “achievable” by “*application of production processes and available methods, systems and techniques...*” RCW 70.94.030(6) (emphasis added). Similar uses of the word “technology” are found in other definitions, as pointed out in Brooks’s opening brief and acknowledged by the Board in its decision.

Applying Brooks’s interpretation makes sense and works throughout the use of the phrase in all contexts found in the Act. Under this definition, the “emission control technology” at Brooks is the “production processes and available methods, systems and techniques” of how Brooks limits emissions. This is consistent with how the phrase is used in the definitions of both BACT and RACT, in that they both dictate that “control technology” should be *applied* to determine what control devices or equipment should be used. In other words, the concept of “a” baghouse is control technology. “The” Baghouse itself—the actual baghouse at Brooks—is control equipment or a control device, which is based on the “emission control technology” used at Brooks.

To avoid this common sense plain language interpretation, the Board and the Air Agency focused on one word: “installed” as found in RCW 70.94.153. They both reason that use of this word by the legislature in the same paragraph as “control technology” is proof that “control

technology” was intended to include control devices and equipment, and not just “processes and methods.” This, again, is another illogical stretch, when the phrase “control technology” is found in so many other contexts where that interpretation is strained.

Use of the word “installed” is actually harmonious with the plain language meaning of “control technology” that Brooks advances: “A” baghouse is “control technology.” It can be installed by constructing and connecting “the” Baghouse to the exhaust system. Control technology can be “installed” in many other real-world situations when defined as a process, method, or technique. For example—anti-lock brakes. The technology of anti-lock brakes and the anti-lock brake system are installed when an ABS system is placed in a car. “An” ABS system is the technology. But, “the” ABS system – the specific system installed in the car—is the is the equipment, or the device, not the technology.

Brooks’s interpretation of “emission control technology” also makes sense under the Federal Clean Air Act. As admitted by the Air Agency, under the Federal Act, a “modification” only arises in a situation where emissions are *increased*. Under the federal system, even a “modification” may not be subject to review when “routine maintenance”

is what gave rise to it. Here, as all parties agree, *there is no increase in air emissions* as a result of the work performed by Brooks.

After the 2014 work on the Baghouse, the emissions at Brooks remained the same and within the parameters of the 1989 permit; Brooks merely repaired an existing and permitted system that has been properly operating since it was installed.

“Emission control technology” refers to a science, a method, study or a process. It does not include “emission control equipment” or “emission control devices” and thus, Brooks did not replace or substantially alter “emission control technology” when it performed work on its Baghouse in 2014.

**C. The Brooks Baghouse was Not “Replaced.”**

The Air Agency focuses its response on the evidentiary challenge Brooks raised to Finding of Fact No. 30, as argued in the Opening Brief at 32-33. While it is true that the “substantial evidence” standard for challenging a Finding of Fact is high, this issue also requires this Court to interpret and apply the word “replace” to the facts, regardless of whether Finding No. 30 is upheld. Thus, Brooks also briefed and challenged the PCHB’s conclusion of law finding that Brooks “replaced” its baghouse

under RCW 70.94.153. (CR 923; COL 20). (Opening Br. at 31-32).  
Review of this issue is both factual and legal.

The error of law standard under RCW 34.05.570(3)(c) and (d) require this Court engage in a *de novo* review of the meaning and application of the word “replace.” While Brooks stands by its arguments that Finding of Fact No. 30 is not supported by substantial evidence, even if it is upheld, it (along with the evidence in the record) does not provide sufficient factual support to uphold Conclusion of Law No. 20. Replacing less than all the parts of the Baghouse with the exact same parts does not meet the statutory standard of “replace or substantially alter.”

Using Brooks’s definition, the emission control technology was not replaced (or substantially altered) because “a” baghouse is the emission control technology, and it is still being used. Since “the” baghouse that is currently installed at Brooks is a 121 bag pulse jet baghouse, of the same exact dimensions and functions as originally permitted, the emission control technology was not “substantially altered.”

Because “substantially altered” is not at issue here, the parties have not focused on it much. But applying the Air Agency’s logic to the phrase “substantially altered” equally to “replacement” makes no logical sense. Under Brooks’s definition, “replacement” of emission control technology

as-applied to Brooks's ash baghouse would occur only if "the" baghouse were replaced with something like an electrostatic precipitator, or some other different type of process or technique used to clean the exhaust from the boiler. Likewise, a "substantial alteration" of the emission control technology applied at Brooks would occur if "the" baghouse was changed from a 121 bag pulse jet to a 150 bag pulse jet, or if the current system of one baghouse were changed to two smaller baghouses.

Under the Air Agency's interpretation, "substantially altered" is meaningless. Virtually no circumstance exists where a "substantial alteration" of control technology would occur which would also not constitute a replacement of control technology. The only way the Air Agency's proposed definition works is if it has multiple different meanings within RCW 70.94.153.

However, even if this Court is using the Air Agency's definition of "emission control technology", the emission control technology in this case was not "replaced." No weight or deference should be given to the opinions of employees of the Air Agency or its other regional cohorts about the "important" parts of a baghouse versus those that are allegedly not. This is a fiction created by the Air Agency because it had to concede that all the parts of the baghouse were in fact not replaced. Most

importantly, the Air Agency conceded that the parts that were not replaced (e.g., those that were re-used) were in fact *required* for the Baghouse to operate properly. (RP 105 (T. Mahar testimony); RP 308 (M. Wolfe testimony)). If the Baghouse would not work properly without the parts that were re-used, it cannot be said to have been “replaced.”

The Baghouse was not replaced, and the Air Agency concedes it was not substantially altered. It was rebuilt; it was repaired; it was maintained. After the work was complete, it fit back onto the same original legs, using the same original magnehelic and pulse jet equipment. The same tube sheet and bags were placed back into it. It was connected to the pre-existing complex ducting and equipment from the boiler, to the multiclone, ID fan, and economizer. None of that equipment needed to be moved or altered in any way to re-connect the Baghouse after the work was done. Thus, even if *the* Baghouse (as opposed to *a* baghouse) falls within the meaning of “emission control technology,” it was neither replaced nor substantially altered under RCW 70.94.153.

**D. “Routine maintenance, repair or similar parts replacement”  
Need Not be Addressed in This Appeal.**

The Agency does not want this Court to focus on the fact that the “limitation” in NWCAA Reg. 300.13(a) leaves a gap in the statutory language. Just because an act does not fall within the meaning of “routine

maintenance, repair, or similar parts replacement” does not *ipso facto* mean that such an act fits within the definition of “replace or substantially alter.” The phrases are not mutually exclusive.

This Court need not decide the full scope and definition of “routine maintenance, repair, or similar parts replacement.” Instead, this Court may simply find that the work Brooks did on its Baghouse in 2014, does not meet the threshold of “replace or substantially alter” in RCW 70.94.153. In doing so, it need not address whether the work falls within the “routine maintenance, repair, or similar parts replacement” language.

**E. The 2014 Work Constituted Routine Maintenance, Repair or Similar Parts Replacement.**

But as outlined in its Opening Brief at 34-36, at the hearing on the merits, and on appeal below, if this issue is reached, Brooks conclusively established that the scope of work performed in 2014 constitutes routine maintenance, repair or similar parts replacement for baghouses connected to a wood fired boiler. Brooks’s expert witnesses, Mark Wolfe and Dave Sharpe, both testified to this, without any rebuttal. They testified that like for like replacement with stainless steel was common and routine under the plain meaning of the word. This alone should have led to the Board entering a Conclusion of Law that the work was exempt from RCW 70.94.153.

The Air Agency counters this uncontroverted testimony by arguing “While it may be common in an industry to replace the rusted out parts of a baghouse, at some point the changes are extensive enough to cross the line and becomes replacement of the control technology.” (Resp. Br. at 21). The PCHB concurred with the Air Agency when it reached Conclusion of Law No. 11:

If, as advocated by Brooks, an entity can replace, at one time, almost all of the parts including the house of a baghouse under the regulatory language of ‘similar parts replacement’ without filing a notice of construction application, the regulatory exception would be inconsistent with the statute.”

(COL11, CR919).

The purported “inconsistency” between the regulation and the statute is a problem that exists only if this Court adheres to the illogical interpretations of “emission control technology” and “replace or substantially alter” that the PCHB and Air Agency used. This purported “inconsistency” does not exist if the plain language of the statute is honored as Brooks advocates.

The phrase “routine maintenance, repair or similar parts replacement” fits perfectly within the statutory scheme when the plain language definition Brooks advocates is used; it instructs all who read it that the listed activities are absolutely excluded from RCW 70.94.153’s

“replace or substantially alter” language. That is, replacing the worn out parts of a baghouse with new version of the same exact parts would absolutely not constitute an act considered to “replace or substantially alter” the emission control technology. This interpretation makes even more sense when Regulation 300.13(a) and WAC 173-400-114(1) are viewed as the *interpretive* rules that they are.

**F. The Four Factor Test for “Routine.”**

The PCHB used a four-factor test to determine whether an act is “routine” under the federal regulations and applied it to this case. This “test” was based on Dan Mahar’s testimony at the hearing on the merits and admission he did not even engage in this analysis until much later. The Air Agency’s arguments in their Response Brief and continued reliance on these factors are intellectually dishonest, because they misinform this Court as to the true purpose of the factors.

The Air Agency states that the EPA “identified these factors for use in answering the same question posted by NWCAA Regulation 300.13: how to differentiate between routine and non-routine work performed on emission control equipment.” (Resp. Br. at 11). This statement could not be farther from the truth. The federal regulations relied upon by the EPA in arriving at these factors relate specifically to an

exception to the federal equivalent of new source review after a “modification” has taken place. By definition, a “modification” under the federal system only exists when there is an increase in emissions. (Opening Br. at 36-37, *citing*, CFR Title 40, Part 60, Section 60.14). Thus, the “routine maintenance” exception as used in the federal context serves to exempt from agency review a change in equipment which actually *increases* emissions, so long as the work done was “routine.”

The Air Agency dismisses this important distinction, as if an increase in emissions without agency review were somehow insignificant. To the contrary, under Washington’s Clean Air Act and NWCAA regulations, increasing emissions is massively significant. Any action which results in an increase in emissions requires new source review and requires a BACT analysis, which the Air Agency agrees is very a stringent standard. (Resp. Br. at 11-12, *citing* RCW 70.94.153, RCW 70.94.152(10), and RCW 70.94.030(6)).

The four-part test and EPA direction on what is “routine maintenance” are wholly inappropriate to use here. The phrase “routine maintenance, repair or similar parts replacement” is only applied under the Washington Clean Air Act when there is no increase in emissions. Thus, unlike in the federal system where “routine maintenance” could legally

cause an increase in pollution, here, under NWCAA Reg. 300.13(1) and the statute and WAC, “routine maintenance, repair or similar parts replacement” would never exempt from review an act which increases pollution. Under this circumstance, defining “routine” by what is a common occurrence in the industry is in fact, appropriate, contrary to the Air Agency’s argument. (Resp. Br. at 20).

**G. The Agency’s Motives Skew Its Interpretations.**

The Air Agency now concedes that the Washington Clean Air Act does not contain authority for it to review permit conditions based upon the passage of time. This statutory scheme was a public policy decision imposed by the legislature (Opening Br. at 40) which the Air Agency seeks to effectively repeal without legislative action. The Air Agency succinctly points out that it believes “If emission control *methods* have moved on, RCW 70.94.153 allows air agencies to require that emission controls be updated rather than perpetuating outdated equipment that emits more pollution than the controls that have become reasonably available.” (Resp. Br. at 13; emphasis added). The Air Agency has twisted RCW 70.94.153 into a vehicle for changing the conditions of permits which the statutory scheme as adopted does not allow.

The Clean Air Act allows a company like Brooks to re-build a baghouse to ensure it works as was intended. If the legislature had intended on allowing the Air Agency to review emissions limits on permits because “control methods have moved on,” then it would have said so. Instead, the legislature adopted RCW 70.94.153, which authorizes the Air Agency to require such a review only when “emission control technology” is replaced or substantially altered.

A stated purpose of the Washington Clean Air Act is to “promote the economic ... development of the state.” RCW 70.94.011. Allowing the Air Agencies to use RCW 70.94.153 as argued here by the Air Agency is contrary to this and does not foster other stated purposes of the Act. Requiring a business such as Brooks to go through a full NOC application, which would include SEPA, public comment, and a RACT analysis, which the Air Agency could claim would require a complete change of the emission control equipment and system, is not what the statutory language intended.

While Brooks’s interpretation of “emission control technology” and “replace” as found in RCW 70.94.153 may be “narrow” in the eyes of the regulators who wield massive power over industry, it is only as broad as necessary to foster the purposes of the Act, as determined by the

Legislature. Adhering to the PCHB and Air Agency's interpretations in this case fosters unpredictability, with no identifiable regulatory standards, and effectively puts any maintenance work at risk of requiring an NOC. The Agency's only solution to this uncertainty: Brooks can "always call" the Air Agency and ask, or otherwise rely on "common sense factors" to navigate the regulatory scheme. (Sup. Ct. RP at pg 28, ln. 16-18). This solution only fosters further arbitrary applications of the law by the Air Agency and is contradictory to the Clean Air Act.

**H. Inconsistent Interpretations by the Air Agency are Highly Relevant.**

The Air Agency completely ignores the relevance of its past interpretations of RCW 70.94.153, while at the same time demanding total deference by this Court to its interpretation here. The historical examples of these inconsistent applications of RCW 70.94.153 and Regulation 300.13(a) were outlined in Brooks's Opening Brief (pgs. 16-20) are probative on two levels. Most importantly, these examples put on full display the arbitrary and capricious manner in which the Air Agency interprets RCW 70.94.153 in this case. Second, these examples explain why Brooks did the work without obtaining an NOC.

In 2001, Brooks replaced a system of four multiclones with a baghouse. Even under Brooks's definition, this was a replacement or

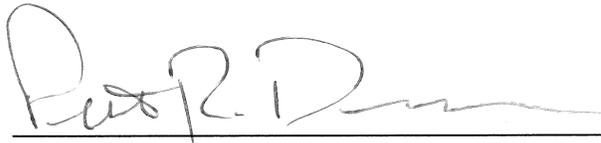
substantial alteration of emission control technology. Despite this, the Air Agency was inconsistent and unsure whether an NOC was even required. Ultimately, the Air Agency required an NOC after the fact, but it was years after the new baghouse had been in operation and an afterthought. In 2002, Brooks did not merely “reconfigure” their de-mister as alleged below by the Air Agency; they changed the fundamental process of how the apparatus worked to remove chemicals from the air from the retort. The equipment that was put back into place after the work looked nothing like what was there before. The Air Agency required no NOC, indicating the work was “routine maintenance” and repair. (Opening Br. at 19, *citing*, RP 51).

The Air Agency argues that its past interpretations are irrelevant in evaluating the interpretations advanced here, and that those advanced here are consistent with the EPA and federal regulations. The Northwest Clean Air Agency has failed to cite any change in any Washington statute or regulation justifying its change in how it interprets and applies RCW 70.94.153, particularly as to this case with Brooks. Certainty, predictability, consistency, and most of all, a fair reading of the statute, must prevail in this case. The PCHB and Superior Court should be reversed.

### **III. CONCLUSION**

For the reasons stated herein, and in Appellant's Opening Brief, this Court should REVERSE the Superior Court and PCHB, and remand the matter for entry of a Dismissal with Prejudice of the Notice of Violation and Corrective Action Order issued by the Northwest Clean Air Agency.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June 2018.

A handwritten signature in black ink, appearing to read "Peter R. Dworkin", written over a horizontal line.

Peter R. Dworkin, WSBA#30394  
Attorney for Appellant

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No. 51451-6-II

COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

Brooks Manufacturing Co.,

Appellant,

v.

Northwest Clean Air Agency,

Respondent.

DECLARATION OF  
SERVICE

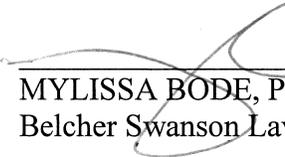
On said day below, I sent via email and regular mail a true and correct copy of Appellant's Opening Brief in the Court of Appeals Cause No. 74863-7 to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to my best knowledge and belief.

DATED June 6, 2018 at Bellingham, Washington.

  
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Belcher Swanson Law Firm, PLLC

**BELCHER SWANSON LAW FIRM PLLC**

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**Superior Court Case Number:** 16-2-01367-5

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# APPENDIX A

WSR 92-18-096

August 31, 1992  
 Paula O'Connor  
 Chairman

September 1, 1992  
 Fred Olson  
 Deputy Director

AMENDATORY SECTION (Amending Order 85, Resolution No. 94, filed 10/28/81)

**WAC 314-20-015 Licensed brewers—Retail sales of beer on brewery premises—Beer served without charge on premises—Class H restaurant operation.** (1) A licensed brewer holding a proper retail license, pursuant to chapter 66.24 RCW, may sell beer of its own production at retail on the brewery premises: *Provided*, That beer so sold at retail shall be subject to the tax and penalty for late payment, if any, as imposed by RCW 66.24.290, and to reporting and bonding requirements as prescribed in RCW 66.28.010 and WAC 314-20-010.

(2) In selling beer at retail, as provided in subsection (1) of this regulation, a brewer shall conduct such operation in conformity with the statutes and regulations applicable to holders of such beer retailers' licenses. The brewer shall maintain records of such retail operation separate from other brewery records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, beer of a licensed brewer's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the licensed brewer.

(4) A licensed brewer or a lessee of a licensed brewer operating a Class H restaurant, licensed pursuant to RCW 66.28.010, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such Class H licenses.

(5) A brewer may serve beer of its own production without charge as samples on the brewery premises, as authorized by RCW 66.28.040. Such beer served without charge as provided herein is not subject to the tax imposed by RCW 66.24.290. A brewery is required to obtain the appropriate retail license to serve beer, wine, or spirits on the brewery premises that is not of its own production.

(6) No retail license or fee is required for the holder of a brewer's license to serve beer of its own production as samples without charge on the brewery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such brewer shall obtain approval of the proposed service area and facilities from the board. Such brewer shall maintain a separate record of all beer so served.

**WSR 92-18-095**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
 [Order 91-55—Filed September 2, 1992, 10:39 a.m.]

Continuance of WSR 92-09-035.

Title of Rule: Amendments to WAC 173-433-100, 173-433-110, and 173-433-170, Solid fuel burning devices.

Purpose: Continue adoption date from September 1, 1992, to October 20, 1992.

Date of Intended Adoption: October 20, 1992.

**WSR 92-18-096**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 92-34—Filed September 2, 1992, 10:42 a.m.]

Original Notice.

Title of Rule: Chapter 173-400 WAC, General regulations for air pollution sources.

Purpose: This rule is being amended to update the new source review provisions to incorporate changes in the state and federal Clean Air Acts; establish criteria and procedures for excusing unavoidable excess emissions from penalties; and revise several sections to accommodate the state's upcoming operating permit rule.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 173-400 WAC, General regulations for air pollution sources.

Summary: Amendments to Clean Air Washington and the federal Clean Air Act require ecology to update the general regulations for air pollution. This rule amends the following sections of chapter 173-400 WAC, WAC 173-400-030 Definitions; WAC 173-400-040 General standards for maximum emissions; WAC 173-400-070 Emission standards for certain source categories; WAC 173-400-075 Emission standards for source emitting hazardous air pollutants; WAC 173-400-100 Registration; WAC 173-400-105 Records, monitoring and reporting; WAC 173-400-110 New source review; WAC 173-400-115 Standards of performance for new sources; WAC 173-400-120 Bubbles 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 173-400-171 Public involvement; WAC 173-400-180 Variance; WAC 173-400-230 Regulatory actions; and WAC 173-400-250 Appeals. This rule also establishes the following new sections, WAC 173-400-080 Startup and shutdown; WAC 173-400-107 Excess emissions; WAC 173-400-112 Requirements for new sources in nonattainment; WAC 173-400-113 Requirements for new sources in attainment; and **WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.**

Reasons Supporting Proposal: Timely adoption of this update is a vital element of the state implementation plan (SIP) revision package ecology is required to submit to EPA by November 15, 1992. Adoption of the SIP revision by EPA will make this rule "federally enforceable." Failure to adopt this rule may subject the state to federal sanctions including the imposition of stricter and much more costly controls on industrial air pollution sources and the loss of highway construction grants.

Name of Agency Personnel Responsible for Drafting: Alan Butler, 3190 160th Avenue SE, Bellevue, WA 98008-5452, (206) 649-7103; Implementation and Enforcement:

Joseph Williams, P.O. Box 47600, Olympia, WA 98504-7600, (206) 459-6255.

Name of Proponent: Washington State Department of Ecology, governmental.

Rule is necessary because of federal law, the following sections of 1990 Federal Clean Air Act Amendments: 112, 172, 173, 181, 182, 186, 187, 188, and 189.

Explanation of Rule, its Purpose, and Anticipated Effects: **This rule will incorporate the new state and federal requirements into the general regulation for sources of air pollution.** In 1991, the Washington Clean Air Act was amended to reflect changes in the federal Clean Air Act. These changes lower the minimum size requirement for sources to undergo the new source review process in certain nonattainment areas. The new minimum weighs the severity of the area's amendments also establish procedures and criteria for excusing unavoidable excess emissions from penalty. The majority of these excess emissions are a result of fluctuations in a facility's startup and shutdown procedures. The burden of proving that the excess emission was truly unavoidable lies with the source. The changes also require that revisions be made in the state rule to accommodate the upcoming operating permit program.

**Proposal does not change existing rules.**

**This rule is designed to meet the requirements mandated by chapter 70.94 RCW that were not included in the rule or that needed further clarification.**

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

REGULATORY FAIRNESS ACT  
COMPLIANCE DOCUMENT  
STATE ECONOMIC POLICY ACT  
COMPLIANCE DOCUMENT  
GENERAL REGULATIONS FOR  
AIR POLLUTION SOURCES

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that proposed rules be evaluated for disproportionate impacts upon small versus large businesses and that any such impacts be mitigated if feasible and legally possible. The proposed amendments to chapter 173-400 WAC have been examined, and a determination that a complete small business economic impact statement is not required has been made.

Changes to the existing rule fall generally within two groups; provisions needed to conform to new or revised federal rules or laws that have arisen since the state rule was last amended, and editorial revisions aimed at simplifying or clarifying rule language. As such, none of the proposed changes will be likely to have a significant impact upon businesses in Washington. Those amendments incorporating new or revised federal requirements will have no effects beyond those that would have occurred in their absence.

Chapter 43.21H RCW, the State Economic Policy Act, requires that economic values be considered in addition to environmental, social and public health and safety values in rule making. In view of the conclusion, described above, that the proposed rule amendments will have no effects beyond those already existing under previous rule or those which would flow from federal rule or law provisions in any case, the overall economic impacts of the proposed action are deemed negligible.

Hearing Location: On October 13, at 7 p.m., in Seattle, Ecology's N.W. Regional Office, 3190 160th S.E., Bellevue, Conference Room A, 649-7000; on October 14, at 7 p.m., in Vancouver, Fire District 5, Station #8, 17408 S.E. 15th Street, 892-4323; on October 14, at 7 p.m., in Yakima, Ecology's Central Regional Office, 3601 West Washington, River Room, 575-4173; and on October 15, at 7 p.m., in Bellingham, Fairhaven Public Library, 1117 12th Street, Fireplace Room, 676-6985, and in Spokane, Spokane County Health Center, West 1101 College, Auditorium, 324-1500.

Submit Written Comments to: Dave Bradley, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, by October 22, 1992.

Date of Intended Adoption: January 15, 1993.

September 1, 1992

Fred Olson

Deputy Director

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-030 Definitions.** (~~The following definitions will apply unless a different meaning is clearly required by context:~~

(1) ~~"Actual emissions" relating to a particular date means the average rate, in weight per unit time of emitted pollutant during the immediately preceding two year period of normal operation. Ecology or the authority may allow or require the use of an alternative time period if it is more representative of normal operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or burned during the selected time period.~~

~~Ecology or the authority may presume that unit specific allowable emissions, which incorporate limits on hours of operation or production rate, are equivalent to the actual emissions of the unit.~~

~~(2) "Administrator" shall refer to ecology or the authority unless specifically defined otherwise.~~

~~(3)) Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:~~

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

~~((4))~~ (3) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

~~((5))~~ (4) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

~~((6))~~ (5) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is ~~(limited in production rate or hours of operation, or both, by an applicable federally enforceable regulatory order) and the most stringent of (a), (b), or (c) of this subsection. Physical and process limitations must be considered in determining maximum rated capacity.~~

~~(a) Standards as set forth in 40 CFR Part 60 and Part 61, if applicable to the source; or~~

~~(b) The applicable state implementation plan emission limitation; or~~

~~(c) The emission rate specified by an applicable federally enforceable regulatory order)) subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:~~

~~(a) The applicable standards as set forth in 40 CFR Part 60 or 61;~~

~~(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or~~

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

~~((7))~~ (6) "Ambient air" means the surrounding outside air.

~~((8))~~ (7) "Ambient air quality standard" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(8) "Ancillary" means, for the purposes of defining "source," "related."

(9) "Authority" means ~~((an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. (This may be delegated by ecology.))~~ any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(10) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to this regulation which would be emitted from any proposed new or modified source which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to meet the requirement of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results. The ~~((requirement of RCW 70.94.152 that a new source will provide))~~ term "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.

(11) "Best available retrofit technology (BART)" means any emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by ~~((source))~~ an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required. ~~((Such standards shall, to the degree possible, set forth the emission reductions achieved and provide for compliance by prescribing appropriate conditions in a regulatory order.))~~

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

(13) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two digit code) as described in the

Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

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

~~((14))~~ (15) "Class I area" means any ~~((federal, state, or Indian land which is classified Class I))~~ area designated pursuant to §§ 162 or 164 of the Federal Clean Air Act Amendments as a Class I area. The following areas are the Class I areas in Washington state:

Alpine Lakes Wilderness;  
Glacier Peak Wilderness;  
Goat Rocks Wilderness;  
Mount Rainier National Park;  
North Cascades National Park;  
Olympic National Park;  
Pasayten Wilderness;  
Spokane Indian Reservation.

~~((15))~~ (16) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

~~((16))~~ (17) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

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

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

~~((17))~~ (18) "Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

~~((18))~~ (19) "Director" means director of the Washington state department of ecology or duly authorized representative.

~~((19))~~ (20) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

~~((20))~~ (21) "Ecology" means the Washington state department of ecology.

~~((21))~~ (22) "Emission" means a direct or indirect release of air contaminants into the ambient air.

~~((22))~~ (23) "Emission reduction credit (ERC)" means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

~~((23))~~ (24) "Emission standard" means ~~((an allowable rate of emissions, level of opacity, or prescribing equipment or operating conditions as set forth in a regulation or regulatory order to assure continuous emission control))~~ a limitation on the release of an air contaminant or multiple contaminants into the ambient air.

~~((24))~~ (25) "Emissions unit" means any part of a source which emits or would have the potential to emit any pollutant subject to regulation.

~~((25))~~ (26) "Excess emissions" means an emission or emissions that violate any applicable emission standard. Ecology or the authority may excuse excess emissions from penalty if the owner or operator of the source meets the requirements of WAC 173-400-107.

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

~~((26))~~ (28) "Federal Clean Air Act (FCAA)" means the Federal Clean Air Act, also known as Public Law 88-206, Stat. 392, December 17, 1963, 42 U.S.C. & 401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(29) "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

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

~~((27))~~ (31) "Fugitive dust" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

~~((28))~~ (32) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~((29))~~ (33) "General process unit" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((30))~~ (34) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

~~((31))~~ (35) "Incinerator" means a furnace used primarily for the thermal destruction of waste.

~~((32))~~ (36) "In operation" means engaged in activity related to the primary design function of the source.

~~((33))~~ (37) "Integral vista" means a view perceived from within ~~((the))~~ a mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the Class I area.

~~((34))~~ "Land manager" means ~~the secretary of the federal department or head of the state department or Indian governing body with authority over the Class I area.~~

~~(35))~~ (38) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source ~~((, whichever is more stringent)).~~

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

~~((36))~~ (39) "Mandatory Class I federal area" means any area defined in 40 CFR Part 81, Subpart D as amended through July 1, 1992. The mandatory Class I federal areas in Washington state are as follows:

Alpine Lakes Wilderness;  
Glacier Peak Wilderness;  
Goat Rocks Wilderness;  
Mount Rainier National Park;  
North Cascades National Park;  
Olympic National Park;  
Pasayten Wilderness.

(40) "Major modification" means ~~((any physical change or change in the method of operation as defined in WAC 173-400-141.~~

(37) "Major source" means: ~~Any source which emits or has the potential to emit one hundred tons per year or more of any pollutant regulated by state or federal law)) any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the act. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation shall not include:~~

~~(a) Routine maintenance, repair, and replacement;~~

~~(b) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;~~

~~(c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;~~

~~(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~(e) Use of an alternative fuel or raw material by a stationary source which:~~

~~(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or § 51.166; or~~

~~(ii) The source is approved to use under any permit issued under regulations approved pursuant to this section;~~

~~(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;~~

~~(g) Any change in ownership at a stationary source.~~

(41) "Major stationary source" means:

~~(a) Any stationary source (or group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person or persons under common control) which:~~

~~(i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the state or Federal Clean Air Act;~~

~~(ii) Is located in a "marginal" or "moderate" ozone nonattainment area and which emits or has the potential to~~

~~emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen;~~

~~(iii) Is located in a "serious" carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels and which emits or has the potential to emit fifty tons per year or more of carbon monoxide; or~~

~~(iv) Is located in a "serious" particulate matter (PM<sub>10</sub>) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM<sub>10</sub> emissions.~~

~~(b) Any physical change that would occur at a stationary source not qualifying under (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself;~~

~~(c) A major stationary source that is major for VOCs or NOx shall be considered major for ozone;~~

~~(d) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:~~

~~(i) Coal cleaning plants (with thermal dryers);~~

~~(ii) Kraft pulp mills;~~

~~(iii) Portland cements plants;~~

~~(iv) Primary zinc smelters;~~

~~(v) Iron and steel mills;~~

~~(vi) Primary aluminum ore reduction plants;~~

~~(vii) Primary copper smelters;~~

~~(viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;~~

~~(ix) Hydrofluoric, sulfuric, or nitric acid plants;~~

~~(x) Petroleum refineries;~~

~~(xi) Lime plants;~~

~~(xii) Phosphate rock processing plants;~~

~~(xiii) Coke oven batteries;~~

~~(xiv) Sulfur recovery plants;~~

~~(xv) Carbon black plants (furnace process);~~

~~(xvi) Primary lead smelters;~~

~~(xvii) Fuel conversion plants;~~

~~(xviii) Sintering plants;~~

~~(xix) Secondary metal production plants;~~

~~(xx) Chemical process plants;~~

~~(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;~~

~~(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;~~

~~(xxiii) Taconite ore processing plants;~~

~~(xxiv) Glass fiber processing plants;~~

~~(xxv) Charcoal production plants;~~

~~(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and~~

~~(xxvii) Any other stationary source category which, as of August 7, 1980, was being regulated under sections 111 or 112 of the Federal Clean Air Act.~~

~~((38))~~ (42) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((39))~~ (43) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

~~((40))~~ (44) "Modification" means any physical change in, or change in the method of operation of, a source that increases the amount of any air contaminant emitted by such sources or that results in the emissions of any air contaminant not previously emitted.

(45) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61.

~~((41))~~ (46) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

~~((42))~~ (47) "Net emissions increase" means ~~((any emissions increase as defined in WAC 173-400-141));~~

(a) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit, in which case the credit shall expire ten years after the date of original issue of the ERC.

(ii) Ecology or the authority has not relied on it in issuing an order of approval for the source under regulations approved pursuant to 40 CFR 51.165 which permit is in effect when the increase in emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(iv) Ecology or the authority has not relied on it in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

~~((43))~~ (48) "New source" means ~~((a source which commences construction after the effective date of this chapter. Any addition to, enlargement, modification, replacement, restart after a period of five years of~~

~~nonoperation, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emission standards have been established shall be construed as construction or installation or establishment of a new source));~~

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

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

~~((44))~~ (49) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.

~~((45))~~ (50) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.

~~((46))~~ (51) "Notice of construction application" means a written application to permit construction of a new source ~~((or)),~~ modification of an existing source or replacement or substantial alteration of control technology at an existing stationary source.

~~((47))~~ (52) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((48))~~ (53) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered open burning.

~~((49))~~ (54) "Order of approval" means a regulatory order issued by ecology or the authority to approve the notice of construction application for a proposed new source or modification, after review of all information received including public comment as required under WAC 173-400-110 and 173-400-141.

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

~~((50))~~ (56) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

~~((51))~~ (57) "Parts per million (ppm)" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

~~((52))~~ (58) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((53))~~ (59) "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((54))~~ (60) "PM-10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part ~~((60))~~ 51 or by a test method specified in the Washington state implementation plan.

~~((55))~~ (61) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

~~((56))~~ (62) "Prevention of significant deterioration (PSD)" means the program set forth in WAC 173-400-141. Ecology has adopted the federal PSD program contained in 40 CFR 52.21 with some changes, which are described in WAC 173-400-141.

~~((57))~~ (63) "Projected width" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((58))~~ (64) "Reasonably attributable" means attributable by visual observation or any other technique the state deems appropriate.

~~((59))~~ (65) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source category shall be adopted only after notice and opportunity for comment are afforded.

~~(RACT requirements for any source or source category may be adopted as an order or regulation after public involvement per WAC 173-400-171.~~

(60)) (66) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which approves a notice of construction application and/or limits emissions and/or establishes other air pollution control requirements.

~~((61))~~ (67) "Significant ~~((emission))~~" means a rate of emission equal to or greater than any one of the following rates:

<del>(Pollutant</del>	<del>Tons/Year</del>	<del>Pounds/Day</del>	<del>Pounds/Hour</del>
Carbon monoxide	100		
Nitrogen oxides	40		
Sulfur dioxide	40	800	80
Volatile organic compounds	40		
Particulate matter	25	500	50
PM-10	15		
Lead	.6		

~~Total reduced sulfur (as H<sub>2</sub>S) — 10  
Total fluoride — 3))~~

Pollutant	Tons/Year
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter (PM)	25
Fine particulate matter (PM <sub>10</sub> )	15
Volatile organic compounds (VOC)	40
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H <sub>2</sub> S)	10
Total reduced sulfur (including H <sub>2</sub> S)	10
Reduced sulfur compounds (including H <sub>2</sub> S)	10
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans	0.0000035
Municipal waste combustor metals (measured as PM)	15
Municipal waste combustor acid gases (measured as SO <sub>2</sub> and hydrogen chloride)	40

~~((62))~~ (68) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

~~((63))~~ (69) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, ~~((which))~~ that are located on one or more contiguous ~~((or adjacent))~~ properties, and are under the control of the same person~~((s) and))~~ or persons under common control, including those whose activities ~~((that))~~ are ~~((secondary))~~ ancillary to the production of a single product or functionally related groups of products.

~~((64))~~ (70) "Source category" means all sources of the same type or classification.

~~((65))~~ (71) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((66))~~ (72) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

~~((67))~~ (73) "Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

~~((68))~~ (74) "Stationary source" means any building, structure, facility, or installation which emits or may emit any contaminant subject to regulation under the Federal Clean Air Act.

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

~~((69))~~ (76) "Total reduced sulfur, (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an

approved equivalent method and expressed as hydrogen sulfide.

~~((70))~~ (77) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

~~((71))~~ (78) "United States Environmental Protection Agency, (USEPA)" shall be referred to as EPA.

~~((72))~~ (79) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

~~((73))~~ (80) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

~~((74))~~ (81) "Volatile organic compound, (VOC)" means ~~(any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the USEPA administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. This reactivity policy exempts the following compounds per the Federal Register: Methane, ethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, trichlorotrifluoroethane, dichlorotetrafluoroethane, chloropentafluoroethane, methylene chloride, and 1,1,1-trichloroethane (methyl chloroform))~~;

(a) Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any organic compound other than the following, which have negligible photochemical activity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro 2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 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); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations; and

(iii) 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 CFR Part 60 Appendix A. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by ecology or the authority.

(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 or the authority, the amount of negligibly-reactive compounds in the source's emissions.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-040 General standards for maximum emissions.** 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 will take precedent over a general emission standard listed in this chapter. 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. Further, 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 determined to be less than RACT, ecology or the authority shall, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order or operating permit condition to the source or sources for installation of RACT.

(1) Visible emissions. No person shall cause or permit 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 permit 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 ecology or the authority be advised of the schedule.

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

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

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

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

(3) Fugitive emissions. The owner or operator of any emissions unit engaging in materials handling, construction, demolition or any 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, shall be required to use ~~((best available control technology (BACT)))~~ reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the contaminants for which nonattainment has been designated. ((Significance will be determined by EPA interpretive ruling for PSD and offsets on file with ecology.))

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

(5) Emissions detrimental to persons or property. No person shall cause or permit 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.

(6) Sulfur dioxide.

No person shall cause or permit 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, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ecology or the authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the authority.

(7) Concealment and masking. No person shall cause or permit 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.

~~((8) Fugitive dust sources.~~

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

~~(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to a Category I PM 10 area shall be required to use reasonably available control technology to control emissions. Significance will be determined by the definition found in 40 CFR Part 51, Appendix S, as amended through July 1, 1990.))~~

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**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 burners.

(a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7).

(b) All wigwam burners shall 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 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) Ecology may establish additional requirements for wigwam burners located in sensitive areas as defined by chapter 173-440 WAC. 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 burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(1). 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 boilers.

(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 permit the 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 ecology or the 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.

(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, except during the first thirty minutes after such device or material is ignited.

(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) 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 permit 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 permit 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) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 173-400-040.

(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<sub>2</sub>SO<sub>4</sub>, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H<sub>2</sub>SO<sub>4</sub>.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants.** (1) The emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency (EPA) prior to July 1, ((1989)) 1992, as contained in Title 40, Code of Federal Regulations, Part 61, are adopted by reference. The term "administrator" in 40 CFR Part 61 shall mean both the administrator of EPA and the director of ecology.

(2) Ecology or the authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants ((registered)) regulated under 40 CFR Part 61 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants such as: Asbestos, benzene from fugitive emission sources, beryllium, mercury, or vinyl chloride shall conform with the requirements of Title 40, Code of Federal Regulations, Part 61, as promulgated prior to July 1, ((1989)) 1992.

(4) This section shall not apply to any source operating pursuant to a waiver granted by EPA or an exemption granted by the president of the United States during the effective life of such waiver or exemption.

#### NEW SECTION

**WAC 173-400-080 Startup and shutdown.** In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) ecology and the authorities shall consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown. Where ecology or the authority determines that the source or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, ecology or the authority shall include in the standard appropriate operating parameters or other criteria to regulate the performance of the source during startup or shutdown conditions.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-100 Registration.** The owner or operator of each source within the following source categories that does not hold an operating permit shall register the source with ecology or ((and)) the authority:

- (1) Agricultural drying and dehydrating operations;
- (2) Asphalt plants;
- (3) Beverage can surface coating operations;
- (4) Bulk gasoline terminals;
- (5) Cattle feedlots with facilities for one thousand or more cattle;
- (6) Chemical plants;
- (7) Ferrous foundries;
- (8) Fertilizer plants;
- (9) Flexible vinyl and urethane coating and printing operations;
- (10) Grain handling, seed processing, pea and lentil processing facilities;
- (11) Metallic mineral processing plants;
- (12) Mineralogical processing plants;
- (13) Nonferrous foundries;
- (14) Other metallurgical processing plants;
- (15) Petroleum refineries;
- (16) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;
- (17) Pressure sensitive tape and label surface coating operations;
- (18) Rendering plants;
- (19) Scrap metal operations;
- (20) Synthetic organic chemical manufacturing industries;
- (21) Sulfuric acid plants;
- (22) Synthetic fiber production facilities;

- (23) Veneer dryers;
- (24) Wood waste incinerators including wigwam burners;
- (25) Other incinerators designed for a capacity of one hundred pounds per hour or more;
- (26) Stationary internal combustion engines rated at five hundred horse power or more;
- (27) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;
- (28) Any category of stationary sources to which a federal standard of performance (NSPS) applies;
- (29) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);
- (30) Any major stationary source.

Registration shall be on forms to be supplied by ecology or the authority within the time specified on the form.

A report of closure shall be filed with ecology or the authority within ninety days (~~with ecology or an authority if under their jurisdiction when~~) after operations producing emissions permanently cease at any source within the above categories.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-105 Records, monitoring, and reporting.** The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter, (~~PM-10~~) PM<sub>10</sub>, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

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

(4) Source testing. To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 C.F.R. 60 Appendix A which are adopted by reference, or approved procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) (~~Report of startup, shutdown, breakdown or upset condition(s). If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner(s) or operator(s) of the source(s) shall take the following actions as applicable:~~

(a) ~~For a planned condition, such as a startup or shutdown, the condition shall be reported to ecology or the authority in advance of its occurrence.~~

(b) ~~For an unplanned condition, such as a breakdown or upset, the condition shall be reported to ecology or the authority as soon as possible.~~

~~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.~~

~~Compliance with the requirements of WAC 173-400-105(5) does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter or an applicable chapter nor from the resulting liabilities for failure to comply.~~

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

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

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

(B) Only gaseous fuel is burned.

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

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

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

(b) Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred

percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

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

(ii) Continuous monitoring equipment. The requirements of WAC 173-400-105 (6)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by WAC 173-400-105 (6)(d) shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5, promulgated October 6, 1975, and amended November 7, 1986, which is adopted by reference.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (6) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

~~((7))~~ (6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program.

Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-105(1) shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

## NEW SECTION

**WAC 173-400-107 Excess emissions.** (1) The owner or operator of a source shall have the burden of proving that excess emissions were unavoidable.

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

(3) Excess emissions shall be reported to ecology or the authority as soon as possible. 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 demonstrates to the satisfaction of ecology or the authority 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 demonstrates to the satisfaction of ecology or the authority that the excess emissions could not have been avoided through better design, 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 demonstrates to the satisfaction of ecology or the 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; 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, 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.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-110 New source review (NSR).** (1) **Applicability.**

~~((a) A notice of construction must be approved by ecology or the authority prior to the construction, installation, or establishment of a new source or emissions unit which is required to register per WAC 173-400-100.~~

~~(b) Ecology or the authority may require a notice of construction prior to the construction, installation, or establishment of any other new source, other than a single family or duplex dwelling.~~

~~(c) The notice of construction and new source review shall apply only to the emission unit(s) affected and the contaminants involved.~~

~~(d) The owner(s) or operator(s) of any source that is required to register per WAC 173 400 100 shall notify ecology or the authority prior to replacement of air pollution control equipment or process equipment other than equivalent replacement for routine maintenance and repair. Ecology or the authority may determine that a notice of construction is required.~~

~~(2) **Additional information.** Within thirty days of receipt of a notice of construction, ecology or the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.~~

~~(3) **Requirements for new sources.** Ecology or the authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:~~

~~(a) The new source will be in accord with applicable federal and state rules and regulations, including NSPS and NESHAPS and the new source will use BACT for emissions control; and~~

~~(b) Requirements for nonattainment areas;~~

~~(i) If the new source is a major source or the proposed change is a major modification, it will comply with LAER for emissions of the contaminants for which nonattainment has been designated; and~~

~~(ii) If the new source is a major source or the proposed change is a major modification and is located in an area that is not in attainment for carbon monoxide or ozone and the source will emit carbon monoxide or VOCs, it is required that there be an analysis of alternative sites, sizes, and production processes and environmental control techniques for the proposed new source which demonstrates that benefits of the proposed new source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification. This analysis is the responsibility of the applicant, who may use an environmental impact statement prepared under the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA) as a source of information; and~~

~~(iii) The proposed new source will not violate the requirements for reasonable further progress established by the state implementation plan. If the new source is a major source or the proposed change is a major modification, the total new allowable emissions from all sources existing at the time of application for notice of construction plus proposed allowable emissions for the new source, of the contaminants for which nonattainment has been designated, shall be no greater than the total allowable emissions from existing sources, except that: (A) Ecology or the authority may require that new total allowable emissions be reduced to less than existing total allowable emissions, as necessary to achieve air quality attainment goals stated in an approved plan of attainment, and (B) the emissions from the proposed new source may be approved without an offsetting reduction from existing sources if an adequate emissions growth allowance is included in an approved plan of attainment. The above requirements must be met by reducing emissions from existing source(s). Arrangements for such offsetting reduction(s) of actual emissions must be made by the owner(s) or operator(s) of the proposed new source. The proposed new source may be constructed only after the~~

~~issuance of a regulatory order(s) to the proposed new source and to all the source(s) that provided the offset. The said orders shall include new allowable emissions limits for all the affected sources; and~~

~~(iv) If the new source is a major source or the proposed change is a major modification, the owner(s) or operator(s) shall demonstrate that all major sources owned or operated by such person (or persons under common control with such person) in the state which are subject to emission limitations are in compliance or on a schedule for compliance with applicable emission limitations and standards under the Federal Clean Air Act; and~~

~~(v) In a locality that does not meet national ambient air quality standards and has not been designated a nonattainment area, a proposed new major source or major modification must reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact. An ecology approved air quality model shall be used to demonstrate a net air quality benefit where the source would otherwise cause or contribute to a violation of any national ambient air quality standard.~~

~~(c) **Requirements for attainment areas.** If the proposed new source is located in an area that is in attainment for contaminants that would be emitted by the source and the source is located in an ozone attainment area if the source would emit VOCs;~~

~~(i) The allowable emissions from the proposed new source will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any national ambient air quality standard. This requirement will be considered to be met if the impact at any location within a nonattainment area or a locality exceeding the applicable standard does not exceed the following levels:~~

Pollutant	Annual Average	24 Hour Average	8 Hour Average	3 Hour Average	1 Hour Average
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>
TSP	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
SO <sub>x</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>		25 ug/m <sup>3</sup>	30 ug/m <sup>3</sup>
PM-10	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
NO <sub>x</sub>	1.0 ug/m <sup>3</sup>				

~~(ii) The proposed new source will not cause a violation of any ambient air quality standard.~~

~~(iii) An offsetting emissions reduction that satisfies the requirements of WAC 173 400 110 (3)(b) may be used to satisfy the requirements of WAC 173 400 110 (3)(c) and (d) if required.~~

~~(d) **Visibility requirements.** Any new major source or new major modification shall evaluate the visibility impairment per 40 CFR 52.21(e) for all Class I areas in Washington and neighboring states. The evaluation shall comply with the following:~~

~~(i) When the land manager has officially designated visibility to be an important attribute, the owner(s) or operator(s) of the new source shall demonstrate that the potential emissions in combination with emissions from all other sources permitted after January 1, 1982, shall not cause or contribute to a significant visibility impairment.~~

~~(ii) Ecology shall upon receipt of an application for a notice of construction notify the land managers of potentially affected areas. Notification shall be in writing and include~~

a copy of all information relevant to the application including the information developed for this section. This information shall be transmitted to the land manager within thirty days of receipt of the application and at least sixty days prior to public hearing on the application for permit to construct.

(iii) All evaluations of visibility impairment required under this section shall use the models on file with ecology or equivalent models approved by ecology or EPA.

(iv) The results of the evaluation shall be sent to the land manager of the affected areas for review and recommendation. The review shall consider the degree of visibility impairment, duration, geographic extent, frequency, and time. The recommendation of the land managers concerning adverse impact on visibility shall be sent to ecology within thirty days of receipt of the evaluation results.

(v) Should ecology concur with the recommendation of the land manager, the notice of construction shall be approved or disapproved according to the recommendation. Ecology may find the review of a land manager inadequate and make its own determination. A finding of significant visibility impairment shall require a disapproval of the notice of construction, unless sufficient mitigating measures are developed.

(vi) Ecology or land managers may demonstrate that the new source would cause impairment of an integral vista officially designated at least six months before the new source submitted a complete application. The protection of an integral vista by controls on the source shall consider the time necessary for compliance, the energy and nonair quality environmental effects of compliance and the productive life of the source.

(vii) Ecology may require visibility monitoring at the site of the new source or potentially affected areas as a part of the applicable regulatory order. The monitoring period may be before or after construction or both.

(4) **Preliminary determination.** Within thirty days after receipt of all information required, ecology or the authority shall:

(a) Make preliminary determinations on the matters set forth in subsection (3)(b), (c), and (d) of this section if applicable; and

(b) Initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable.

(5) **Final determination.** If, after review of all information received including public comment, ecology or the authority finds that all the conditions in subsection (3) of this section are satisfied, whichever is applicable, the authority will issue a regulatory order to approve the notice of construction for the proposed new source or modification.

(6) **Appeal of approval.** A notice of construction approval can be appealed to the state pollution control hearings board per RCW 70.94.025.

(7) **Portable sources.** For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies

sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

(8) **Commencement of construction.** The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.) (a) A notice of construction application must be filed by the owner or operator and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification which is required to register per WAC 173-400-100.

(b) Ecology or the authority may require that a notice of construction application be filed by the owner or operator of a proposed new source or modification and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification, other than a single family or a duplex dwelling.

(c) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(2) **Completeness determination.** Within thirty days of receipt of a notice of construction application ecology or the authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary, based upon review of information already supplied, to complete the application. For a project subject to PSD review under WAC 173-400-141 a completeness determination includes a determination that the application provides all information required to conduct PSD review.

(3) **Final determination.**

(a) Within sixty days of receipt of a complete application, ecology or the authority shall either issue a final decision on the application or, for those projects subject to public notice, initiate notice and comment procedures under WAC 173-400-171 on a proposed decision, followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of ecology or the authority.

(c) If the new source is a major stationary source or the change is a major modification, ecology or the authority shall submit any control technology determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA.

(4) **Appeals.** An order of approval, any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW.

(5) Portable sources. For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction application, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

#### NEW SECTION

**WAC 173-400-112 Requirements for new sources in nonattainment areas.** Ecology or an authority reviewing an application to establish a new source or modification in a nonattainment area, prior to issuance of an order of approval, shall determine that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

(3) If the proposed new source is a major stationary source or the proposed modification is a major modification and ecology or the authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification the owner or operator has secured sufficient offsetting emission reductions to satisfy the requirements of, and federally enforceable rules promulgated under § 173 of the Federal Clean Air Act and, if the source proposes to locate in an ozone nonattainment area, § 182 of the Federal Clean Air Act. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(5) If the proposed new source is a major stationary source or the proposed modification is a major modification the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to

emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in an EPA-approved state implementation plan.

(6) If the proposed new source is a major stationary source or the proposed modification is a major modification for the purposes of the PSD program described in WAC 173-400-141 it meets the requirements of that program for all contaminants for which the area has not been designated nonattainment.

(7) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC the source meets all applicable requirements of that chapter.

(8) If the proposed new source is a major stationary source or the proposed modification is a major modification ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.28 and determined that the project meets the criteria set forth in subsection (g) of that section.

#### NEW SECTION

**WAC 173-400-113 Requirements for new sources in attainment areas.** Ecology or an authority reviewing an application to establish a new source or modification in an area that is in attainment for all air contaminants the new source would emit and that is in attainment for ozone if the proposed new or modified source would emit VOCs or NO<sub>x</sub>, prior to issuance of an order of approval, shall determine that the proposed project satisfies all of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

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

(3) Allowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment area does not exceed the following levels for the pollutant(s) for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5 mg/m <sup>3</sup>	-	2 mg/m <sup>3</sup>
TSP	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	25 µg/m <sup>3</sup>	30 µg/m <sup>3</sup>
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the offsetting requirements of this subsection.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification for purposes of the PSD program described in WAC 173-400-141 it meets all applicable requirements of that chapter.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC the source meets all applicable requirements of that chapter.

(6) If the proposed new source is a major stationary source or the proposed modification is a major modification ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.27 and determined that the project meets the criteria set forth in subsections (d)(4) and (5) of that section.

**NEW SECTION**

**WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.** (1) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the appropriate authority, or with ecology in areas or for sources over which ecology has jurisdiction. For projects not otherwise reviewable under WAC 173-400-110, ecology or the authority may:

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

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

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

(3) Construction shall not commence on a project subject to review under this section until the authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the authority takes no action within thirty days of receipt of a complete notice of construction application.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-115 Standards of performance for new sources.** Title 40, Code of Federal Regulations, Part 60 (standards of performance for new sources), as promulgated prior to July 1, ((1989)) 1992, is adopted by reference except for sections 60.5 (determination of construction or modification) and 60.6 (review of plans). The term "administrator" in 40 CFR Part 60 shall mean both the administrator of EPA and the director of ecology.

~~((1)) Sections 60.5 and 60.6 of Title 40, Code of Federal Regulations, are not incorporated herein because they provide for preconstruction review of new sources only on request. Such review under the state program is mandatory and an order of approval is required prior to construction, installation or establishment of a new source.~~

((2)) As of July 1, ((1989)) 1992, the federal regulations adopted by reference hereby set standards of performance affecting facilities for the following described subparts of 40 CFR Part 60:

- Subpart D Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
- Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
- Subpart Db Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts
- Subpart Dc Small industrial-commercial-institutional steam generating units
- Subpart E Incinerators
- Subpart Ea Municipal waste combustors
- Subpart F Portland cement plants
- Subpart G Nitric acid plants
- Subpart H Sulfuric acid plants
- Subpart I Asphalt concrete plants
- Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products
- Subpart K Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons
- Subpart Ka Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons
- Subpart Kb Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984
- Subpart L Secondary lead smelters

Subpart M Brass and bronze ingot production plants  
 Subpart N Iron and steel plants  
 Subpart O Sewage treatment plants  
Subpart P Primary copper smelters  
Subpart Q Primary zinc smelters  
Subpart R Primary lead smelters  
 Subpart S Primary aluminum reduction plants  
 Subpart T Phosphate fertilizer industry: Wet process phosphoric acid plants  
 Subpart U Phosphate fertilizer industry: Superphosphoric acid plants  
 Subpart V Phosphate fertilizer industry: Diammonium phosphate plants  
 Subpart W Phosphate fertilizer industry: Triple superphosphate plants  
 Subpart X Phosphate fertilizer industry: Granular triple superphosphate storage facilities  
 Subpart Y Coal preparation plants  
 Subpart Z Ferroalloy production facilities  
 Subpart AA Steel plants: Electric arc furnaces  
Subpart AAa Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels  
 Subpart BB Kraft pulp mills  
 Subpart CC Glass manufacturing plants  
 Subpart DD Grain elevators  
 Subpart EE Industrial surface coating: Metal furniture  
 Subpart GG Stationary gas turbines  
 Subpart HH Lime manufacturing plants  
 Subpart KK Lead-acid ((batteries)) battery plants  
 Subpart LL Metallic mineral processing plants  
 Subpart MM Automobile and light duty truck surface coating operations  
 Subpart NN Phosphate rock plants  
 Subpart PP Ammonium sulfate manufacture  
 Subpart QQ Publication rotogravure printing  
 Subpart RR Pressure sensitive tape and label surface coating operations  
 Subpart SS Industrial surface coating: Large appliances  
 Subpart TT Industrial surface coating: Metal coils  
 Subpart UU Asphalt processing and asphalt roofing manufacture  
 Subpart VV SOCOMI equipment leaks (VOC)  
 Subpart WW Beverage can surface coating operations  
 Subpart XX Bulk gasoline terminals  
 Subpart AAA New residential wood heaters  
Subpart BBB Rubber tire manufacturing industry  
Subpart DDD VOC emissions from the polymer manufacturing industry  
 Subpart FFF Flexible vinyl and urethane coating and printing  
 Subpart GGG Petroleum refineries - compressors and fugitive emission sources  
 Subpart HHH Synthetic fiber production facilities  
Subpart III VOC emissions from SOCOMI air oxidation unit processes  
 Subpart JJJ Petroleum dry cleaners  
Subpart KKK Equipment leaks of VOC from onshore natural gas processing plants  
Subpart LLL Onshore natural gas processing; SO<sub>2</sub> emissions

Subpart NNN VOC emissions from SOCOMI distillation operations  
 Subpart PPP Wool fiberglass insulation manufacturing plants  
Subpart QQQ VOC emissions from petroleum refinery wastewater emissions  
Subpart SSS Magnetic tape coating facilities  
Subpart TTT Industrial surface coating: Surface coating of plastic parts for business machines  
Subpart VVV Polymeric coating of supporting substrates facilities

~~((Compliance with the standards for affected facilities within these source categories shall be determined by performance tests and visual observations of opacity as set forth in the regulations adopted by reference.))~~

Note: For fossil fuel fired steam generators referenced by Subpart D and Da above, units greater than 250 megawatts are governed by the energy facility site evaluation council (EFSEC) in Title 463 WAC.

**NEW SECTION**

**WAC 173-400-116 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.** (1) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the appropriate authority, or ecology in areas or for sources for which ecology has jurisdiction. For projects not otherwise reviewable under WAC 173-400-110, ecology or the authority may:

- (a) Require that the owner or operator employ RACT for the affected emission unit; and
  - (b) Prescribe reasonable operation and maintenance conditions for the control equipment.
- (2) Within thirty days of receipt of a complete notice of construction application under this section ecology or the authority shall either issue an order of approval or a proposed RACT determination for the proposed project.
- (3) Construction shall not commence on a project subject to review under this section until the authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the authority takes no action within thirty days of receipt of a complete notice of construction application.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

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

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

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

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

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

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

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

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

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

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

(iv) If the given emissions unit emits or has the potential to emit 100 tons per year or more of particulate matter, the opacity shall be monitored continuously.

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

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

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

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

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

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, ecology or the authority may require the

submission of additional information needed to review the application.

(5) Approval. Within the time period allowed by the state operating permit rules, or for nonpermitted sources, within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, ~~((a regulatory order or equivalent document shall be issued which includes))~~ the operating permit for each source affected by the bubble shall be revised to incorporate new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit ~~((involved in the application))~~ affected by the bubble. The ~~((order or equivalent document must))~~ revised permit shall include ~~((all requirements necessary))~~ any conditions required to assure that ~~((conditions in))~~ subsection (2)(a) through (j) of this section will be satisfied. If a source affected by a bubble is not a permitted source under the state operating permit program, the conditions imposed to satisfy subsection (2)(a) through (j) of this section shall be adopted as a regulatory order. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit ~~((the))~~ operation of the affected equipment.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

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

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

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

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

(c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved, but in no case shall the ERC be for less than one ton per year.

(d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC ~~((173-400-110 (3)(e)))~~ 173-400-112(4), nor as

part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, BACT, or LAER.

(e) Concurrently with or prior to the authorization of an ERC, the applicant shall receive (have received) a regulatory order or permit that establishes total allowable emissions from the source of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time. ~~((The new allowable emissions shall be considered RACT.))~~

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

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

(5) Approval. Within the time period allowed by the state operating permit rules, or for nonpermitted sources, within thirty days after all ((the)) required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. ((If the ERC application has not been approved or denied within thirty days, the ERC will be automatically approved.)) If the application is approved, ecology or the authority shall:

(a) ~~((Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the proposed new allowable emission rate(s) claimed in the ERC application, expressed as weight of pollutant per unit time. The regulatory order or equivalent document must include all requirements that are necessary to provide such assurance. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit the startup))~~ Modify the source's operating permit to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The modified permit shall include any conditions required to assure that subsection (3)(a) through (e) of this section will be satisfied. If a source applying for an ERC is not a permitted source under the state operating permit program the conditions imposed to satisfy subsection (3)(a) through (e) of this section shall be adopted as a regulatory order. If the ERC depends in whole or in part upon the shutdown of equipment, the revised permit or regulatory order must prohibit operation of the affected equipment; and,

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-136 Use of emission reduction credits.**

(1) Permissible use. An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the

requirements for new source review per WAC ~~((173-400-110 (3)(e), to satisfy requirements for PSD review per WAC 173-400-110 (4)(e), or to satisfy requirements for visibility review per WAC 173-400-110 (4)(e)))~~ 173-400-113(3), to satisfy requirements for PSD review per WAC 173-400-113(4), or to satisfy requirements for visibility review per WAC 173-400-113(6).

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

(3) Conditions of use. An ERC may be used only for the contaminant(s) for which it was issued. Ecology or the authority may impose additional conditions of use to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC.

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

(5) Time of use. An unused ERC and any unused portion thereof shall expire ten years after date of original issue.

(6) Discount due to change in SIP. If reductions in emissions beyond those identified in the state implementation plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by ecology or the authority after public involvement per WAC 173-400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-141 Prevention of significant deterioration (PSD).** Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and (w), Prevention of Significant Deterioration of Air Quality, as in effect on July 1, ~~((1989))~~ 1992, are incorporated by reference with the following additions and modifications:

(1) Construction of "administrator." In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) administrator shall mean both the administrator of EPA and the director of ecology.

(2) Contemporaneous. Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs ~~((at the same time or within ten years prior to the change))~~ between the date five years before construction on the particular change commences and the date that the increase from the particular

change occurs. If a decrease occurred more than one year prior to the date of submittal of the notice of construction application for the particular change it can only be credited if the decrease has been documented by an emission reduction credit."

(3) Public participation. Subpart 40 CFR 51.166(q) public participation, as in effect July 1, ~~((1989))~~ 1992, is hereby incorporated by reference ~~((, with the following modifications:~~

~~(a) In 40 CFR 51.166 (q)(2)(iv), the word "administrator" shall be construed in its original meaning.~~

~~(b))~~ except that in 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days.

(4) Section 40 CFR 51.166 Subpart (p)(1) Sources Impacting Federal Class I areas - additional requirements - Notice to EPA, as in effect on July 1, ~~((1989))~~ 1992, is herein incorporated by reference.

(5) Secondary emissions. Subpart 40 CFR 52.21 (b)(18) is changed to read:

Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

~~((6) List of Class I areas. The following areas are the Class I areas in Washington state as of January 1, 1989:~~

~~Mount Rainier National Park  
North Cascade National Park  
Olympic National Park  
Alpine Lakes Wilderness Area  
Glacier Peak Wilderness Area  
Goat Rocks Wilderness Area  
Mount Adams Wilderness Area  
Pasayten Wilderness Area.))~~

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-171 Public involvement.** (1) **Applicability.** Ecology or the authority shall provide public notice prior to the approval or denial of any of the following types of applications or other actions:

(a) Notice of construction application for any new or modified source or emissions unit, if a net significant emissions increase for any pollutant regulated by state or federal law would result; or

(b) Any application or other proposed action for which a public hearing is required by PSD rules; or

(c) Any order to determine RACT; or

(d) An order to establish a compliance schedule or a variance; or

(e) The establishment or disestablishment of a nonattainment area, or the changing of the boundaries thereof; or

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

(g) An order to authorize a bubble; or

(h) Any application or other proposed action made pursuant to this chapter in which there is a substantial public interest according to the discretion of ecology or the authority.

(2) **Public notice.** Public notice shall be made only after all information required by ecology or the authority has been submitted and after applicable preliminary determinations, if any, have been made. The cost of providing public notice shall be borne by the applicant or other initiator of the action. Public notice shall include:

(a) Availability for public inspection in at least one location near the proposed project, of the nonproprietary information submitted by the applicant and of any applicable preliminary determinations, including analyses of the effect(s) on air quality.

(b) Publication in a newspaper of general circulation in the area of the proposed project of notice:

(i) Giving a brief description of the proposal;

(ii) Advising of the location of the documents made available for public inspection;

(iii) Advising of a thirty-day period for submitting written comment to ecology or the authority;

(iv) Advising that a public hearing may be held if ecology or the authority determines within a thirty-day period that significant public interest exists.

(c) A copy of the notice will be sent to the EPA regional administrator.

Public participation procedures for notice of construction applications that are processed in coordination with an application to issue or modify an operating permit shall be conducted as provided in the state operating permit rule.

(3) **Public comment.** No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the thirty-day period for written comment published as provided above. If a public hearing is held the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public hearings.** The applicant, any interested governmental entity, any group or any person may request a public hearing within the thirty-day period published as above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. Ecology or the authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time(s) and place(s) as ecology or the authority deems reasonable.

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives

of public notice and opportunity for comment, such procedures may be used in lieu of the provisions of this section.

(6) **Public information.** Copies of notices of construction, orders, and modifications thereof which are issued hereunder shall be available for public inspection on request at ecology or the authority.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

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

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

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

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

~~((1) **Notice of violation.** Whenever ecology has reason to believe that any provision of this chapter has been violated, it may cause written notice (either by certified mail with return receipt requested or by personal service) to be served on the alleged violator or violators. The notice shall specify the provision of this chapter 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.~~

~~(2) **Civil penalty.** Any person who violates any of the provisions of this chapter shall be subject to a penalty in the form of a fine in an amount not to exceed one thousand dollars per day for each violation. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty shall be imposed by a notice in writing from personnel of ecology or an authority, describing the violation with reasonable detail. Further, the person is subject to a fine of up to five thousand dollars to be levied by the director if requested by the board of a local authority or if the director determines that the penalty is needed for effective enforcement of this chapter. The maximum daily fine imposed for violation of standards by a specific~~

~~emissions unit is five thousand dollars. Upon written application submitted to ecology within fifteen days after notice has been received the director may remit or mitigate the penalty upon such terms as the director deems proper and when deemed in the best interest to carry out the purpose of this chapter. The mitigation shall not affect or reduce the penalty imposed by the local board. The maximum daily fine that may be imposed upon any emissions unit for violation of any opacity standard is four hundred dollars.))~~ (1) **Enforcement actions by department—Notice to violators.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action.

(2) **Civil penalties.**

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

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

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

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

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

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

subsection (a) of this section shall be reduced by the amount of the payment.

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-250 Appeals.** Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. PSD permits (~~issued by ecology~~) are appealable (~~only to ecology pursuant~~) to the EPA under 40 CFR Part 124.

**WSR 92-18-097**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**  
 [Filed September 2, 1992, 10:45 a.m.]

Original Notice.

Title of Rule: Chapter 365-195 WAC, Procedural criteria for adopting comprehensive plans and development regulations.

Purpose: To adopt by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of the Growth Management Act.

Statutory Authority for Adoption: RCW 36.70A.190 (4)(b).

Statute Being Implemented: Chapter 36.70A RCW.

Summary: The rule provides a recommended framework for carrying out the planning requirements of the Growth Management Act, reflecting regional and local variations and the diversity that exists among different counties and cities.

Reasons Supporting Proposal: The department's technical assistance program is required by statute to include procedural criteria to assist local jurisdictions.

Name of Agency Personnel Responsible for Drafting: Wick Dufford, Criteria Coordinator, Olympia, (206) 586-1274; Implementation and Enforcement: Mike McCormick, Assistant Director, Olympia, (206) 753-2222.

Name of Proponent: Department of Community Development, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule contains definitions and interpretations of terms used in the Growth Management Act, recommendations for developing required elements of comprehensive plans, suggested approaches to establishing urban growth areas and to creating a siting process for essential public facilities, recommendations for public participation and adoption procedures. The purpose is to provide assistance. The effects cannot be precisely anticipated, because local jurisdictions may adopt other approaches to compliance with the act.

Proposal does not change existing rules.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

The department has considered whether these rules are subject to the Regulatory Fairness Act and has determined that they are not for the following reasons: The rules are procedural, interpretive, and optional. The rules do not impose regulatory burdens or other restrictions on business, and include no requirements for forms, fees, appearances or compliance actions by business. The rules are addressed to government entities to assist them in making choices that will ultimately be reflected in local land use regulations. The rules, however, do not make those choices or mandate the content of those regulations. The economic effect of these rules on industry, if any, is therefore indirect, subject to intervening decisions which are as yet unknown. Such effect cannot be ascertained and meaningfully evaluated.

# APPENDIX B

WSR 93-05-048

**WSR 93-05-048****PROPOSED RULES****DEPARTMENT OF ECOLOGY**

(Order 92-34—Filed February 17, 1993, 10:44 a.m.)

**Supplemental Notice to WSR 92-18-096.**

Title of Rule: Chapter 173-400 WAC, General regulations for sources of air pollution.

Purpose: This rule is being amended to update the new source review provisions to incorporate changes in the state and federal clean air acts; establish criteria and procedures for excusing unavoidable excess emissions from penalties; and revise several sections to accommodate the state's upcoming operating permit rule.

Statutory Authority for Adoption: Chapter 70.94 RCW, Clean Air Washington Act.

Statute Being Implemented: Chapter 173-400 WAC, General regulations for sources of air pollution.

Summary: Amendments to Clean Air Washington and the federal Clean Air Act require ecology to update the general regulations for air pollution. This rule amends the following sections of chapter 173-400 WAC: WAC 173-400-030 Definitions; 173-400-040 General standards for maximum emissions; 173-400-100 Registration; 173-400-105 Records, monitoring and reporting; 173-400-110 New source review; 173-400-120 Bubble rules; 173-400-131 Issuance of emission reduction credits; 173-400-136 Use of emission reduction credits; 173-400-141 Prevention of significant deterioration (PSD); 173-400-171 Public involvement; 173-400-180 Variance; 173-400-190 Requirements for nonattainment areas; and 173-400-250 Appeals. This rule also establishes the following new sections: WAC 173-400-080 Startup and shutdown; 173-400-107 Excess emissions; 173-400-112 Requirements for new sources in nonattainment; 173-400-113 Requirements for new sources in attainment; and 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.

The Department of Ecology is also proposing that chapter 173-400 WAC, the General regulations for sources of air pollution, be included within the state implementation plan for Washington state, to comply with federal requirements.

Reasons Supporting Proposal: Adoption of this update is a vital element of the state implementation plan (SIP) revision package which ecology is required to submit to EPA. Adoption of the SIP revision by EPA will make this rule federally enforceable. Failure to adopt could result in the imposition of stricter and much more costly air pollution controls on industrial sources and the loss of highway construction grants.

Name of Agency Personnel Responsible for Drafting: Alan Butler, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, (206) 649-7103; Implementation and Enforcement: Joseph Williams, P.O. Box 47600, Olympia, WA 98504-7600, (206) 459-6255.

Name of Proponent: Washington State Department of Ecology, governmental.

Rule is necessary because of federal law, the following sections of 1990 Federal Clean Air Act Amendments: 112, 172, 173, 181, 182, 186, 187, 188, and 189.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will incorporate the new state and federal

requirements into the general regulations for sources of air pollution. In 1991, the Washington Clean Air Act, chapter 70.94 RCW, was amended to reflect changes in the federal Clean Air Act. These changes lower the minimum size requirement for sources to undergo the new source review process in certain nonattainment areas. The new minimum weighs the severity of the area's amendments also establish procedures and criteria for excusing unavoidable excess emissions from penalty. The majority of these excess emissions are a result of fluctuations in a facility's startup and shutdown procedures. The burden of proving that the excess emission was truly unavoidable lies with the source. The changes also require that revisions be made in the state rule to accommodate the upcoming operating permit program.

Proposal Changes the Following Existing Rules: This rule is designed to meet the requirements mandated by chapter 70.94 RCW that were not included in the rule or that needed further clarification.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that proposed rules be evaluated for disproportionate impacts upon small versus large businesses and that any such impacts be mitigated if feasible and legally possible. The proposed amendments to chapter 173-400 WAC have been examined, and a determination that a complete small business economic impact statement is not required has been made.

Changes to the existing rule fall generally within two groups; provisions needed to conform to new or revised federal rules or laws that have arisen since the state rule was last amended, and editorial revisions aimed at simplifying or clarifying rule language. As such, none of the proposed changes will be likely to have a significant impact upon businesses in Washington. Those amendments incorporating new or revised federal requirements will have no effects beyond those that would have occurred in their absence.

Chapter 43.21H RCW, the State Economic Policy Act, requires that economic values be considered in addition to environmental, social and public health and safety values in rule making. In view of the conclusion, described above, that the proposed rule amendments will have no effects beyond those already existing under previous rule or those which would flow from federal rule or law provisions in any case, the overall economic impacts of the proposed action are deemed negligible.

Hearing Location: On April 20, at 7 p.m., Seattle, Ecology's N.W. Regional Office, 3190 160th S.E., Blvu, Conference Room A, (206) 649-7000; on April 21, at 7 p.m., Vancouver, Fire District 5 Station #8, 17408 S.E. 15th, (206) 892-4323; and on April 22, at 7 p.m., Spokane, City Council Chambers, West 808 Spokane Falls Boulevard, (509) 625-6255.

Submit Written Comments to: David Bradley, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, by April 23, 1993.

Date of Intended Adoption: July 6, 1993.

February 16, 1993  
Mary Riveland  
Director

Section to be Re-ProposedChapter 173-400 WAC  
General Regulations for Sources of Air Pollution

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-030 Definitions.** ~~((The following definitions will apply unless a different meaning is clearly required by context:~~

(1) ~~"Actual emissions" relating to a particular date means the average rate, in weight per unit time of emitted pollutant during the immediately preceding two-year period of normal operation. Ecology or the authority may allow or require the use of an alternative time period if it is more representative of normal operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or burned during the selected time period.~~

~~Ecology or the authority may presume that unit specific allowable emissions, which incorporate limits on hours of operation or production rate, are equivalent to the actual emissions of the unit.~~

~~(2) "Administrator" shall refer to ecology or the authority unless specifically defined otherwise.~~

~~(3)) Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:~~

~~(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.~~

~~(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.~~

~~(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.~~

~~(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.~~

~~((4)) (3) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."~~

~~((5)) (4) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.~~

~~((6)) (5) "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is ((limited in production rate or hours of operation, or both, by an applicable federally enforceable regulatory order) and the most stringent of (a), (b), or (c) of this subsection. Physical and process limitations must be considered in determining maximum rated capacity.~~

~~(a) Standards as set forth in 40 CFR Part 60 and Part 61, if applicable to the source; or~~

~~(b) The applicable state implementation plan emission limitation; or~~

~~(c) The emission rate specified by an applicable federally enforceable regulatory order)) subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:~~

~~(a) The applicable standards as set forth in 40 CFR Part 60 or 61;~~

~~(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or~~

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

~~((7)) (6) "Ambient air" means the surrounding outside air.~~

~~((8)) (7) "Ambient air quality standard" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.~~

~~((9)) (8) "Authority" means ((an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. (This may be delegated by ecology.)~~

~~(10) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to this regulation which would be emitted from any proposed new or modified source which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources~~

would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to meet the requirement of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results. The requirement of RCW 70.94.152 that a new source will provide "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology)) any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

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

~~((11))~~ (10) "Best available retrofit technology (BART)" means ~~((any))~~ an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by ~~((source))~~ an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. ~~((If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required. Such standards shall, to the degree possible, set forth the emission reductions achieved and provide for compliance by prescribing appropriate conditions in a regulatory order.~~

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

~~((13))~~ (12) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

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

(14) "Class I area" means any ~~((federal, state, or Indian land which is classified Class I))~~ area designated pursuant to §§ 162 or 164 of the Federal Clean Air Act Amendments as a Class I area. The following areas are the Class I areas in Washington state:

Alpine Lakes Wilderness;  
Glacier Peak Wilderness;  
Goat Rocks Wilderness;  
Mount Adams Wilderness;  
Mount Rainier National Park;  
North Cascades National Park;  
Olympic National Park;  
Pasayten Wilderness;  
Spokane Indian Reservation.

(15) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

(16) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

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

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

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

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

(19) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

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

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

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

(23) "Emission standard" and "emission limitation" means ~~(an allowable rate of emissions, level of opacity, or prescribing equipment or operating conditions as set forth in a regulation or regulatory order to assure continuous emission control)~~ a requirement established under the FCAA or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air pollutants 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 promulgated under the FCAA or chapter 70.94 RCW.

(24) "Emissions unit" means any part of a source which emits or would have the potential to emit any pollutant subject to regulation.

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

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

~~((26))~~ (27) "Existing stationary facility" means a stationary source of air pollutants which has the potential to emit two hundred fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

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

(29) "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

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

~~((27))~~ (31) "Fugitive dust" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

~~((28))~~ (32) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~((29))~~ (33) "General process unit" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((30))~~ (34) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

~~((31))~~ (35) "Incinerator" means a furnace used primarily for the thermal destruction of waste.

~~((32))~~ (36) "In operation" means engaged in activity related to the primary design function of the source.

~~((33))~~ (37) "Integral vista" means a view perceived from within ~~(the)~~ a mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.

~~((34))~~ "Land manager" means the secretary of the federal department or head of the state department or Indian governing body with authority over the Class I area.

~~(35))~~ (38) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source ~~(; whichever is more stringent))~~.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

~~((36))~~ (39) "Mandatory Class I federal area" means any area defined in Section 162(a) of the FCAA. The mandatory Class I federal areas in Washington state are as follows:

Alpine Lakes Wilderness;  
Glacier Peak Wilderness;  
Goat Rocks Wilderness;  
Mount Adams Wilderness;  
Mount Rainier National Park;  
North Cascades National Park;  
Olympic National Park;  
Pasayten Wilderness.

(40) "Major modification" means ~~((any physical change or change in the method of operation as defined in WAC 173-400-141.~~

~~(37) "Major source" means: Any source which emits or has the potential to emit one hundred tons per year or more of any pollutant regulated by state or federal law)) any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the act. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation shall not include:~~

(a) Routine maintenance, repair, and replacement;  
(b) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;  
(c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, in a prevention of significant deterioration permit or notice of construction approval; or

(ii) The source is approved to use under any approval, order, or permit issued under regulations approved pursuant to 40 CFR 51.165;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, in a prevention of significant deterioration permit or a notice of construction approval;

(g) Any change in ownership at a stationary source.

(41) "Major stationary source" means:

(a) Any stationary source which:

(i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the state or Federal Clean Air Acts;

(ii) Is located in a "marginal" or "moderate" ozone nonattainment area and which emits or has the potential to emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen;

(iii) Is located in a "serious" carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels and which emits or has the potential to emit fifty tons per year or more of carbon monoxide; or

(iv) Is located in a "serious" particulate matter (PM<sub>10</sub>) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM<sub>10</sub> emissions.

(b) Any physical change that would occur at a stationary source not qualifying under (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself;

(c) A major stationary source that is major for VOCs or NOx shall be considered major for ozone;

(d) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources or the source is a major source solely due to (a)(iii) or (iv) of this subsection:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cements plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, was being regulated under sections 111 or 112 of the Federal Clean Air Act.

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

~~((38))~~ (42) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((39))~~ (43) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

~~((40))~~ (44) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such sources or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(45) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61.

~~((41))~~ (46) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

~~((42))~~ (47) "Net emissions increase" means ~~((any emissions increase as defined in WAC 173-400-141));~~

(a) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit, in which case the credit shall expire ten years after the date of original issue of the ERC. Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) Ecology or the authority has not relied on it in issuing an order of approval for the source under regulations approved pursuant to 40 CFR 51.165 Subpart I or the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21 which order or permit is in effect when the increase in emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(iv) Ecology or the authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51 Subpart I or ecology or the authority has not relied on it in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

~~(((43))) (48) "New source" means ((a source which commences construction after the effective date of this chapter. Any addition to, enlargement, modification, replacement, restart after a period of five years of nonoperation, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emission standards have been established shall be construed as construction or installation or establishment of a new source));~~

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

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

~~(((44))) (49) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.~~

~~(((45))) (50) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.~~

~~(((46))) (51) "Notice of construction application" means a written application to permit construction of a new source ((or), modification of an existing source or replacement or substantial alteration of control technology at an existing stationary source. Replacement or substantial alteration of control technology does not include routine maintenance, repair, or parts replacement.~~

~~(((47))) (52) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.~~

~~(((48))) (53) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered open burning.~~

~~(((49))) (54) "Order" means any order issued by ecology or a local air authority pursuant to RCW 70.94.332 and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, and regulatory order.~~

~~(55) "Order of approval" "approval order" means a regulatory order issued by ecology or the authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source after review of all information received including public comment as required under WAC 173-400-110 and 173-400-141.~~

~~(56) "Particulate matter" or "particulates" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.~~

~~(((50))) (57) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.~~

~~(((51))) (58) "Parts per million (ppm)" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.~~

~~(((52))) (59) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.~~

~~(((53))) (60) "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.~~

~~(((54))) (61) "PM-10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method,~~

or an equivalent or alternate method, specified in Appendix M of 40 CFR Part ((60)) 51 or by a test method specified in the Washington state implementation plan.

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

((56)) (63) "Prevention of significant deterioration (PSD)" means the program set forth in WAC 173-400-141. Ecology has adopted the federal PSD program contained in 40 CFR 52.21 with some changes, which are described in WAC 173-400-141.

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

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

((59)) (66) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

((RACT requirements for any source or source category may be adopted as an order or regulation after public involvement per WAC 173-400-171.

((60)) (67) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which ~~((approves a notice of construction and/or limits emissions and/or establishes other air pollution control requirements))~~ applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.

((61)) (68) "Significant ((emission))" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission equal to or greater than any one of the following rates:

(Pollutant	Tons/Year	Pounds/Day	Pounds/Hour
Carbon monoxide	100		
Nitrogen oxides	40		
Sulfur dioxide	40	800	80
Volatile organic compounds	40		

Particulate matter	25	500	50
PM 10	15		
Lead	.6		
Total reduced sulfur (as H <sub>2</sub> S)	10		
Total fluoride	3))		

Pollutant	Tons/Year
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter (PM)	25
Fine particulate matter (PM <sub>10</sub> )	15
Volatile organic compounds (VOC)	40
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H <sub>2</sub> S)	10
Total reduced sulfur (including H <sub>2</sub> S)	10
Reduced sulfur compounds (including H <sub>2</sub> S)	10
Municipal waste combustor organics	0.000035
<u>(measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans</u>	
Municipal waste combustor metals (measured as PM)	15
Municipal waste combustor acid gases (measured as SO <sub>2</sub> and hydrogen chloride)	40

((62)) (69) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

((63)) (70) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, ~~((which))~~ that are located on one or more contiguous ~~((or adjacent))~~ properties, and are under the control of the same person~~((s) and those))~~ or persons under common control, whose activities ~~((that))~~ are ~~((secondary))~~ ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

((64)) (71) "Source category" means all sources of the same type or classification.

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

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

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

((68)) (75) "Stationary source" means any building, structure, facility, or installation which emits or may emit any contaminant. This term does not include emissions resulting directly from an internal combustion engine for

transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the FCAA.

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

((69)) (77) "Total reduced sulfur, (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

((70)) (78) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

((71)) (79) "United States Environmental Protection Agency, (USEPA)" shall be referred to as EPA.

((72)) (80) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

((73)) (81) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

((74)) (82) "Volatile organic compound, (VOC)" means ~~(any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the USEPA administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. This reactivity policy exempts the following compounds per the Federal Register: Methane, ethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, trichlorotrifluoroethane, dichlorotetrafluoroethane, chloropentafluoroethane, methylene chloride, and 1,1,1-trichloroethane (methyl chloroform)):~~

(a) Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any organic compound other than the following, which have negligible photochemical activity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro 2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 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); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no saturations; and

(iii) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by ecology or the authority.

(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 or the authority, the amount of negligibly-reactive compounds in the source's emissions.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-040 General standards for maximum emissions.** 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 will take precedent over a general emission standard listed in this chapter. 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. Further, 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 determined))~~ to be less than RACT, ecology or the authority shall, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order or operating permit condition to the source or sources for installation of RACT.

(1) Visible emissions. No person shall cause or permit 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 permit 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 ecology or the authority be advised of the schedule.

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

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

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

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

(3) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or any 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, shall be required to use ~~((best available control technology (BACT)))~~ reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the contaminants for which nonattainment has been designated. ((Significance will be determined by EPA interpretive ruling for PSD and offsets on file with ecology.))

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

(5) **Emissions detrimental to persons or property.** No person shall cause or permit 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.

(6) **Sulfur dioxide.**

No person shall cause or permit 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, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ecology or the authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations.

All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the authority.

(7) **Concealment and masking.** No person shall cause or permit 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.

(8) **Fugitive dust sources.**

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

(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to a Category I PM-10 area shall be required to use reasonably available control technology to control emissions. Significance will be determined by the definition found in 40 CFR Part 51, Appendix S, as amended through ~~((July 1, 1990))~~ (date of adoption).

#### NEW SECTION

**WAC 173-400-081 Startup and shutdown.** In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) ecology and the authorities shall consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown. Where ecology or the authority determines that the source or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, ecology or the authority shall include in the standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions. In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, ecology and the 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. Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in an approved state implementation plan shall not take effect until approved by EPA as a SIP amendment.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-100 Registration.** The owner or operator of each source within the following source categories that does not hold an operating permit shall register the source with ecology or ~~((and))~~ the authority:

- (1) Agricultural drying and dehydrating operations;
- (2) Asphalt plants;
- (3) Beverage can surface coating operations;
- (4) Bulk gasoline terminals;
- (5) Cattle feedlots with facilities for one thousand or more cattle;
- (6) Chemical plants;

- (7) Ferrous foundries;
- (8) Fertilizer plants;
- (9) Flexible vinyl and urethane coating and printing operations;
- (10) Grain handling, seed processing, pea and lentil processing facilities;
- (11) Metallic mineral processing plants;
- (12) Mineralogical processing plants;
- (13) Nonferrous foundries;
- (14) Other metallurgical processing plants;
- (15) Petroleum refineries;
- (16) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;
- (17) Pressure sensitive tape and label surface coating operations;
- (18) Rendering plants;
- (19) Scrap metal operations;
- (20) Synthetic organic chemical manufacturing industries;
- (21) Sulfuric acid plants;
- (22) Synthetic fiber production facilities;
- (23) Veneer dryers;
- (24) Wood waste incinerators including wigwam burners;
- (25) Other incinerators designed for a capacity of one hundred pounds per hour or more;
- (26) Stationary internal combustion engines rated at five hundred horse power or more;
- (27) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;
- (28) Any category of stationary sources to which a federal standard of performance (NSPS) applies;
- (29) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);
- (30) Any major stationary source.

Registration shall be on forms to be supplied by ecology or the authority within the time specified on the form.

A report of closure shall be filed with ecology or the authority within ninety days ~~((with ecology or an authority if under their jurisdiction when))~~ after operations producing emissions permanently cease at any source within the above categories.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-105 Records, monitoring, and reporting.** The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter, ~~((PM-10))~~ PM<sub>10</sub>, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required)

no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

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

(4) Source testing. To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 ~~((C.F.R.))~~ CFR 60 Appendix A which are adopted by reference, or approved procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

~~(5) ((Report of startup, shutdown, breakdown or upset condition(s). If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner(s) or operator(s) of the source(s) shall take the following actions as applicable:~~

~~(a) For a planned condition, such as a startup or shutdown, the condition shall be reported to ecology or the authority in advance of its occurrence.~~

~~(b) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to ecology or the authority as soon as possible.~~

~~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.~~

~~Compliance with the requirements of WAC 173-400-105(5) does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter or an applicable chapter nor from the resulting liabilities for failure to comply.~~

~~(6))~~ Continuous monitoring and recording. Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

- (a) Fossil fuel-fired steam generators.
  - (i) Opacity, except where:
    - (A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or
    - (B) Only gaseous fuel is burned.
  - (ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.
  - (iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.
  - (iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

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

(ii) Continuous monitoring equipment. The requirements of WAC 173-400-105 (6)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by WAC 173-400-105 (6)(d) shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5, promulgated October 6, 1975, and amended November 7, 1986, which is adopted by reference.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (6) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or

operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

~~((7))~~ (6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program.

Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-105(1) shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

#### NEW SECTION

**WAC 173-400-107 Excess emissions.** (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.

(2) Excess emissions determined by ecology or the authority 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 to ecology or the authority 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 demonstrates to the satisfaction of ecology or the authority or the decision-making authority in an enforcement action 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 demonstrates to the satisfaction of ecology or the 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; 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, 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.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-110 New source review (NSR). (1) Applicability.**

~~((a) A notice of construction must be approved by ecology or the authority prior to the construction, installation, or establishment of a new source or emissions unit which is required to register per WAC 173-400-100.~~

~~(b) Ecology or the authority may require a notice of construction prior to the construction, installation, or establishment of any other new source, other than a single family or duplex dwelling.~~

~~(c) The notice of construction and new source review shall apply only to the emission unit(s) affected and the contaminants involved.~~

~~(d) The owner(s) or operator(s) of any source that is required to register per WAC 173-400-100 shall notify ecology or the authority prior to replacement of air pollution control equipment or process equipment other than equivalent replacement for routine maintenance and repair. Ecology or the authority may determine that a notice of construction is required.~~

~~(2) **Additional information.** Within thirty days of receipt of a notice of construction, ecology or the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.~~

~~(3) **Requirements for new sources.** Ecology or the authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:~~

~~(a) The new source will be in accord with applicable federal and state rules and regulations, including NSPS and NESHAPS and the new source will use BACT for emissions control; and~~

~~(b) Requirements for nonattainment areas;~~

~~(i) If the new source is a major source or the proposed change is a major modification, it will comply with LAER for emissions of the contaminants for which nonattainment has been designated; and~~

~~(ii) If the new source is a major source or the proposed change is a major modification and is located in an area that is not in attainment for carbon monoxide or ozone and the source will emit carbon monoxide or VOCs, it is required that there be an analysis of alternative sites, sizes, and production processes and environmental control techniques for the proposed new source which demonstrates that benefits of the proposed new source significantly outweigh~~

~~the environmental and social costs imposed as a result of its location, construction, and modification. This analysis is the responsibility of the applicant, who may use an environmental impact statement prepared under the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA) as a source of information; and~~

~~(iii) The proposed new source will not violate the requirements for reasonable further progress established by the state implementation plan. If the new source is a major source or the proposed change is a major modification, the total new allowable emissions from all sources existing at the time of application for notice of construction plus proposed allowable emissions for the new source, of the contaminants for which nonattainment has been designated, shall be no greater than the total allowable emissions from existing sources, except that: (A) Ecology or the authority may require that new total allowable emissions be reduced to less than existing total allowable emissions, as necessary to achieve air quality attainment goals stated in an approved plan of attainment, and (B) the emissions from the proposed new source may be approved without an offsetting reduction from existing sources if an adequate emissions growth allowance is included in an approved plan of attainment. The above requirements must be met by reducing emissions from existing source(s). Arrangements for such offsetting reduction(s) of actual emissions must be made by the owner(s) or operator(s) of the proposed new source. The proposed new source may be constructed only after the issuance of a regulatory order(s) to the proposed new source and to all the source(s) that provided the offset. The said orders shall include new allowable emissions limits for all the affected sources; and~~

~~(iv) If the new source is a major source or the proposed change is a major modification, the owner(s) or operator(s) shall demonstrate that all major sources owned or operated by such person (or persons under common control with such person) in the state which are subject to emission limitations are in compliance or on a schedule for compliance with applicable emission limitations and standards under the Federal Clean Air Act; and~~

~~(v) In a locality that does not meet national ambient air quality standards and has not been designated a nonattainment area, a proposed new major source or major modification must reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact. An ecology approved air quality model shall be used to demonstrate a net air quality benefit where the source would otherwise cause or contribute to a violation of any national ambient air quality standard.~~

~~(e) **Requirements for attainment areas.** If the proposed new source is located in an area that is in attainment for contaminants that would be emitted by the source and the source is located in an ozone attainment area if the source would emit VOCs;~~

~~(i) The allowable emissions from the proposed new source will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any national ambient air quality standard. This requirement will be considered to be met if the impact at any location within a nonattainment area or a locality exceeding the applicable standard does not exceed the following levels:~~

Pollutant	Annual Average	24 Hour Average	8 Hour Average	3 Hour Average	1 Hour Average
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>
TSP	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>		25 ug/m <sup>3</sup>	30 ug/m <sup>3</sup>
PM 10	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>				

(ii) The proposed new source will not cause a violation of any ambient air quality standard.

(iii) An offsetting emissions reduction that satisfies the requirements of WAC 173-400-110 (3)(b) may be used to satisfy the requirements of WAC 173-400-110 (3)(c) and (d) if required.

(d) **Visibility requirements.** Any new major source or new major modification shall evaluate the visibility impairment per 40 CFR 52.21(e) for all Class I areas in Washington and neighboring states. The evaluation shall comply with the following:

(i) When the land manager has officially designated visibility to be an important attribute, the owner(s) or operator(s) of the new source shall demonstrate that the potential emissions in combination with emissions from all other sources permitted after January 1, 1982, shall not cause or contribute to a significant visibility impairment.

(ii) Ecology shall upon receipt of an application for a notice of construction notify the land managers of potentially affected areas. Notification shall be in writing and include a copy of all information relevant to the application including the information developed for this section. This information shall be transmitted to the land manager within thirty days of receipt of the application and at least sixty days prior to public hearing on the application for permit to construct.

(iii) All evaluations of visibility impairment required under this section shall use the models on file with ecology or equivalent models approved by ecology or EPA.

(iv) The results of the evaluation shall be sent to the land manager of the affected areas for review and recommendation. The review shall consider the degree of visibility impairment, duration, geographic extent, frequency, and time. The recommendation of the land managers concerning adverse impact on visibility shall be sent to ecology within thirty days of receipt of the evaluation results.

(v) Should ecology concur with the recommendation of the land manager, the notice of construction shall be approved or disapproved according to the recommendation. Ecology may find the review of a land manager inadequate and make its own determination. A finding of significant visibility impairment shall require a disapproval of the notice of construction, unless sufficient mitigating measures are developed.

(vi) Ecology or land managers may demonstrate that the new source would cause impairment of an integral vista officially designated at least six months before the new source submitted a complete application. The protection of an integral vista by controls on the source shall consider the time necessary for compliance, the energy and nonair quality environmental effects of compliance and the productive life of the source.

(vii) Ecology may require visibility monitoring at the site of the new source or potentially affected areas as a part

of the applicable regulatory order. The monitoring period may be before or after construction or both.

(4) **Preliminary determination.** Within thirty days after receipt of all information required, ecology or the authority shall:

(a) Make preliminary determinations on the matters set forth in subsection (3)(b), (c), and (d) of this section if applicable; and

(b) Initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable.

(5) **Final determination.** If, after review of all information received including public comment, ecology or the authority finds that all the conditions in subsection (3) of this section are satisfied, whichever is applicable, the authority will issue a regulatory order to approve the notice of construction for the proposed new source or modification.

(6) **Appeal of approval.** A notice of construction approval can be appealed to the state pollution control hearings board per RCW 70.94.025.

(7) **Portable sources.** For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

(8) **Commencement of construction.** The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.) (a) A notice of construction application must be filed by the owner or operator and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification which is listed in WAC 173-400-100.

(b) Ecology or the authority may require that a notice of construction application be filed by the owner or operator of a proposed new source or modification and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification, other than a single family or a duplex dwelling.

(c) New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification.

(2) **Completeness determination.** Within thirty days of receipt of a notice of construction application, ecology or the authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary, based upon review of information already supplied, to complete the application. For a project subject to PSD review under WAC 173-400-

141 a completeness determination includes a determination that the application provides all information required to conduct PSD review.

**(3) Final determination.**

(a) Within sixty days of receipt of a complete application, ecology or the authority shall either issue a final decision on the application or, for those projects subject to public notice, initiate notice and comment procedures under WAC 173-400-171 on a proposed decision, followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of ecology or the authority.

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

(d) If the new source is a major stationary source or the change is a major modification, ecology or the authority shall submit any control technology determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA.

(4) Appeals. An order of approval, any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW.

(5) Portable sources. For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction application, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

## NEW SECTION

**WAC 173-400-112 Requirements for new sources in nonattainment areas.** Ecology or an authority reviewing an application to establish a new source or modification in a nonattainment area, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

(3) The proposed new source will not violate the requirements for reasonable further progress established by the state implementation plan and will comply with WAC 173-400-113(3) for all contaminants for which the area has not been designated nonattainment.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification, and ecology or the authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) If the proposed new source is a major stationary source or the proposed modification is a major modification, allowable emissions from the proposed new source or modification are offset by reductions in actual emissions from existing sources in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(a) The proposed new level of allowable emissions must be less than the current level of actual emissions of the source providing emissions reduction. No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source. Emission reductions imposed by local, state, or federal regulations or permits cannot be credited.

(b) The emission reductions must provide for a net air quality benefit. For ozone nonattainment areas, the total emissions of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new source is located. For any other nonattainment area, ambient concentrations of the nonattainment pollutant are not increased by any location as demonstrated through appropriate dispersion modeling.

(c) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable. The new source may not commence operation before the date such reductions are actually achieved. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in an EPA-approved state implementation plan.

(7) If the proposed new source is a major stationary source or the proposed modification is a major modification for the purposes of the PSD program described in WAC

173-400-141, it meets the requirements of that program for all contaminants for which the area has not been designated nonattainment.

(8) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(9) If the proposed new source is a major stationary source or the proposed modification is a major modification ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.28 (c) through (h), as in effect on January 1, 1993, and determined that the project meets the criteria set forth in 40 CFR 52.28(g). For purposes of this subsection definitions referenced in 40 CFR 52.28(b) are incorporated by reference, except that the term "visibility protection area" means any Class I area, and terms defined in WAC 173-400-030 shall have the meanings defined in that section. References in 40 CFR 52.28 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.

**NEW SECTION**

**WAC 173-400-113 Requirements for new sources in attainment or nonclassifiable areas.** Ecology or an authority reviewing an application to establish a new source or modification in an area that is in attainment or unclassifiable for any air contaminant the new source would emit and that is in attainment or unclassifiable for ozone if the proposed new or modified source would emit VOCs or NO<sub>x</sub>, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies all of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

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

(3) Allowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment or unclassifiable nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment area does not exceed the following levels for the pollutant(s) for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5 mg/m <sup>3</sup>	-	2 mg/m <sup>3</sup>
TSP	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	25 µg/m <sup>3</sup>	30 µg/m <sup>3</sup>
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification for purposes of the PSD program described in WAC 173-400-141, it meets all applicable requirements of that chapter.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

(6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the source would not cause an adverse impact upon visibility.

**NEW SECTION**

**WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.** (1) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emission unit shall file a notice of construction application with the appropriate authority, or with ecology in areas or for sources over which ecology has jurisdiction.

(2) For projects not otherwise reviewable under WAC 173-400-110, ecology or the authority may:

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

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

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

(4) Actual construction, as defined in WAC 173-400-030 (17)(a) and (b), shall not begin on a project subject to review under this section until ecology or the authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if ecology or the authority takes no action within thirty days of receipt of a complete notice of construction application.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-120 Bubble rules.** (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal

law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

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

(a) The contaminants exchanged must be of the same type, that is, (~~particulates for particulates~~) PM<sub>10</sub> for PM<sub>10</sub>, sulfur dioxide for sulfur dioxide, etc.

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

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

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

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

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

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

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

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

(iv) If the given emissions unit emits or has the potential to emit 100 tons per year or more of particulate matter, the opacity shall be monitored continuously.

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

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

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

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

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

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

(5) Approval. Within the time period allowed by the state operating permit rules, or for nonpermitted sources, within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, (~~a regulatory order or equivalent document shall be issued which includes~~) the operating permit for each source affected by the bubble shall be revised to incorporate new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit (~~involved in the application~~) affected by the bubble. The (~~order or equivalent document must~~) revised permit shall include (~~all requirements necessary~~) any conditions required to assure that (~~conditions in~~) subsection (2)(a) through (j) of this section will be satisfied. If a source affected by a bubble is not a permitted source under the state operating permit program, the conditions imposed to satisfy subsection (2)(a) through (j) of this section shall be adopted as a regulatory order. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit (~~the~~) operation of the affected equipment.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

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

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

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

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

(c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved, but in no case shall the ERC be for less than one ton per year.

(d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction

under WAC (~~(173-400-110 (3)(e))~~) 173-400-112(4), nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, NESHAPS, BACT, or LAER.

(e) (~~(Concurrently)~~) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a regulatory order or permit that establishes total allowable emissions from the source of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time. (~~(The new allowable emissions shall be considered RACT.)~~)

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

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

(5) Approval. Within the time period allowed by the state operating permit rules, or for nonpermitted sources, within thirty days after all ((the)) required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. ((If the ERC application has not been approved or denied within thirty days, the ERC will be automatically approved.)) If the application is approved, ecology or the authority shall:

(a) (~~(Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the proposed new allowable emission rate(s) claimed in the ERC application, expressed as weight of pollutant per unit time. The regulatory order or equivalent document must include all requirements that are necessary to provide such assurance. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit the startup.))~~) Modify the source's operating permit to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The modified permit shall include any conditions required to assure that subsection (3)(a) through (e) of this section will be satisfied. If a source applying for an ERC is not a permitted source under the state operating permit program the conditions imposed to satisfy subsection (3)(a) through (e) of this section shall be adopted as a regulatory order. If the ERC depends in whole or in part upon the shutdown of equipment, the revised permit or regulatory order must prohibit operation of the affected equipment; and,

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-136 Use of emission reduction credits.**

(1) Permissible use. An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-

400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per WAC (~~(173-400-110 (3)(e)), to satisfy requirements for PSD review per WAC 173-400-110 (4)(e), or to satisfy requirements for visibility review per WAC 173-400-110 (4)(e))~~) 173-400-112 or 173-400-113(3), or to satisfy requirements for PSD review per WAC 173-400-113(4).

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

(3) Conditions of use. An ERC may be used only for the contaminant(s) for which it was issued. Ecology or the authority may impose additional conditions of use to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC.

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

(5) Time of use. An unused ERC and any unused portion thereof shall expire ten years after date of original issue.

(6) Discount due to change in SIP. If reductions in emissions beyond those identified in the state implementation plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by ecology or the authority after public involvement per WAC 173-400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-141 Prevention of significant deterioration (PSD).** Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and (w), Prevention of Significant Deterioration of Air Quality, as in effect on (~~July 1, 1989~~) January 1, 1993, are incorporated by reference with the following additions and modifications:

(1) Construction of "administrator." In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) administrator shall mean both the administrator of EPA and the director of ecology.

(2) Contemporaneous. Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs (~~(at the same time or within ten years prior to the change))~~ between the date ten years before construction on the particular change commenc-

es and the date that the increase from the particular change occurs. If a decrease occurred more than one year prior to the date of submittal of the notice of construction application for the particular change it can only be credited if the decrease has been documented by an emission reduction credit."

(3) Public participation. Subpart 40 CFR 51.166(q) public participation, as in effect ((July 1, 1989)) January 1, 1993, is hereby incorporated by reference(~~(, with the following modifications:~~

~~(a) In 40 CFR 51.166 (q)(2)(iv), the word "administrator" shall be construed in its original meaning.~~

~~(b)) except that in 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days and the word "administrator" shall mean the EPA administrator.~~

(4) Section 40 CFR 51.166 Subpart (p)(1) Sources Impacting Federal Class I areas - additional requirements - Notice to EPA, as in effect on ((July 1, 1989)) January 1, 1993, is herein incorporated by reference.

(5) Secondary emissions. Subpart 40 CFR 52.21 (b)(18) is changed to read:

Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(6) ~~((List of Class I areas. The following areas are the Class I areas in Washington state as of January 1, 1989:~~

- ~~Mount Rainier National Park~~
- ~~North Cascade National Park~~
- ~~Olympic National Park~~
- ~~Alpine Lakes Wilderness Area~~
- ~~Glacier Peak Wilderness Area~~
- ~~Goat Rocks Wilderness Area~~
- ~~Mount Adams Wilderness Area~~
- ~~Pasayten Wilderness Area.)~~

Significant. The definition of "significant" in 40 CFR 52.21 (b)(23) is changed to exclude from the list of pollutants which may trigger PSD review any pollutant listed under FCAA §112.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-171 Public involvement.** (1) **Applicability.** Ecology or the authority shall provide public notice prior to the approval or denial of any of the following types of applications or other actions:

(a) Notice of construction application for any new or modified source or emissions unit, if a net significant emissions increase for any pollutant regulated by state or federal law would result; or

(b) Any application or other proposed action for which a public hearing is required by PSD rules; or

(c) Any order to determine RACT; or

(d) An order to establish a compliance schedule or a variance; or

(e) The establishment or disestablishment of a nonattainment area, or the changing of the boundaries thereof; or

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

(g) An order to authorize a bubble; or

(h) Notice of construction application or regulatory order used to establish a creditable emission reduction; or

(i) Any application or other proposed action made pursuant to this chapter in which there is a substantial public interest according to the discretion of ecology or the authority.

(2) **Public notice.** Public notice shall be made only after all information required by ecology or the authority has been submitted and after applicable preliminary determinations, if any, have been made. The cost of providing public notice shall be borne by the applicant or other initiator of the action. Public notice shall include:

(a) Availability for public inspection in at least one location near the proposed project, of the nonproprietary information submitted by the applicant and of any applicable preliminary determinations, including analyses of the effect(s) on air quality.

(b) Publication in a newspaper of general circulation in the area of the proposed project of notice:

(i) Giving a brief description of the proposal;

(ii) Advising of the location of the documents made available for public inspection;

(iii) Advising of a thirty-day period for submitting written comment to ecology or the authority;

(iv) Advising that a public hearing may be held if ecology or the authority determines within a thirty-day period that significant public interest exists.

(c) A copy of the notice will be sent to the EPA regional administrator.

Public participation procedures for notice of construction applications that are processed in coordination with an application to issue or modify an operating permit shall be conducted as provided in the state operating permit rule.

(3) **Public comment.** No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the thirty-day period for written comment published as provided above. If a public hearing is held the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public hearings.** The applicant, any interested governmental entity, any group or any person may request a public hearing within the thirty-day period published as above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. Ecology or the authority may, in its discretion, hold a public hearing if

it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time(s) and place(s) as ecology or the authority deems reasonable.

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

(6) **Public information.** Copies of notices of construction, orders, and modifications thereof which are issued hereunder shall be available for public inspection on request at ecology or the authority.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

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

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

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

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-250 Appeals.** Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. (~~PSD permits issued by ecology are appealable only to ecology pursuant to 40 CFR Part 124.~~)

**WSR 93-05-052  
PROPOSED RULES  
DEPARTMENT OF  
GENERAL ADMINISTRATION  
(Division of Banking)  
[Filed February 17, 1993, 11:00 a.m.]**

Original Notice.

Title of Rule: Interstate acquisition reciprocity—States possessing.

Purpose: Updating WAC 50-48-100 to add states that possess acceptable reciprocal interstate acquisition statutes with Washington.

Statutory Authority for Adoption: RCW 30.04.232 (1)(c).

Statute Being Implemented: RCW 30.04.232.

Summary: RCW 30.04.232 (1)(c) authorizes the supervisor of banking to identify by rule the states that allow Washington banks to acquire out-of-state banks on terms and conditions no less favorable than other banks doing a banking business within that state. Accordingly, those out-of-state banks may acquire banks in Washington.

Reasons Supporting Proposal: The rule was last amended June 9, 1987, and many more states have authorized interstate banking since then.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Bley, 1400 South Evergreen Park Drive S.W., #120, Olympia, 753-6520.

Name of Proponent: Division of Banking, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Update lists states that have reciprocity with Washington regarding interstate bank acquisitions.

Proposal Changes the Following Existing Rules: Adds states to the rule which possess interstate acquisition reciprocity with Washington.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Division of Banking, 1400 South Evergreen Park Drive S.W., Suite 120, Olympia, WA 98504, on March 23, 1993, at 9:00 a.m.

Submit Written Comments to: John L. Bley, P.O. Box 41026, Olympia, WA 98504-1026, by March 23, 1993.

Date of Intended Adoption: March 23, 1993.

February 17, 1993

John L. Bley

Supervisor of Banking

AMENDATORY SECTION (Amending Order 68, filed 6/9/87)

**WAC 50-48-100 Interstate acquisition reciprocity—States possessing.** The supervisor of banking, having reviewed the laws of the following states as they relate to a domestic (Washington) bank holding company acquiring more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within such states, has determined, pursuant to RCW 30.04.232, that the laws of such states allow a domestic bank holding company to acquire a bank, trust company, or national banking association, the principal operations of which are conducted within such states, and permit the operation of the acquired bank, trust company, or national banking association within such states on terms and conditions no less favorable than other banks, trust companies, or national banking associations doing a banking business within such states: (1) Alaska, (2) Arizona, (3) California, ~~((3))~~ (4) Colorado, (5) Connecticut, (6) Idaho, ~~((4))~~ (7) Illinois, (8) Kentucky, (9) Louisiana, (10) Maine, (11) Massachusetts, (12) Michigan, (13) Nebraska, (14) Nevada, (15) New Hampshire, (16) New Jersey, (17) New Mexico, (18) New York, ~~((and 5))~~ (19) North Dakota, (20) Ohio, (21) Oklahoma, (22) Oregon, (23) Pennsylvania, (24) Rhode Island, (25) South Dakota, (26) Tennessee, (27)

# APPENDIX C

WSR 93-18-007

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

**EXPRESS SHIPMENTS** - A flat handling charge of \$25.00 per parcel is charged.

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees. Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled at \$5.00 per parcel.

**MEDICAL SUPPLIES** - A flat handling charge of \$5.00 per shipment is charged.

**DISCLAIMER** - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

### WSR 93-18-006

#### PERMANENT RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed August 19, 1993, 2:08 p.m.]

Date of Adoption: August 19, 1993.

Purpose: Amending WAC 468-300-700 Preferential loading, to handle livestock during the summer season.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Pursuant to notice filed as WSR 93-13-059 on June 17, 1993.

Effective Date of Rule: Thirty-one days after filing.  
August 19, 1993

Alice B. Tawresay, Chair  
Transportation Commission

**AMENDATORY SECTION** (Amending Order 61, Resolution No. 298, filed 5/21/87)

**WAC 468-300-700 Preferential loading.** In order to protect public health, safety and commerce; to encourage more efficient use of the ferry system; and to reduce dependency on ~~((the))~~ single occupant private automobiles:

(1) Preferential loading privileges on vessels operated by Washington state ferries, exempting vehicles from the standard ~~((first come first serve))~~ first-come first-served rule, shall be granted~~((;))~~ in the order set forth below, to:

(a) Emergency vehicles ~~((actually))~~ involved in ~~((emergency operations))~~ or returning from their particular operations, and medical personnel traveling to unscheduled emergency calls (but not when returning from such calls, and not when traveling to or from their place of employment or to or from operations or procedures, whether emergency or not, which are scheduled enough in advance to allow ferry travel without preferential loading);

(b) Vehicles transporting persons with severe illnesses or severe disabilities such that the delay in loading which would otherwise ~~((result would))~~ cause health risks~~((,- undue strain or undue discomfort))~~ to those persons;

(c) Public ~~((transportation and))~~ or pupil transportation vehicles owned or operated by public or private transporta-

tion operators providing transit or charter service under a certificate of public convenience and necessity issued by the utilities and transportation commission of the state of Washington or owned and operated by a local school district or private school system;

(d) Commuter vanpools which are certified in the manner set forth in WAC 468-300-020;

(e) Commuter car pools which shall consist of a minimum number of persons as determined by ferry system management~~((:- Provided, That))~~; and such minimum number shall in no case be less than three~~((,- and provided further that))~~; and a formal registration system may be required ~~((as determined))~~ by ferry system management;

(f) Vehicles carrying livestock and traveling on routes where Washington state ferries is the only major access for land-based traffic, where such livestock (i) is raised for commercial purposes and is recognized by the department of agriculture, county agriculture soil and conservation service as raised on a farm; or (ii) is traveling to participate in a 4H event sanctioned by the county extension agent;

(g) Commercial vehicles traveling on routes where Washington state ferries is the only major access for ~~((landbased))~~ land-based traffic, provided that the vehicles are carrying wholesale perishable article(s) of commerce to be bought or sold in commercial activity or to be used in the production of other such articles;

(h) Overweight or oversize vehicles requiring transport at special times due to tidal conditions, vessel assignments, or availability of space.

(2) Such preferential loading privileges shall be subject to the following conditions:

(a) Privileges shall be granted only where physical facilities are deemed by ferry system management to be adequate to ~~((achieve))~~ allow granting the privilege and achieving an efficient operation;

(b) Documentation outlining qualifications for preferential loading and details of travel will be required in advance from all agencies, companies, or individuals requesting such privileges;

(c) Privileges may be limited to specified time periods as determined by ferry system management;

(d) Privileges may require a minimum frequency of travel, as determined by ferry system management;

(e) Privileges may be limited to a specific number of vehicle spaces for any one sailing; and,

(f) Privileges may require arriving at the ferry terminal a specified time prior to the scheduled sailing.

(3) To obtain more information about the documentation required and conditions imposed under subsection (2) of this section, call Washington state ferries' general information number, (206) 464-6400, or a terminal on a route for which the preferential boarding right is requested.

**WSR 93-18-007**

**PERMANENT RULES**

**DEPARTMENT OF ECOLOGY**

[Order 93-03—Filed August 20, 1993, 12:17 p.m.]

Date of Adoption: August 20, 1993.

**Purpose:** The purpose of the amendments is to comply with the Washington Clean Air Act and to incorporate the state's upcoming operating permit rule.

**Citation of Existing Rules Affected by this Order:** Amending WAC 173-400-030, 173-400-040, 173-400-100, 173-400-105, 173-400-110, 173-400-120, 173-400-131, 173-400-141, 173-400-171, 173-400-180, and 173-400-250; and new sections WAC 173-400-081, 173-400-107, 173-400-112, and 173-400-113.

**Statutory Authority for Adoption:** Washington Clean Air Act, chapter 70.94 RCW.

**Pursuant to notice filed as WSR 93-15-052 on July 15, 1993.**

Changes Other than Editing from Proposed to Adopted Version: WAC 173-400-030(5), the definition of "allowable emissions" was revised to use the term "stationary source" in two places instead of the term "source"; WAC 173-400-030(12), the definition of "building, structure, facility, or installation" was deleted; WAC 173-400-030(15), the definition of "combustion and incineration sources" was revised to change the term "sources" to "units" within the definition; WAC 173-400-030(24), the definition of "emission unit" is revised by adding the term "stationary" to source and by clarifying that for purposes of identifying emissions units, ecology is concerned about those pollutants regulated for purposes of protecting air quality; WAC 173-400-030(40), the definition of "major modification" is revised by adding nitrogen oxides as significant for ozone, and in a number of subsections, the word "stationary" is added to the word "source" for clarifying purposes; WAC 173-400-030 (47)(a)(i), in the definition of "net emissions increase," the term "stationary source" is replaced with the term "source" because "net emissions increase" is considered on a plantwide basis. Subsection (c)(i) is revised to include permits and the word "actual" is added to emissions for clarification purposes; WAC 173-400-030 (47)(b), the definition of "net emissions increase" was revised to include a ten year period between the date construction commences and the date that the increase from the change in emissions occurs; WAC 173-400-030 (47)(e)(iv), in the definition of "net emissions increase," the conditions for crediting emissions decrease is revised by adding "order of approval" to "permits" and where "EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21"; WAC 173-400-030(61), the definition of "PM-10 emissions" is revised by clarifying that PM-10 emissions include condensable particulate matter; WAC 173-400-030(68), the definition of "significant," reference to "reduced sulfur compounds" is deleted; WAC 173-400-030(70), the definition of "source" is revised by adding adjacent to contiguous; WAC 173-400-040, General standards for maximum emissions, changes were made regarding RACT to reflect the provisions in section 8, chapter 252, Laws of 1993; WAC 173-400-040 (7)(8)(b), General standards for maximum emissions, changes were made to incorporate the "significance levels" found in WAC 173-400-113(3); a new section WAC 173-400-091, Voluntary limits on emissions, was added to provide a mechanism for establishing federally enforceable provisions that restrict a source's potential to emit to levels below the relevant threshold limits for inclusion in the operating permit program; WAC 173-400-100 (1) and (4), Registration, changes were made to clarify that the key date is EPA approval of

the state permit program - not issuance of an individual permit; WAC 173-400-100 (1)(bb), Registration, changes were made to clarify that all sources within a category for which EPA has published a NSPS must register with ecology or the authority. This provision has also been revised to exempt owners/operators of residential wood heaters from the registration requirements of this section; WAC 173-400-107, Excess emissions, subsections (1), (4), (5) and (6) were revised so that a consistent standard of proof will apply to all situations, independent of the decisionmaking authority; WAC 173-400-107 (6)(c), Excess emissions, a provision was added in recognition of the fact that slowing or shutting down an emissions unit during upset conditions may not minimize emissions; WAC 173-400-110 New source review, subsection (1)(a) applicability, a provision was added to clarify that sources subject to both the registration program and the operating permit program must submit notice of construction applications when establishing or modifying any new source or emission unit or modification; WAC 173-400-110 New source review, subsection (3)(a) final determination, was revised in congruence with section 4, chapter 252, Laws of 1993, to provide the flexibility for a person to integrate review of the notice of construction application with the review of the operating permit application; WAC 173-400-110 New source review, subsection (4) appeals, a provision was added that codifies ecology's current notification practices and clarifies the appeals process under the PSD program; WAC 173-400-110 New source review, a new subsection (6), was added stating that approval to construct or modify a stationary source shall become invalid if construction is not commenced within 18 months, is discontinued for a period of 18 months or more, or is not completed within a reasonable time; WAC 173-400-112(3) Requirements for new sources in nonattainment areas, a provision was added to clarify that a new source in a nonattainment area may not cause any ambient air quality standard to be exceeded; WAC 173-400-112(5) Requirements for new sources in nonattainment areas, changes were made to clarify that offset requirements apply to major new stationary sources or major modifications that are major for the pollutant(s) for which the area is designated nonattainment. Also, a change was made to clarify that a demonstration of reasonable further progress refers to more than the requirement to obtain appropriate offsets; WAC 173-400-112 (5)(a) Requirements for new sources in nonattainment areas, changes were made to clarify that emission offsets may be obtained from an emission unit(s) rather than the whole source and to clarify calculation of the amount of available offsets; WAC 173-400-112 (5)(b) Requirements for new sources in nonattainment areas, dispersion modeling was removed and a provision was added stating that emissions offsets must provide a positive net air quality benefit in the nonattainment area; WAC 173-400-112 (5)(c) requirements for new sources in nonattainment areas, revisions were made to comply with federal requirements that emission reductions be in effect and enforceable by the time the new or modified source commences operation; WAC 173-400-113(6) Requirements for new sources in attainment or unclassifiable areas, revisions were made to ensure that any increase in emissions which triggers PSD review also triggers visibility review; WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing

stationary source, a new subsection (2)(c) was added to state that ecology or the authority may prescribe other requirements as authorized by chapter 70.94 RCW for projects not otherwise reviewable under WAC 173-400-110. Also, a new subsection (5), was added stating that approval to replace or substantially alter emission control technology shall become invalid if construction is not commenced within 18 months, is discontinued for a period of 18 months or more, or is not completed within a reasonable time; WAC 173-400-120(5) Bubble rules, revisions were made to reflect the fact that ecology or a local air authority cannot use the Title V operating permit as a means to approve bubbles until this section is revised to meet the "generic" bubble rule requirements of EPA; WAC 173-400-131 (3)(c) Issuance of emission reduction credits, the phrase "but in no case shall the ERC be for less than one ton per year" was deleted; WAC 173-400-131 Issuance of emission reduction credits, subsection (5) approval, was revised to delete references to the state operating permit rule and revisions to a source's operating permit. Subsection (3)(e) conditions, is revised to include emission units; WAC 173-400-141 and elsewhere throughout the text the date January 1, 1993, was changed to March 3, 1993, to incorporate by reference any changes in the federal PSD rules that were made since the last time WAC 173-400-141 was updated; and WAC 173-400-171 Public involvement, subsection (1)(h)(i) applicability, "an order issued under WAC 173-400-090 which establishes limitations on a source's potential to emit" is added to the list

Effective Date of Rule: Thirty-one days after filing.

August 20, 1993

Mary Riveland

Director

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-030 Definitions.** ((The following definitions will apply unless a different meaning is clearly required by context:

(1) "Actual emissions" relating to a particular date means the average rate, in weight per unit time of emitted pollutant during the immediately preceding two-year period of normal operation. Ecology or the authority may allow or require the use of an alternative time period if it is more representative of normal operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or burned during the selected time period.

Ecology or the authority may presume that unit specific allowable emissions, which incorporate limits on hours of operation or production rate, are equivalent to the actual emissions of the unit.

(2) "Administrator" shall refer to ecology or the authority unless specifically defined otherwise.

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

with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

(4) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(6) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is limited in production rate or hours of operation, or both, by an applicable federally enforceable regulatory order) and the most stringent of (a), (b), or (c) of this subsection. Physical and process limitations must be considered in determining maximum rated capacity.

(a) Standards as set forth in 40 CFR Part 60 and Part 61, if applicable to the source; or

(b) The applicable state implementation plan emission limitation; or

(c) The emission rate specified by an applicable federal enforceable regulatory order.

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

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

(9) "Authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. (This may be delegated by ecology.)

(10) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to this regulation which would be emitted from any proposed new or modified source which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to meet the requirement of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results. The requirement of RCW

70.94.152 that a new source will provide "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.

(11) "Best available retrofit technology (BART)" means any emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by source. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required. Such standards shall, to the degree possible, set forth the emission reductions achieved and provide for compliance by prescribing appropriate conditions in a regulatory order.

(12) "Bubble" means a set of emission limits which allows an increase in emissions from a given emissions unit(s) in exchange for a decrease in emissions from another emissions unit(s), pursuant to RCW 70.94.155 and WAC 173.400.120.

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

(14) "Class I area" means any federal, state, or Indian land which is classified Class I.

(15) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

(16) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

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

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

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

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

(19) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

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

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

(22) "Emission reduction credit (ERC)" means a credit granted pursuant to WAC 173.400.131. This is a voluntary reduction in emissions.

(23) "Emission standard" means an allowable rate of emissions, level of opacity, or prescribing equipment or operating conditions as set forth in a regulation or regulatory order to assure continuous emission control.

(24) "Emissions unit" means any part of a source which emits or would have the potential to emit any pollutant subject to regulation.

(25) "Excess stack height" means that portion of a stack which exceeds the greater of sixty five meters or the calculated stack height described in WAC 173.400.200(2).

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

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

(28) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

(30) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173.400.200 (2)(a)(ii).

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

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

(33) "Integral vista" means a view perceived from within the Class I area of a specific landmark or panorama located outside the boundary of the Class I area.

(34) "Land manager" means the secretary of the federal department or head of the state department or Indian governing body with authority over the Class I area.

(35) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(36) "Major modification" means any physical change or change in the method of operation as defined in WAC 173.400.141.

(37) "Major source" means: Any source which emits or has the potential to emit one hundred tons per year or more of any pollutant regulated by state or federal law.

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

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

(40) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61.

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

(42) "Net emissions increase" means any emissions increase as defined in WAC 173-400-141.

(43) "New source" means a source which commences construction after the effective date of this chapter. Any addition to, enlargement, modification, replacement, restart after a period of five years of nonoperation, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emission standards have been established shall be construed as construction or installation or establishment of a new source.

(44) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.

(45) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.

(46) "Notice of construction" means a written application to permit construction of a new source or modification of an existing source.

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

(48) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered open burning.

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

(50) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

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

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

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

(54) "PM-10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or

equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

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

(56) "Prevention of significant deterioration (PSD)" means the program set forth in WAC 173-400-141.

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

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

(59) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case by case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls.

RACT requirements for any source or source category may be adopted as an order or regulation after public involvement per WAC 173-400-171.

(60) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which approves a notice of construction and/or limits emissions and/or establishes other air pollution control requirements.

(61) "Significant emission" means a rate of emission equal to or greater than any one of the following rates:

Pollutant	Tons/Year	Pounds/Day	Pounds/Hour
Carbon monoxide	100		
Nitrogen oxides	40		
Sulfur dioxide	40	800	80
Volatile organic compounds	40		
Particulate matter	25	500	50
PM-10	15		
Lead	.6		
Total reduced sulfur (as H <sub>2</sub> S)	10		
Total fluoride	3		

(62) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case by case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of

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visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

(63) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, which are located on one or more contiguous or adjacent properties under the control of the same person(s) and those activities that are secondary to the production of a single product or functionally related group of products.

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

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

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

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

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

(69) "Total reduced sulfur, (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

(70) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

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

(72) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

(73) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

(74) "Volatile organic compound, (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the USEPA administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. This reactivity policy exempts the following compounds per the Federal Register: Methane, ethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, trichlorotrifluoroethane, dichlorotetrafluoroethane, chloropentafluoroethane, methylene chloride, and 1,1,1-trichloroethane (methyl chloroform).) Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the

emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

(3) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR Part 60 or 61;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or

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

(6) "Ambient air" means the surrounding outside air.

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

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

(9) "Best available control technology (BACT)" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61, as they exist on May 7, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

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

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

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

(13) "Class I area" means any area designated pursuant to §§ 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

- Alpine Lakes Wilderness;
- Glacier Peak Wilderness;
- Goat Rocks Wilderness;
- Mount Adams Wilderness;
- Mount Rainier National Park;
- North Cascades National Park;
- Olympic National Park;
- Pasayten Wilderness;
- Spokane Indian Reservation.

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

(15) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

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

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

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

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

(18) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

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

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

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

(22) "Emission standard" and "emission limitation" means a requirement established under the FCAA 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 promulgated under the FCAA or chapter 70.94 RCW.

(23) "Emissions unit" means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA, chapter 70.94 or 70.98 RCW.

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

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

(26) "Existing stationary facility" means a stationary source of air pollutants which has the potential to emit two hundred fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

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

(28) "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

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

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

(31) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

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

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

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

(36) "Integral vista" means a view perceived from within a mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.

(37) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(38) "Mandatory Class I federal area" means any area defined in Section 162(a) of the FCAA. The mandatory Class I federal areas in Washington state are as follows:

Alpine Lakes Wilderness;  
Glacier Peak Wilderness;  
Goat Rocks Wilderness;  
Mount Adams Wilderness;  
Mount Rainier National Park;  
North Cascades National Park;  
Olympic National Park;  
Pasayten Wilderness.

(39) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions

increase of any pollutant subject to regulation under the FCAA. Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(i) The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, in a prevention of significant deterioration permit or notice of construction approval; or

(ii) The stationary source is approved to use under any federally-enforceable notice of construction approval or a PSD permit issued by the environmental protection agency;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, in a prevention of significant deterioration permit or a notice of construction approval;

(g) Any change in ownership at a stationary source.

(40) "Major stationary source" means:

(a) Any stationary source which:

(i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the state or Federal Clean Air Acts; or

(ii) Is located in a "marginal" or "moderate" ozone nonattainment area and which emits or has the potential to emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen.

(b) Any stationary source (or group of stationary sources) which:

(i) Is located in a "serious" carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels and which emits or has the potential to emit fifty tons per year or more of carbon monoxide; or

(ii) Is located in a "serious" particulate matter (PM<sub>10</sub>) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM<sub>10</sub> emissions.

(c) Any physical change that would occur at a stationary source not qualifying under (a) or (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself;

(d) A major stationary source that is major for VOCs or NOx shall be considered major for ozone;

(e) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the stationary source belongs to one of the

following categories of stationary sources or the source is a major stationary source due to (b) of this subsection:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cements plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category which, as of August 7, 1980, was being regulated under sections 111 or 112 of the Federal Clean Air Act.

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

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

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

(43) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modifi-

cation in Section 7411, Title 42, United States Code, and with rules implementing that section.

(44) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61.

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

(46) "Net emissions increase" means:

(a) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular change or change in method of operation at a source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit, in which case the credit shall expire ten years after the date of original issue of the ERC. Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) Ecology or the authority has not relied on it in issuing any permit or order of approval for the source under regulations approved pursuant to 40 CFR 51 Subpart I or the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(iv) Ecology or the authority has not relied on it in issuing any permit or order of approval under regulations approved pursuant to 40 CFR 51 Subpart I, the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21, or ecology or the authority has not relied on it in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown

becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(47) "New source" means:

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

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

(48) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.

(49) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.

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

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

(52) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered open burning.

(53) "Order" means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

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

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

(56) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

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

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

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

(60) "PM-10 emissions" means finely divided solid or liquid material, including condensible particulate matter, with

an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington state implementation plan.

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

(62) "Prevention of significant deterioration (PSD)" means the program set forth in WAC 173-400-141.

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

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

(65) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(66) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.

(67) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission equal to or greater than any one of the following rates:

Pollutant	Tons/Year
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter (PM)	25
Fine particulate matter (PM <sub>10</sub> )	15
Volatile organic compounds (VOC)	40
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H <sub>2</sub> S)	10

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Total reduced sulfur (including H <sub>2</sub> S) . . . . .	10
Municipal waste combustor organics . . . . .	0.0000035
(measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	
Municipal waste combustor metals (measured as PM) . . . . .	15
(Municipal waste combustor acid gases (measured as SO <sub>2</sub> and hydrogen chloride))	

(68) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

(69) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

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

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

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

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

(74) "Stationary source" means any building, structure, facility, or installation which emits or may emit any contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the FCAA.

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

(76) "Total reduced sulfur (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

(77) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

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

(79) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

(80) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

(81) "Volatile organic compound (VOC)" means:

(a) Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any organic compound other than the following, which have negligible photochemical activity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro 2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 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); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations; and

(iii) 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 CFR Part 60 Appendix A. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by ecology or the authority.

(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 or the authority, the amount of negligibly-reactive compounds in the source's emissions.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-040 General standards for maximum emissions.** ((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 will take precedent over a general emission standard listed in this chapter. 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. Further, 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, ecology or the authority shall, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order to the source or sources for installation of RACT.

(1) Visible emissions. No person shall cause or permit 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 permit 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 ecology or the authority be advised of the schedule.

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

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

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

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

(3) Fugitive emissions. The owner or operator of any emissions unit engaging in materials handling, construction, demolition or any 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, shall be required to use best available control technology (BACT) to control emissions of the contaminants for which nonattainment has been designated. Significance will be determined by EPA interpretive ruling for PSD and offsets on file with ecology.

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

(5) Emissions detrimental to persons or property. No person shall cause or permit 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.

(6) Sulfur dioxide.

No person shall cause or permit 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, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ecology or the authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the authority.

(7) Concealment and masking. No person shall cause or permit 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.

(8) Fugitive dust sources.

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

(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to a Category I PM 10 area shall be required to use reasonably available control technology to control emissions. Significance will be determined by the definition found in 40 CFR Part 51, Appendix S, as amended through July 1, 1990.) 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 will take precedent over a general emission standard listed in this chapter. 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. Further, 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, ecology or the authority shall, as provided in section 8, chapter 252, Laws of 1993, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(1) Visible emissions. No person shall cause or permit 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 permit 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 ecology or the authority be advised of the schedule.

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

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

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

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

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

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

(5) Emissions detrimental to persons or property. No person shall cause or permit 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.

(6) Sulfur dioxide.

No person shall cause or permit 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, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the authority that there is no feasible method of reducing the

concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ecology or the authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the authority.

(7) Concealment and masking. No person shall cause or permit 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.

(8) Fugitive dust sources.

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

(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to a PM-10 nonattainment area shall be required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(3).

#### NEW SECTION

**WAC 173-400-081 Startup and shutdown.** In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) ecology and the authorities shall consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown. Where ecology or the authority determines that the source or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, ecology or the authority shall include in the standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions. In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, ecology and the 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. Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in an approved state implementation plan shall not take effect until approved by EPA as a SIP amendment.

#### NEW SECTION

**WAC 173-400-091 Voluntary limits on emissions.**

(1) Upon request by the owner or operator of a source, ecology or the authority with jurisdiction over the source shall issue a regulatory order that limits the source's potential to emit any air contaminant or contaminants to a level

agreed to by the owner or operator and ecology or the authority with jurisdiction over the source.

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

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

(4) Any order issued under this section shall be subject to the notice and comment procedures under WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington state implementation plan. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-100 Registration.** ~~((The owner or operator of each source within the following source categories shall register the source with ecology or an authority:~~

- ~~(1) Agricultural drying and dehydrating operations;~~
- ~~(2) Asphalt plants;~~
- ~~(3) Beverage can surface coating operations;~~
- ~~(4) Bulk gasoline terminals;~~
- ~~(5) Cattle feedlots with facilities for one thousand or more cattle;~~
- ~~(6) Chemical plants;~~
- ~~(7) Ferrous foundries;~~
- ~~(8) Fertilizer plants;~~
- ~~(9) Flexible vinyl and urethane coating and printing operations;~~
- ~~(10) Grain handling, seed processing, pea and lentil processing facilities;~~
- ~~(11) Metallic mineral processing plants;~~
- ~~(12) Mineralogical processing plants;~~
- ~~(13) Nonferrous foundries;~~
- ~~(14) Other metallurgical processing plants;~~
- ~~(15) Petroleum refineries;~~
- ~~(16) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;~~
- ~~(17) Pressure sensitive tape and label surface coating operations;~~
- ~~(18) Rendering plants;~~
- ~~(19) Scrap metal operations;~~
- ~~(20) Synthetic organic chemical manufacturing industries;~~
- ~~(21) Sulfuric acid plants;~~
- ~~(22) Synthetic fiber production facilities;~~
- ~~(23) Veneer dryers;~~

- ~~(24) Wood waste incinerators including wigwam burners;~~
- ~~(25) Other incinerators designed for a capacity of one hundred pounds per hour or more;~~
- ~~(26) Stationary internal combustion engines rated at five hundred horse power or more;~~
- ~~(27) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;~~
- ~~(28) Any category of stationary sources to which a federal standard of performance (NSPS) applies;~~
- ~~(29) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);~~
- ~~(30) Any major source.~~

~~Registration shall be on forms to be supplied by ecology or the authority within the time specified on the form.~~

~~A report of closure shall be filed within ninety days with ecology or an authority if under their jurisdiction when operations producing emissions permanently cease at any source within the above categories.))~~ (1) Except as provided in subsection (4) of this section, the owner or operator of each source within the following source categories shall register the source with ecology or the authority:

- (a) Agricultural drying and dehydrating operations;
- (b) Asphalt plants;
- (c) Beverage can surface coating operations;
- (d) Bulk gasoline terminals;
- (e) Cattle feedlots with facilities for one thousand or more cattle;
- (f) Chemical plants;
- (g) Ferrous foundries;
- (h) Fertilizer plants;
- (i) Flexible vinyl and urethane coating and printing operations;
- (j) Grain handling, seed processing, pea and lentil processing facilities;
- (k) Metallic mineral processing plants;
- (l) Mineralogical processing plants;
- (m) Nonferrous foundries;
- (n) Other metallurgical processing plants;
- (o) Petroleum refineries;
- (p) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;
- (q) Pressure sensitive tape and label surface coating operations;
- (r) Rendering plants;
- (s) Scrap metal operations;
- (t) Synthetic organic chemical manufacturing industries;
- (u) Sulfuric acid plants;
- (v) Synthetic fiber production facilities;
- (w) Veneer dryers;
- (x) Wood waste incinerators including wigwam burners;
- (y) Other incinerators designed for a capacity of one hundred pounds per hour or more;
- (z) Stationary internal combustion engines rated at five hundred horse power or more;
- (aa) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;
- (bb) Any category of stationary sources subject to a federal standard of performance (NSPS) under 40 CFR Part

PERMANENT

60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters);

(cc) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);

(dd) Any major stationary source.

(2) Registration shall be on forms to be supplied by ecology or the authority within the time specified on the form.

(3) A report of closure shall be filed with ecology or the authority within ninety days after operations producing emissions permanently cease at any source within the above categories.

(4) Permit program sources, as defined in RCW 70.94.030(17), are not required to comply with the registration requirements of this section after the Environmental Protection Agency grants interim or final approval for the state operating permit program.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-105 Records, monitoring, and reporting.** ((The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter, PM 10, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

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

(4) Source testing. To demonstrate compliance, ecology may conduct or require that a test be conducted of the source using approved EPA methods from 40 C.F.R. 60 Appendix A which are adopted by reference, or approved procedures contained in "Source Test Manual—Procedures for Compli-

ance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) Report of startup, shutdown, breakdown or upset condition(s). If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner(s) or operator(s) of the source(s) shall take the following actions as applicable:

(a) For a planned condition, such as a startup or shutdown, the condition shall be reported to ecology or the authority in advance of its occurrence.

(b) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to ecology or the authority as soon as possible.

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.

Compliance with the requirements of WAC 173-400-105(5) does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter or an applicable chapter nor from the resulting liabilities for failure to comply.

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

(a) Fossil fuel fired steam generators.

(i) Opacity, except where:

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

(B) Only gaseous fuel is burned.

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

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

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

(b) Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

~~(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.~~

~~Opacity where fresh feed capacity is more than twenty thousand barrels per day.~~

~~(d) Wood residue fuel-fired steam generators.~~

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

~~(ii) Continuous monitoring equipment. The requirements of WAC 173-400-105 (6)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by WAC 173-400-105 (6)(d) shall be subject to approval by ecology.~~

~~(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5, promulgated October 6, 1975, and amended November 7, 1986, which is adopted by reference.~~

~~(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.~~

~~(g) Exemptions. This subsection (6) does not apply to any source which is:~~

~~(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.~~

~~(ii) Not subject to an applicable emission standard.~~

~~(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.~~

~~(7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-105(1) shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.) The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.~~

~~(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter,~~

PM<sub>10</sub>, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

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

(4) Source testing. To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 CFR 60 Appendix A which are adopted by reference, or approved procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

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

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

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

(B) Only gaseous fuel is burned.

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

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

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

(b) Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

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

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

(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5, promulgated October 6, 1975, and amended November 7, 1986, which is adopted by reference.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

## NEW SECTION

**WAC 173-400-107 Excess emissions.** (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.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-110 New source review (NSR).** ((+)) **Applicability.**

~~(a) A notice of construction must be approved by ecology or the authority prior to the construction, installa-~~

tion, or establishment of a new source or emissions unit which is required to register per WAC 173 400 100.

(b) Ecology or the authority may require a notice of construction prior to the construction, installation, or establishment of any other new source, other than a single family or duplex dwelling.

(c) The notice of construction and new source review shall apply only to the emission unit(s) affected and the contaminants involved.

(d) The owner(s) or operator(s) of any source that is required to register per WAC 173 400 100 shall notify ecology or the authority prior to replacement of air pollution control equipment or process equipment other than equivalent replacement for routine maintenance and repair. Ecology or the authority may determine that a notice of construction is required.

(2) **Additional information.** Within thirty days of receipt of a notice of construction, ecology or the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.

(3) **Requirements for new sources.** Ecology or the authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:

(a) The new source will be in accord with applicable federal and state rules and regulations, including NSPS and NESHAPS and the new source will use BACT for emissions control; and

(b) Requirements for nonattainment areas;

(i) If the new source is a major source or the proposed change is a major modification, it will comply with LAER for emissions of the contaminants for which nonattainment has been designated; and

(ii) If the new source is a major source or the proposed change is a major modification and is located in an area that is not in attainment for carbon monoxide or ozone and the source will emit carbon monoxide or VOCs, it is required that there be an analysis of alternative sites, sizes, and production processes and environmental control techniques for the proposed new source which demonstrates that benefits of the proposed new source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification. This analysis is the responsibility of the applicant, who may use an environmental impact statement prepared under the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA) as a source of information; and

(iii) The proposed new source will not violate the requirements for reasonable further progress established by the state implementation plan. If the new source is a major source or the proposed change is a major modification, the total new allowable emissions from all sources existing at the time of application for notice of construction plus proposed allowable emissions for the new source, of the contaminants for which nonattainment has been designated, shall be no greater than the total allowable emissions from existing sources, except that: (A) Ecology or the authority may require that new total allowable emissions be reduced to less than existing total allowable emissions, as necessary to achieve air quality attainment goals stated in an approved plan of attainment, and (B) the emissions from the proposed

new source may be approved without an offsetting reduction from existing sources if an adequate emissions growth allowance is included in an approved plan of attainment. The above requirements must be met by reducing emissions from existing source(s). Arrangements for such offsetting reduction(s) of actual emissions must be made by the owner(s) or operator(s) of the proposed new source. The proposed new source may be constructed only after the issuance of a regulatory order(s) to the proposed new source and to all the source(s) that provided the offset. The said orders shall include new allowable emissions limits for all the affected sources; and

(iv) If the new source is a major source or the proposed change is a major modification, the owner(s) or operator(s) shall demonstrate that all major sources owned or operated by such person (or persons under common control with such person) in the state which are subject to emission limitations are in compliance or on a schedule for compliance with applicable emission limitations and standards under the Federal Clean Air Act; and

(v) In a locality that does not meet national ambient air quality standards and has not been designated a nonattainment area, a proposed new major source or major modification must reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact. An ecology approved air quality model shall be used to demonstrate a net air quality benefit where the source would otherwise cause or contribute to a violation of any national ambient air quality standard.

(c) **Requirements for attainment areas.** If the proposed new source is located in an area that is in attainment for contaminants that would be emitted by the source and the source is located in an ozone attainment area if the source would emit VOCs;

(i) The allowable emissions from the proposed new source will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any national ambient air quality standard. This requirement will be considered to be met if the impact at any location within a nonattainment area or a locality exceeding the applicable standard does not exceed the following levels:

Pollutant	Annual Average	24 Hour Average	8 Hour Average	3 Hour Average	1 Hour Average
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>
TSP	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>		25 ug/m <sup>3</sup>	30 ug/m <sup>3</sup>
PM 10	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>				

(ii) The proposed new source will not cause a violation of any ambient air quality standard.

(iii) An offsetting emissions reduction that satisfies the requirements of WAC 173 400 110 (3)(b) may be used to satisfy the requirements of WAC 173 400 110 (3)(c) and (d) if required.

(d) **Visibility requirements.** Any new major source or new major modification shall evaluate the visibility impairment per 40 CFR 52.21(e) for all Class I areas in Washington and neighboring states. The evaluation shall comply with the following:

PERMANENT

(i) When the land manager has officially designated visibility to be an important attribute, the owner(s) or operator(s) of the new source shall demonstrate that the potential emissions in combination with emissions from all other sources permitted after January 1, 1982, shall not cause or contribute to a significant visibility impairment.

(ii) Ecology shall upon receipt of an application for a notice of construction notify the land managers of potentially affected areas. Notification shall be in writing and include a copy of all information relevant to the application including the information developed for this section. This information shall be transmitted to the land manager within thirty days of receipt of the application and at least sixty days prior to public hearing on the application for permit to construct.

(iii) All evaluations of visibility impairment required under this section shall use the models on file with ecology or equivalent models approved by ecology or EPA.

(iv) The results of the evaluation shall be sent to the land manager of the affected areas for review and recommendation. The review shall consider the degree of visibility impairment, duration, geographic extent, frequency, and time. The recommendation of the land managers concerning adverse impact on visibility shall be sent to ecology within thirty days of receipt of the evaluation results.

(v) Should ecology concur with the recommendation of the land manager, the notice of construction shall be approved or disapproved according to the recommendation. Ecology may find the review of a land manager inadequate and make its own determination. A finding of significant visibility impairment shall require a disapproval of the notice of construction, unless sufficient mitigating measures are developed.

(vi) Ecology or land managers may demonstrate that the new source would cause impairment of an integral vista officially designated at least six months before the new source submitted a complete application. The protection of an integral vista by controls on the source shall consider the time necessary for compliance, the energy and nonair quality environmental effects of compliance and the productive life of the source.

(vii) Ecology may require visibility monitoring at the site of the new source or potentially affected areas as a part of the applicable regulatory order. The monitoring period may be before or after construction or both.

(4) **Preliminary determination.** Within thirty days after receipt of all information required, ecology or the authority shall:

(a) Make preliminary determinations on the matters set forth in subsection (3)(b), (c), and (d) of this section if applicable; and

(b) Initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable.

(5) **Final determination.** If, after review of all information received including public comment, ecology or the authority finds that all the conditions in subsection (3) of this section are satisfied, whichever is applicable, the authority will issue a regulatory order to approve the notice of construction for the proposed new source or modification.

(6) **Appeal of approval.** A notice of construction approval can be appealed to the state pollution control hearings board per RCW 70.94.025.

(7) **Portable sources.** For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

(8) **Commencement of construction.** The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.) (1) **Applicability.**

(a) A notice of construction application must be filed by the owner or operator and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification which is listed in WAC 173-400-100 or required to obtain a permit under RCW 70.94.161.

(b) Ecology or the authority may require that a notice of construction application be filed by the owner or operator of a proposed new source or modification and an order of approval issued by ecology or an authority prior to the establishment of any new source or emission unit or modification, other than a single family or a duplex dwelling.

(c) New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification.

(2) **Completeness determination.** Within thirty days of receipt of a notice of construction application, ecology or the authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary, based upon review of information already supplied, to complete the application. For a project subject to PSD review under WAC 173-400-141 a completeness determination includes a determination that the application provides all information required to conduct PSD review.

(3) **Final determination.**

(a) Within sixty days of receipt of a complete application, ecology or the authority shall either issue a final decision on the application or, for those projects subject to public notice, initiate notice and comment procedures under WAC 173-400-171 on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(b) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of ecology or the authority.

(c) If the new source is a major stationary source or the change is a major modification, ecology or the authority shall submit any control technology determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA.

(4) Appeals. An order of approval, any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. Ecology or the authority 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 application, along with a notice advising parties of their rights of appeal to the Pollution Control Hearings Board and, where applicable, to the EPA Environmental Appeals Board.

(5) Portable sources. For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction application, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

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

#### NEW SECTION

**WAC 173-400-112 Requirements for new sources in nonattainment areas.** Ecology or an authority reviewing an application to establish a new source or modification in a nonattainment area, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

(3) The proposed new source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the state implementation plan and will comply with WAC 173-400-113(3) for all contaminants for which the area has not been designated nonattainment.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) If the proposed new source or the proposed modification is major for the contaminant for which the area is designated nonattainment, allowable emissions from the proposed new source or modification of that contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (prior to submittal of the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the FCAA) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(a) The proposed new level of allowable emissions of the source or emission unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders, or permits cannot be credited.

(b) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emissions of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new source is located. For any other nonattainment area, the emissions offsets must provide a positive net air quality benefit in the nonattainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S.

(c) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the new or modified source commences operation. The new source may not commence operation before the date such reductions are actually achieved. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in an EPA-approved state implementation plan.

(7) If the proposed new source is a major stationary source or the proposed modification is a major modification for the purposes of the PSD program described in WAC 173-400-141, it meets the requirements of that program for all contaminants for which the area has not been designated nonattainment.

(8) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(9) If the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.28(c) through (e) except for (c)(4)(i), (g), and (h), as in effect on March 3, 1993, and determined that the project meets the criteria set forth in 40 CFR 52.28(g). For purposes of this subsection, definitions referenced in 40 CFR 52.28(b) are incorporated by reference, except that the term "visibility protection area" means any Class I area, and terms defined in WAC 173-400-030 shall have the meanings defined in that section. References in 40 CFR 52.28 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.

**NEW SECTION**

**WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas.** Ecology or an authority reviewing an application to establish a new source or modification in an area that is in attainment or unclassifiable for any air contaminant the new source would emit and that is in attainment or unclassifiable for ozone if the proposed new or modified source would emit VOCs or NO<sub>x</sub>, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies all of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, emission standards adopted under chapter 70.94 RCW

and, for sources regulated by an authority, the applicable emission standards of that authority.

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

(3) Allowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment area does not exceed the following levels for the pollutant(s) for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-	0.5 mg/m <sup>3</sup>	-	-	2 mg/m <sup>3</sup>
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	25 µg/m <sup>3</sup>	30 µg/m <sup>3</sup>
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification for purposes of the PSD program described in WAC 173-400-141, it meets all applicable requirements of that chapter.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

(6) If, within the meaning of the PSD program described in WAC 173-400-141, the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.27(d) through (f), as in effect on March 3, 1993, and has determined that the source would not cause an adverse impact upon visibility. References in 40 CFR 52.27 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.

**NEW SECTION**

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

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

(2) For projects not otherwise reviewable under WAC 173-400-110, ecology or the authority may:

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

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

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

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

(4) Construction shall not commence, as defined in WAC 173-400-030(15), on a project subject to review under this section until ecology or the authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if ecology or the authority takes no action within thirty days of receipt of a complete notice of construction application.

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

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

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

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

~~(a) The contaminants exchanged must be of the same type, that is, particulates for particulates, sulfur dioxide for sulfur dioxide, etc.~~

~~(b) The bubble will not interfere with the attainment and maintenance of air quality standards.~~

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

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

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

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

~~opacity limit for the given emissions unit may be increased subject to the following limitations:~~

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

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

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

~~(iv) If the given emissions unit emits or has the potential to emit 100 tons per year or more of particulate matter, the opacity shall be monitored continuously.~~

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

~~(h) Concurrently with or prior to the authorization of a bubble, each affected source shall receive or have received a regulatory order that establishes total allowable emissions from the source of the contaminant being bubbled, expressed as weight of the contaminant per unit time. The new total allowable emissions shall be considered RACT.~~

~~(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.~~

~~(j) Specific situations may require additional demonstration as requested by ecology or the authority.~~

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

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

~~(5) Approval. Within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions expressed in weight of pollutant per unit time for each emissions unit involved in the application. The order or equivalent document must include all requirements necessary to assure that conditions in subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit the operation of the affected equipment.)~~ (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

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

**BELCHER SWANSON LAW FIRM PLLC**

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**Appellate Court Case Title:** Brooks Manufacturing Co., Appellant v. Northwest Clean Air Agency,  
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**Superior Court Case Number:** 16-2-01367-5

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