



DEPARTMENT OF
ECOLOGY
State of Washington

Including Revised Chapter 173-400 WAC in the Washington State Implementation Plan

Rule SIP Revision

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Including Revised Chapter 173-400 WAC in the Washington State Implementation Plan

Rule SIP Revision

By
Department of Ecology

Air Quality
Washington State Department of Ecology
Olympia, Washington

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Acronyms and Abbreviations

CAA	Federal Clean Air Act
CAAA	Federal Clean Air Act Amendments
Ecology	Washington State Department of Ecology
EPA	U.S. Environmental Protection Agency
NAAQS	National Ambient Air Quality Standards
NSR	New Source Review
PSD	Prevention of Significant Deterioration
RCW	Revised Code of Washington
SIP	State Implementation Plan
WAC	Washington Administrative Act
$\mu\text{g}/\text{m}^3$	micrograms per cubic meter

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Executive Summary

Background

Section 110 of the federal Clean Air Act, “State implementation plans for national primary and secondary ambient air quality standards,” requires each state to adopt a state implementation plan (SIP) to allow the state to comply with these standards. The plan consists mostly of regulations. It also includes emissions inventories, attainment demonstrations, permits, and other related documents. State regulations approved in the SIP become federally enforceable. When a state revises regulations that were previously approved in the SIP, or develops new regulations to be included in the SIP, it must submit the regulations to the Environmental Protection Agency (EPA) for approval into the SIP.

Washington State has adopted revisions to portions of its general air pollution regulation, Chapter 173-400 of the Washington Administrative Code (WAC). Ecology is proposing to submit those changes to EPA for inclusion in the SIP. The purpose of the SIP revision is to meet federal Clean Air Act requirements of Title I – Air Pollution Prevention and Control, Part A – Section 110, Part C, and Part D.

Ecology’s General Air Quality Regulations

Chapter 173-400 WAC, titled “General Air Quality Regulations,” was last submitted and approved in the SIP in the 1990s. The state rule has since been revised several times. The latest revision to Chapter 173-400 WAC was completed in 2012.

Ecology’s submittal to EPA

Ecology is proposing to include in the SIP the portions of the revised Chapter 173-400 WAC that are necessary to ensure Washington complies with the federal Clean Air Act. Ecology is only proposing that EPA review new or revised sections as a part of this SIP submittal. Ecology is not submitting to EPA those sections of Chapter 173-400 WAC that have not changed since the last SIP approval and are already either approved or were not approved.

As part of the submittal, Ecology asks EPA to:

- Incorporate new or revised provisions into the SIP, including a significant number of housekeeping changes such as updated references, renumbering, and clarifying wording.
- Remove outdated provisions and provisions that are not related to the purposes of the implementation plan.

What the revisions do

The main differences between the revised rule and the one currently in the SIP are in the New Source Review permitting programs:

- The rule currently in the SIP lists the facilities and industries required to apply for a minor new source review permit. If a facility or industry is not on the list, or if an air quality agency Director or control officer determines it does not need a permit, the facility or industry is exempt from permitting.

The revised rule no longer lists facilities that need a permit. As directed by state law, it now lists emission units and activities that are exempt from permitting requirements. Potential applicants whose facilities involve emission units and activities not on this list must apply for a permit.

- The revised rule contains several streamlined permitting options, including a process for issuing a General Order of Approval and a revised process for permitting portable sources.
- The revised rule also includes Prevention of Significant Deterioration (PSD) and nonattainment area permitting regulations that are designed to match federal requirements. If EPA approves the PSD regulations, Washington will have its own SIP-approved state PSD program, instead of being delegated authority to issue PSD permits under the federal program. The nonattainment area permitting regulations are needed for permitting in current and potential nonattainment areas.

I. Introduction

Differences Between the Proposed SIP Revision and Final SIP Revision

There are some differences between the proposed SIP revision and the final SIP revision. Ecology made these changes for the following reasons:

- In response to comments received during the public comment period.
- To ensure clarity and consistency.

The following content describes the changes and Ecology’s reasons for making them. Where a change was made solely for editing or formatting purposes and does not affect the rule language proposed for inclusion in the SIP we did not include it in this table.

WAC Section / SIP Submittal	Description of the Change	Reason for the Change
Executive Summary of the SIP Submittal	Ecology has added the following sentence to the Executive Summary: “The purpose of the SIP revision is to meet Federal Clean Air Act requirements of Title I – Air Pollution Prevention and Control, Part A – Section 110, Part C, and Part D. “	In response to comments received during the public comment period. See Appendix F. <i>Response to Comments</i> , Comments A.i.3, D.ii.1, D.iii.1, and D.iv.1
Page 19 of the SIP Submittal	In the Public Review Draft of the SIP submittal, Ecology included an EPA letter from 1985 ¹ . Ecology has removed the referenced letter from the final submittal.	This change was made in response to a comment received during the public comment period. See Appendix F. <i>Response to Comments</i> , Comment A.ii.2.
Section III.2.b of the SIP Submittal	Ecology has removed the following statement in the SIP Submittal (III.2.b): “Remove subsection 173-400-030(89) (SIP-approved #76) from the SIP”.	This statement was an oversight. Appendix A and Appendix B accurately reflected Ecology’s intent and did not need to be corrected.
WAC 173-400-050(1) and 105(4)	Updated provisions in the rule reference the 2004 version of Ecology’s Source Test Manual. Ecology has included this document and an Environmental Checklist listing this manual for public review, as supporting material for this SIP revision.	This supporting document was omitted in the proposal due to an oversight.

¹ EPA Comment letter to Ecology from Gary L. O’Neil, Director, Air and Toxics Division, EPA Region 10 to Linda Brothers, Assistant Director, Office of Hazardous Substances and Air Quality Control, Department of Ecology, Dated June 28, 1985.

WAC 173-400-113(3), second sentence	Ecology has revised the SIP proposal to not include the second sentence in WAC 173-400-113(3) in the SIP.	In response to a comment received during the comment period. See Appendix F. <i>Response to Comments</i> , Comment C.i.1.
WAC 173-400-720(4)(a)(i) through (iv)	Ecology has revised the SIP proposal to not include WAC 173-400-720(4)(a)(i) through (iv) in the SIP.	In response to comments received during the comment period. See Appendix F. <i>Response to Comments</i> , Comments D.ii.2, D.iii.1, and D.iv.2.

Document Organization

This document has three main sections. Section I includes a list of differences between the proposal and final SIP submittal, as well as this subsection on the components of the document.

Section II below provides background information on Chapter 173-400 WAC and its previous approvals in the SIP. This section also discusses Ecology’s statutory authority to develop rules to implement Clean Air Act requirements and describes Ecology’s Prevention of Significant Deterioration (PSD) permitting program.

Section III discusses proposed SIP revisions in detail and includes justification for changes to the SIP approved regulation.

There are six appendices to this document. A brief description of each appendix is provided below:

Appendix A	An overview table offering a quick guide of the status of all sections of the rule with regard to the current SIP submittal. WAC sections marked as either unchanged since the last SIP revision or as not being submitted in the SIP are not a part of this submittal. Only sections that are marked in the columns “Revised”, “Removed”, or “New” are being submitted to EPA at this time.
Appendix B	A comparison of the SIP-approved rule language and current state adopted rule; the differences shown in track changes.
Appendix C	WAC 197-11-960 Environmental Checklist for “Amendments to Chapter 174-400 WAC, General Regulation for Air Pollution Sources” prepared on August 2, 2010, listing “Source Test Manual – Procedures for Compliance Testing” updated as of September 20, 2004, for public review.
Appendix D	Determination of applicability of MTCA exemption to air quality permitting programs.
Appendix E	Electronic spreadsheet comparing emission units and rates exempt from permitting in Washington, some other states, and the EPA Tribal NSR rule.
Appendix F	Response to comments received during the public comment period and public hearing on the proposal.

The following supporting documents are included with this submittal:

- *Concise Explanatory Statement. Chapter 173-400 WAC Amendments to Washington's New Source Review Regulations.* November 1997.
Ecology's Publication No. 97-211.
Link: <https://fortress.wa.gov/ecy/publications/publications/97211.pdf>.
- *Concise Explanatory Statement and Responsiveness Summary for the Adoption of Chapter 173-400 WAC, General Regulations for Air Pollution Sources.* December 2004.
Ecology's Publication No. 04-02-026.
Link: <https://fortress.wa.gov/ecy/publications/publications/0402026.pdf>.
- *Concise Explanatory Statement. Chapter 173-400 WAC General Regulations for Air Pollution Sources. Summary of rule making and response to comments.* December 2010.
Ecology's Publication No. 11-02-010.
Link: <https://fortress.wa.gov/ecy/publications/publications/1102010.pdf>.
- *Concise Explanatory Statement. Chapter 173-400 WAC General Regulations for Air Pollution Sources and State Implementation Plan Revision: Summary of rule making and response to comments.* October 2012.
Ecology's Publication No. 12-02-024.
Link: <https://fortress.wa.gov/ecy/publications/publications/1202024.pdf>.
- "Source Test Manual – Procedures for Compliance Testing" as of September 20, 2004.
Link: http://www.ecy.wa.gov/programs/air/Source_Test/sourcetesthome.html.

II. Background

The federal Clean Air Act and federal regulations require the Washington Department of Ecology (Ecology) to have in place specific programs and requirements to protect air quality. Section 110 of the Clean Air Act, called "*State implementation plans for national primary and secondary ambient air quality standards*," requires each state to adopt a state implementation plan (SIP) that provides for implementation, maintenance, and enforcement of primary and secondary national ambient air quality standards (NAAQS) in the state. SIP-approved programs and regulations become federally enforceable. Whenever a state revises regulations that were previously approved in the SIP, or develops new regulations to be included in the SIP, it is required to submit the regulations to EPA for approval in the SIP.

The state Legislature enacted Washington's Clean Air Act, Chapter 70.94 of the Revised Code of Washington (RCW) in 1967. This law provides Ecology with the necessary authority to fulfill

the Section 110 requirements of the federal Clean Air Act. Subsection A below contains further details on Ecology's statutory authority as it relates to this submittal.

Using its authority, Ecology submitted to EPA for inclusion in the SIP: air quality regulations, attainment demonstrations, emission inventories, and other documents related to the purposes of the SIP. These submittals now comprise the Washington SIP as codified in the Code of Federal Regulations (40 CFR Part 52, Appendix WW.)

Chapter 173-400 of the Washington Administrative Code (WAC), *General Air Quality Regulations*, is a part of the state's program to implement and enforce NAAQS. Chapter 173-400 WAC was originally promulgated in 1972 under WAC 18-04. In 1976, the provisions were moved to Chapter 173-400 WAC. This chapter underwent numerous revisions over time reflecting the changes in the air quality management in Washington.

The latest SIP update of Chapter 173-400 WAC took place between 1991 and 1995. Ecology submitted the amended Chapter 173-400 WAC to EPA for inclusion in the SIP on May 14, 1991. EPA took final action on that submittal on January 15, 1993.² EPA approved Chapter 173-400 WAC, as in effect on March 22, 1991, except for:

- WAC 173-400-040(1)(c) and (d) "alternative time periods for opacity standards" and "alternative opacity limits"
- WAC 173-400-040(2) "Fallout"
- WAC 173-400-040(4) "Odors"
- The second paragraph of WAC 173-400-040(6) "exemption from sulfur dioxide emission limit"
- The exception provision in WAC 173-400-050(3) "alternative oxygen correction factor"
- WAC 173-400-070(7) "Sulfuric acid plants"
- WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants"
- WAC 173-400-115 "Standards for performance for new sources"
- WAC 173-400-120 "Bubble rules"
- WAC 173-400-131 "Issuance of emission reduction credits"
- WAC 173-400-136 "Use of emission reduction credits"
- WAC 173-400-141 "Prevention of significant deterioration (PSD)"
- WAC 173-400-180 "Variance"

On March 8, 1994, Ecology submitted to EPA revisions to the 1993 SIP-approved Chapter 173-400 WAC. On February 22, 1995³, EPA proposed to approve in part or disapprove in part the revisions. EPA also proposed to not take action on those provisions that were unrelated to the

² 58 FR 4578 (final rule action); 57 FR 44530 (proposed rule action)

³ 60 FR 28726 (final rule action); 60 FR 9802 (proposed rule action);

purposes of the implementation plan⁴. EPA took final action on the proposal on June 2, 1995⁵. Below is a list of approved and disapproved provisions, and the provisions EPA did not take action on (those provisions that were not related to the purposes of the SIP):

- **Approved revisions to:**
 - WAC 173-400-030 “Definitions”
 - WAC 173-400-040 “General standards for maximum emissions” (except for -040(1)(c) and (d); -040(2); -040(4); and the second paragraph of -040(6))
 - WAC 173-400-100 “Registration”
 - WAC 173-400-105 “Records, monitoring, and reporting”
 - WAC 173-400-110 “New source review (NSR)”
 - WAC 173-400-171 “Public involvement”
 - WAC 173-400-230 “Regulatory actions”
 - WAC 173-400-250 “Appeals”

- **Approved new sections:**
 - WAC 173-400-081 “Startup and shutdown”
 - WAC 173-400-091 “Voluntary limits on emissions”
 - WAC 173-400-107 “Excess emissions”
 - WAC 173-400-112 “Requirements for new sources in nonattainment areas” (except for -112(8), which was not submitted for inclusion in the SIP)
 - WAC 173-400-113 “Requirements for new sources in attainment or unclassifiable areas” (except for -113(5), which was not submitted for inclusion in the SIP)

- **Disapproved provisions:**
 - WAC 173-400-040(1)(c) “alternative time periods for opacity standards”
 - WAC 173-400-040(1)(d) “alternative opacity limits”
 - The second paragraph of WAC 173-400-040(6) “exemption from sulfur dioxide emission limit”
 - The exception provision in WAC 173-400-050(3) “alternative oxygen correction factor”
 - WAC 173-400-120 “Bubble rules”
 - WAC 173-400-131 “Issuance of emission reduction credits”
 - WAC 173-400-136 “Use of emission reduction credits”
 - WAC 173-400-141 “Prevention of significant deterioration (PSD)”
 - WAC 173-400-180 “Variance”

- **Took no action:**
 - WAC 173-400-040(2) “Fallout”

⁴ Such as adopting regulations issued in 40 CFR parts 60, and 61 or state plans to implement emission guidelines contained in 40 CFR Part 60, subpart C.

⁵ 60 FR 28726

- WAC 173-400-040(4) “Odors”
- WAC 173-400-070(7) “Sulfuric acid plants”
- WAC 173-400-075 “Emission standards for sources emitting hazardous air pollutants”
- WAC 173-400-115 “Standards for performance for new sources”
- **Provisions not submitted for inclusion in the SIP:**
 - WAC 173-400-112(8)
 - WAC 173-400-113(5)
 - WAC 173-400-114

Since the last SIP approval, Washington State has adopted revisions to portions of Chapter 173-400 WAC. Ecology is now proposing to submit those changes to EPA for inclusion in the SIP.

The primary differences between the revised rule and the one currently in the SIP are in the New Source Review permitting programs:

Minor New Source Review Changes

The rule currently in the SIP lists the facilities and industries required to apply for a minor new source review permit. If a facility or industry is not on the list, or if an air quality agency director or control officer determines it does not need a permit, the facility or industry is exempt from permitting. The revised rule no longer lists facilities that need a permit. State law was amended to require Ecology to list sources, rather than facilities and industries, which are de minimis sources of air pollution. These de minimis sources are exempt from permitting. As a result of this change, the revised regulation requires a permit for any emission unit or activity that is not listed as a de minimis emission source. Potential applicants whose facilities involve emission units and activities not on this list must apply for a permit.

Streamlined Permitting Options

The revised rule contains several streamlined permitting options, including a process for issuing a General Order of Approval and a revised process for permitting portable sources.

Major New Source Review Program Changes

For major sources in Washington, EPA has a Federal Implementation Plan (FIP) in place to implement the Prevention of Significant Deterioration (PSD) program⁶. Pursuant to 40 CFR 52.21(u), EPA has delegated authority to implement and enforce the federal PSD program to the Ecology in a delegation agreement⁷. The revised rule includes PSD permitting regulations that are designed to closely match federal requirements. If EPA approves the PSD regulations,

⁶ 40 CFR 52.2497

⁷ *Agreement for the Delegation of the Federal Prevention of Significant Deterioration (PSD) Regulations by the EPA, Region 10 to the State of Washington Department of Ecology, February 23, 2005*

Washington will have its own SIP-approved state PSD program, instead of being delegated authority to issue PSD permits under the federal program. A detailed overview of Ecology's PSD program can be found on the following page 8.

The revised rule also includes nonattainment area permitting regulations. The nonattainment area permitting regulations are needed for permitting in current and potential nonattainment areas. The regulations closely match federal requirements.

Statutory Authority

The state legislature enacted Washington's first Clean Air Act (Act) in 1967. The Act is codified at Chapter 70.94 RCW.

As it currently exists, the Act sets out a number of different policies and required actions, and specifies:

- the basic hierarchy of regulatory agencies in the state
- the preference for local air pollution control authorities
- requirements for:
 - permitting of new sources
 - the issuance of air operating permits for some existing sources
 - control of open, agricultural, and silvicultural burning
 - commute trip reduction requirements
 - control of emissions from wood burning appliances (wood fired stoves and heaters)

One element of the Act directs Ecology to establish rules to implement the state Clean Air Act programs and requirements. In the case of the new source review rules, the Ecology rules apply statewide, except where a local clean air agency has implemented its own rules. The Act specifies that the Ecology and local agency rules do not apply to the energy facilities under the purview of the Energy Facilities Site Evaluation Council (EFSEC). EFSEC is given primary authority for the permitting of energy projects listed in Chapter 80.50 RCW. EFSEC has enacted regulations for permitting the projects under its jurisdiction. In the case of permitting stationary sources of air pollution, the Act's intent is that local clean air agencies, EFSEC, and Ecology are primarily responsible for implementing programs and rules to control air pollution.

Since 1967, the Act has been periodically amended. The most significant amendment, since Chapter 173-400 WAC was last submitted to EPA in 1993, that affected the activities covered by this rule occurred in 1996. Section 70.94.152 RCW was modified in 1996. This change required Ecology to develop a listing of sources that would be considered to be de minimis sources of air pollutants. These de minimis sources would not require Notice of Construction permits prior to the start of construction or operation.

The state law has been amended since 1996, but the amendments do not affect Ecology's enforcement authority under the law or the permitting of stationary sources.

Prevention of Significant Deterioration Program Description

Ecology has been operating a delegated Prevention of Significant Deterioration (PSD) program since 1983. Ecology submitted PSD rules to EPA in 1993, but EPA disapproved them and reissued a Federal Implementation Plan (FIP). The PSD FIP implements the federal PSD permitting program as it exists in 40 CFR 52.21. It has been a goal of Ecology for the past 15 years to have a SIP-approved PSD program rather than continue to operate a delegated PSD program. Ecology has the necessary staff and resources in place to operate the SIP-approved PSD program which would comply with requirements in Section 110 of the federal Clean Air Act.

The PSD permitting process in Washington

Ecology is primarily responsible for implementing the PSD program in Washington. The EFSEC has separate responsibility to implement a delegated PSD program for the major energy facilities under its jurisdiction. The rule (WAC 173-400-700(2)) establishes the relationship of the permitting program between Ecology, the local authorities, and EFSEC.

While Ecology is primarily responsible for issuing PSD permits, we rely on the assistance of the local authorities to identify applications they receive which are unclear or rely on the provisions of WAC 173-400-720(4)(b)(iii)(D) (revising 40 CFR 52.21(r)(6)) to determine that a project is not subject to PSD. The local agencies consult with us or have the applicant work with us to determine if the proposed project is or is not subject to PSD permitting. When reviewing these analyses, Ecology makes the final decision whether the project as described in the materials reviewed is or is not subject to PSD permitting requirements. Ecology charges a review fee for making these determinations to recover the costs incurred when making the determination.

If the application is subject to PSD, then Ecology consults with the applicant to identify what they must do to submit a complete application.

The resulting permit application contains information needed to address the emissions of all air pollutants; both those subject to PSD permitting and those pollutants subject to state minor source permitting requirements. Ecology has a goal to issue all PSD permits on the timeframe given in RCW 70.94.152 (application completeness decision within 30 days after applicant received, and proposed decision to public comment 30 days after). While the timeframe is a target, pursuant to WAC 173-400-730, Ecology has 30 days to determine if the application is complete and a year after the application has been determined complete to issue a final approval.

Ecology consults with the local authority with jurisdiction over the applicant to assure the emission limitations and Best Available Control Technology (BACT) control decisions made by

both agencies are compatible and capable of being implemented in a minor new source review permit, an Air Operating Permit (AOP). Ecology and the local authority coordinate the public comment periods on the AOP and the PSD permit to the maximum extent possible. The ideal coordination is having both permits addressed in the same public notice and having the same comment period. If a hearing is necessary, both permits are addressed in the same hearing.

Ecology and the local authority also work to issue the two permits as close to the same time as possible. The Washington State/local authority/EPA Compliance Assurance Agreement (Agreement) describes the coordination of enforcement actions between Ecology, the local authorities, and EPA.

Failure to apply for and receive a permit

Per the Agreement, the primary enforcer is the local authority. WAC 173-400-720(3) allows Ecology or the local authority to enforce against a source for failure to apply for a PSD permit when one is required.

Violations of terms of an issued permit

Violations of conditions of a PSD permit are normally enforced by Ecology until the PSD permit has been incorporated into an AOP. WAC 173-400-720(3)(c) allows the local authority to also enforce violations of the PSD permit. As necessary, Ecology and the local authority coordinate their enforcement to avoid conflicting or duplicative enforcement actions. Once incorporated into the AOP, the local authority that issued the AOP is responsible to enforce the PSD permit terms.

Incorporation of the PSD permit into the AOP

PSD permits are applicable requirements of the air operating permit program (definition of applicable requirement in WAC 173-401-200(4)). As such, they are incorporated into an AOP on the timeframes required by WAC 173-401.

Ecology resources to implement the program

Ecology has a staff of engineers and air quality modelers to support the review and issuance of PSD permits. The permitting and modeling staff currently has 60 years of combined PSD permitting experience.

PSD permit applicants are required to pay permitting fees covering the costs of reviewing the application and issuance of the final permitting decision. The permit fees are included in WAC 173-455 and are subject to periodic revision to reflect the cost of issuing the permits.

III. Proposed Revisions to the SIP-Approved Chapter 173-400 WAC

Organization

This chapter of the submittal contains details of the proposed SIP revisions. Each discussion describes changes and proposes specific actions for EPA to take. Specifically, each discussion covers the following elements:

a) *Description (What is submitted?)*

This subsection describes a section of the Chapter 173-400 WAC.

b) *Action (What would Ecology like EPA to do with the submittal?)*

This section describes one or a combination of actions Ecology may propose:

- Approve revised or new provisions into the SIP
- Remove outdated provisions from the SIP
- Remove currently SIP-approved rules that are not related to the criteria pollutants regulated under the SIP or not essential for meeting and maintaining the National Ambient Air Quality Standards (NAAQS)

c) *Analysis of Submittal*

This subsection describes the differences between the SIP-approved rules and the revised rules. The analysis may include the following topics as appropriate with more discussion where there were key changes:

- Summary of the changes and general differences
- A general description of the sources or source categories affected
- Why the rules were revised. If it is a new rule – why the rule is needed
- The effect of the revision on the NAAQS
- Will the allowable or actual emissions increase, decrease; or be de minimis?
- Were the rules relied on in an attainment or maintenance plan?
- Are the NAAQS protected?
- Are the Prevention of Significant Deterioration (PSD) Increments protected?
- Is the revised rule consistent with the Visibility SIP?

SIP Revisions Discussion

1. Section 173-400-020 WAC, “Applicability.”

a) Description (What is submitted?)

This section describes applicability of the rule to the sources of air pollution in the state. The language in subsection 173-400-020(1) WAC was updated in 2012. The revised language clarifies the relationship between Chapter 173-400 WAC and corresponding local clean air authorities’ regulations.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve revised provisions in the SIP.

c) Analysis of Submittal

This rule clarifies that Chapter 173-400 WAC applies statewide unless a local clean air authority has adopted and implemented corresponding local rules. These corresponding rules apply only to sources subject to local jurisdiction. Each authority is responsible for identifying corresponding provisions and submitting them via Ecology to EPA for review and approval into the SIP.

This rule update was added in response to EPA Region 10’s request to clarify the relationship between Ecology and local authority rules. This rule change is not intended to change allowable or actual emission rates or affect implementation and maintenance of the NAAQS. See 2012 Concise Explanatory Statement⁸ for additional information.

2. Section 173-400-030 WAC, “Definitions.”

a) Description (What is submitted?)

This section contains a list of terms and definitions used throughout the rule. The definitions apply statewide unless a local clean air authority or EFSEC has adopted their own definitions.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace outdated section 173-400-030 WAC in the SIP with the updated version, except for the following definitions that are in the state rule:

- Do not approve new subsection 173-400-030(91) into the SIP.

c) Analysis of Submittal

Changes to specific definitions are described below. Due to new definitions being added and some definitions removed, the numbering in the rule is different from the one in the SIP. For example, in the current WAC, definitions related to the federal major new source review programs have been removed from this section and now reside in WAC 173-400-720 (Prevention of Significant Deterioration program) and in WAC 173-400-810 (nonattainment area

⁸ <https://fortress.wa.gov/ecy/publications/publications/1202024.pdf>

new source review program). The numbering below is based on the numbering in the new rule with the exceptions noted.

173-400-030(2) and (79): Class I area visibility protection related definitions were moved to section 173-400-117 WAC.

173-400-030(5): The “Allowable emissions” definition was clarified and references were updated. This definition is for use in the state minor NSR permitting program and for issuing ‘synthetic minor’ orders under WAC 173-400-091. The federal major NSR definitions of ‘allowable emissions’ are found in WAC 173-400-710 and -810.

173-400-030(9): Added “Attainment area” definition.

173-400-030(11): This definition is used in the minor NSR program. The federal definition of “Begin actual construction” is adopted by reference in 173-400-710 WAC.

173-400-030(12): Deleted date of reference. This is the definition of BACT as it exists in state law and is used for minor NSR purposes. The federal definition of BACT is adopted by reference or included verbatim in WAC 173-400-720 and -810 for use in the major NSR programs.

173-400-030(14): This definition was added to support implementation of WAC sections 173-400-035 and -930. Neither section is proposed for inclusion in the SIP at this time.

173-400-030(18): Clarified that the definition is about “units.”

173-400-030(19)(b): Added clarifying language.

173-400-030(21): Added definition of the “criteria pollutant.” This is not the same as the definition of “regulated pollutant” or “regulated NSR pollutant” as used in the federal major NSR program.

173-400-030(28): This is a new definition. It is used within our source registration program and public involvement requirements. It has no effect on major or minor NSR applicability or permitting requirements.

In the registration program, these emission rates are used to determine information submittal and inspection schedules. Within the public involvement requirements, the table is used to determine if the project is subject to a mandatory public comment period under 173-400-171(3)(b).

173-400-030 (32): The “existing stationary facility” definition is listed as 173-400-030(26) in the SIP-approved rule. This definition is applicable to visibility protection requirements. The revised section -151 makes its inclusion here unnecessary.

173-400-030(34): This is a new definition to support the visibility protection requirements.

173-400-030(35): Clarifying language.

173-400-030(36): This is a new definition to clarify what federally enforceable means.

173-400-030(36)(as listed in the SIP approved rule): This definition is removed since it no longer has any regulatory value. Federal Land Managers have never declared any integral vistas in Washington's Federal Class I areas.

173-400-030(37) (as listed in the SIP approved rule): This major NSR definition is now in section 173-400-810.

173-400-030 (39), (40), (46) (as listed in the SIP approved rule): These definitions were removed as a result of the major NSR program being separated from the minor NSR provisions and adoption of federal definitions by reference. They are now included in the major NSR definitions found in WAC 173-400-720 and 810.

173-400-030(42): A new definition to support implementation of 173-400-110(5).

173-400-030(49): Added a new definition for National Ambient Air Quality Standards (NAAQS).

173-400-030(50): This NESHAPS definition has some minor language changes.

173-400-030(51): This is a new definition related to NESHAPS.

173-400-030(54): This definition is 173-400-030(48) in the SIP-approved rule. It defines what a New Source Performance Standard (NSPS) is.

173-400-030(55): Added clarifying language.

173-400-030(56): This definition is used to understand the definition of a stationary source. These engines are exempt from the new source review regulations. The definition is used in WAC 173-400-035, which is not proposed for inclusion in the SIP. The definition is the same as the definition in 40 CFR Part 89.

173-400-030(62): This is a new definition. It was added to support significant rate for ozone depleting substances added to the PSD definition of "significant."

173-400-030(66): This is a new definition to be included in the SIP.

173-400-030(67) and (68) (as listed in the SIP approved rule): These definitions were moved to different sections of the rule. The definition of "significant" under (67) was moved to 173-400-720 WAC. The definition of "significant visibility impairment" was moved to 173-400-117(1)(a) WAC.

173-400-030(70) and (71): These are new definitions. They define PM_{2.5} and PM_{2.5} emissions. These definitions were added in response to the PM_{2.5} NAAQS set by EPA in 1997. The definitions are based on the definitions in 40 CFR Parts 50 and 51.

173-400-030(72): This is a new definition to be included in the SIP. The definition is used in the permitting program for portable stationary sources in WAC 173-400-036.

173-400-030(73): Clarifying changes.

173-400-030(79): This is the definition in 40 CFR 51.165. This definition conforms to the results from a federal court decision (*Natural Resources Defense Council v. U.S. EPA*, 725 F.2d 761 (D.C. Cir. 1984)) rather than the definition persisting in federal regulation. This is not the definition in the EPA's major NSR definitions in 40 CFR 51.166, Part 51 Appendix S, or 52.21.

173-400-030(80): This definition now follows state law rather than EPA regulation. The federal definition is used for the major NSR programs.

173-400-030(85): This is a new definition to be included in the SIP.

173-400-030(88): This is a new definition to be included in the SIP.

173-400-030(91): This definition is for a toxic air pollutant. Toxic air pollutants are not a part of the SIP. We ask EPA to not include it in the SIP.

173-400-030(92): This is a new definition to be included in the SIP.

173-400-030(94): Clarifying changes.

173-400-030(95): This definition was current with the definition in 40 CFR 51.100 at the time of the most recent adoption date of Chapter 173-400 WAC. EPA has since added additional chemicals to the listing of chemicals that are not VOCs, making our definition no longer current with the latest changes in the federal requirements. The definition will be updated when this section of the rule is reopened for revision. In the meantime, we propose to include this version in the SIP as it is more in conformance with the federal requirements than the currently approved SIP definition.

3. Section 173-400-036 WAC, "Relocation of portable sources."

a) Description (What is submitted?)

This is a new section adopted into the state rule in 2012. This section regulates portable sources. Originally, these sources were a part of the SIP-approved rules under WAC 173-400-110(5). The new section is applicable statewide for all authorities that participate in the program.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section in the SIP.

c) Analysis of Submittal

This section outlines a simplified and expedited approval process for sources that are portable and frequently move.

The source must have a notice of construction (NOC) from some permitting authority in the state, but not necessarily from the jurisdiction in which they are locating. A short notice (15 days) given to the permitting agency attests that a source meets:

- New Source Performance standards
- Best available control technology
- National emission standards for HAPs
- NAAQS
- Major source regulations

4. Section 173-400-040 WAC, “General standards for maximum emissions.”

a) Description (What is submitted?)

This section was revised four times (2000, 2001, 2005, and 2011) since it was last approved into the SIP in 1993. Major changes include new exemptions from the twenty percent opacity standard analyzed below.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the revised and new portions of the section into the SIP, except for:

- WAC 173-400-040(2)(c) and (d)
- WAC 173-400-040(3)
- WAC 173-400-040(5)
- WAC 173-400-040(7), second paragraph

These provisions were not approved in the SIP previously⁹ and Ecology does not propose to include them in the SIP at this time.

c) Analysis of Submittal

WAC 173-400-040(2)(e)(i) – Visible emissions reader certification testing.

This is an exemption from the standard to allow for certification of readers per 40 CFR Part 60 Appendix A, Method 9. The reader certification testing protocol requires opacity to be above 20% enough times in an hour to violate the opacity standard in WAC 173-400-040(2), which is currently part of the SIP. During the certification testing, the opacity standard contained in various EPA rules would also be exceeded. The reader certification process dictated in Part 60, Appendix A, Method 9 requires values above the standard as part of the testing process.

Visible emissions reader certification is a necessary qualification for air quality control staff and compliance staff employed by sources. The staff needs to determine compliance with visible emissions standards in permits. In establishing this exemption, we reviewed the 2 days per year (each day approximately 6 months apart) that the reader certification testing occurs at a given location to be a de minimis activity.

⁹ 60 FR 28726

WAC 173-400-040(2)(e)(ii) - Military training exercises.

Military training using obscurants is a necessary component of national defense. The obscurants used are either an oil fog or a pulverized material such as graphite. Specialized equipment mounted on the rear of Humvees, mortar shells, smoke pots, and smoke grenades are used to generate the obscurants and to distribute them across the mock battlefield being used for training. The presence of obscurants emanating from a discrete source (such as a smoke pot) could be classified as a violation of the state opacity standard.

Prior to the inclusion of this training in rule, in 2001 the Army completed environmental assessments (EAs) of the effects of obscurant training with various kinds of smoke generators on Fort Lewis and at the Yakima Training Center¹⁰. The EAs evaluated issues such as obscurant dispersion, density, allowable distances from site boundaries, and prevention of adverse offsite impacts. These EAs formed the basis for our inclusion of the opacity exemption in our rules. The results indicated that no offsite exceedance of a NAAQS would occur with adherence to the location usage criteria within the EAs.

With the assistance of the Army, the results of the EAs, and three local air pollution control authorities, specific requirements to control/reduce the offsite impacts from obscurant training were developed and included in the rule text. One paramount criterion is the tracking of weather conditions—a training is then canceled if wind patterns change such that the obscurant could travel beyond the boundaries of the military site/reservation.

The exemption requires the Army to perform training under specified conditions given in the exemption.

On January 18, 2012, EPA approved for the State of Colorado's SIP a similar exemption (contained in 5 CCR 1001-3 II.D¹¹) for the use of obscurants during military training exercises at two military bases in Colorado.

WAC 173-400-040(2)(e)(iii) – Firefighter training.

State law (primarily RCW 70.94.6546) allows for firefighter training to occur in certain areas of the state without a state issued permit. In all other areas of the state, instructional fires may be allowed when permitted by the local air pollution permitting authority. The implementation of the state law for fire fighter training is codified in rule within WAC 173-425, Open Burning, which implements both the exemption for some fires under RCW 70.94.6546 (formerly codified at RCW 70.94.650) and the requirements of RCW 52.12.150, Setting fires for firefighter instruction -- When burning permit not required -- Notice, inspection required. RCW provisions limit the areas covered by the exemption and restrictions on burning. For example, a fire cannot

¹⁰ The Department of the Army, Headquarters I Corps and Fort Lewis produced environmental assessments and Findings of No Significant Impact of their obscurant training practices in 1999 and in 2001 for training activities on Fort Lewis and the Yakima Training Center. Copies can be made available.

¹¹ 77 FR 2466

be located in an area subject to an emergency episode. There are also requirements in place to minimize the emissions and associated air quality impacts.

Fire fighter training by fighting real fires is a necessary function and training activity for minimizing the loss of life and protecting private and public property. State law exempts this activity from air quality requirements and this opacity exemption merely completes the exemptions in rule.

Firefighter training occurs at either discrete facilities (firefighter training centers) constructed and operated for the training of firefighters or existing structures destined for demolition. Firefighter training centers have been permitted by local air pollution control authorities. The permitting process included an evaluation of the ambient air quality impacts of the training center and setting any necessary operational limitations to protect ambient air quality.

Firefighter instruction using existing structures is also exempted from the opacity standard. These fires are subject to the review process under WAC 173-425. These fires are intentionally set by a fire department specifically for the purpose of using real buildings for training. When using an existing structure, all asbestos and similar hazardous materials are removed prior to the training exercise. Typically, such training takes less than a single day. Such training occurs on an opportunity basis, with the existing structures used for training being scattered through each fire jurisdiction.

The exemption from meeting the opacity standard during firefighter training fires implements the state laws addressing this training.

5. Section 173-400-050 WAC, “Emission standards for combustion and incineration units.”

a) Description (What is submitted?)

This section of Chapter 173-400 WAC has been revised three times (2001, 2005, and 2011) since it was adopted in the SIP in 1993. This section has three subsections that were approved in the SIP in 1993. Subsection 173-400-050(1) has been revised to include updated references and some minor language changes. Subsection 173-400-050(2) does not regulate criteria pollutants and thus does not belong in the SIP. Subsection 173-400-050(3) has been revised to include some minor language changes and clarification on determination of an alternate oxygen correction factor.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace subsections 173-400-050(1) and (3) with the updated version of the rule, including the text that was not approved in the SIP during the last review.

Remove subsection 173-400-050(2) WAC from the SIP.

Take no action on other subsections not listed above.

c) Analysis of Submittal

The revisions to subsection (1) and (3) do not affect emission rates or interfere with implementation or maintenance of the NAAQS. Subsection (1) contains an updated reference to “Source Test Manual – Procedures for Compliance Testing” as of September 20, 2004¹². This manual was a part of the Chapter 173-400 rulemaking in 2004 and was listed in the Environmental Checklist¹³ (WAC 197-11-960) for public review. Ecology submits the manual and Environmental Checklist to EPA as supporting documents.

Subsection (3) establishes a default oxygen correction factor for reporting concentrations of air pollutants in exhaust gases. The section was revised to include criteria on how to modify this correction factor in circumstances where the default value of 7% is inappropriate, such as when implementing NSPS and NESHAP standards. For example, the correction factor for combustion turbines in 40 CFR Part 60 subparts GG and KKKK is 15%¹⁴, the factor in Part 60 Subpart BB¹⁵ is 10%, and the factor in Part 60 subpart Db¹⁶ is 3%.

Subsection (2) is involved with regulating emissions from incinerators that are not subject to regulation under the state solid waste incinerator rule or under federal NSPS rules that have been adopted by the state. This section of the rule dates from the past when small incinerators at grocery stores, apartment buildings, etc, were common. These incinerators produced dense smoke and odors resulting from poor combustion. Ecology plans to remove this outdated section from the rule upon EPA’s approval of its removal from the SIP.

Ecology requests EPA to remove WAC 173-400-050(2) from the SIP. Total carbonyls are not a criteria air pollutant and are not required to be included in the SIP. However, to the extent that the carbonyls captured by this limitation and Ecology’s test method those carbonyls are measured as Volatile Organic Compounds (VOCs), they will be included in VOC analyses and emission limitations. Similarly, if there are condensable or particulate carbonyls, they will be included as part of the particulate emissions from a source. As a result, removal of the specific pollutant total carbonyls from the SIP will not reduce the ability of the state or EPA to regulate VOC or particulate emissions in Washington, to the extent any of these sources remain.

¹² This document is also available on Ecology’s Web Site at:
http://www.ecy.wa.gov/programs/air/Source_Test/sourcetesthome.html

¹³ See Appendix C

¹⁴ Respectively 40 CFR 60.332(a) and 40 CFR Part 60 Subpart KKKK Table 1

¹⁵ 40 CFR 60.283(a)(1)

¹⁶ 40 CFR 60.48b(j)(4)(i)(A)

6. Section 173-400-060 WAC, “Emission standards for general process units.”

a) Description (What is submitted?)

This section was approved into the SIP in 1993. The state revised the section in 1998, 2000, 2001, and 2005. The revisions include an updated reference to EPA test methods and a minor word change.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version in the current state rule.

c) Analysis of Submittal

The revisions are administrative. They do not change the allowable emission rates and do not interfere with implementation or maintenance of the NAAQS.

7. Section 173-400-070 WAC, “Emission standards for certain source categories.”

a) Description (What is submitted?)

This section was approved into the SIP in 1993. The state revised the section in 1996, 1998, 2000, 2001, 2011, and 2012. SIP-approved subsections have had some language clarification changes and updated references in the revisions. A new subsection, (8), is Ecology’s adoption of the §111(d) emission guideline for municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace subsections (1), (2), (3), (4), (5), and (6) with the revised sections in the current state rule.

Subsection (7) was not approved into the original SIP in 1993 and Ecology does not propose it for approval at this time.

Ecology does not propose to include new subsection (8) in the SIP.

c) Analysis of Submittal

The changes to the SIP-approved subsections include language clarifications and reference updates. Subsection (7) does not address criteria pollutants required under the SIP. Subsection (8) is an emission guideline under Section 111 of the Clean Air Act. These provisions do not belong in the SIP.

8. Section 173-400-081 WAC, “Startup and shutdown.”

a) Description (What is submitted?)

Minor revision to existing SIP-approved section of regulation.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version in the current state rule.

c) Analysis of Submittal

No substantive changes. It applies to both minor and major NSR permitting.

9. Section 173-400-091 WAC, “Voluntary limits on emissions.”

a) Description (What is submitted?)

Minor revision to existing SIP-approved section of regulation.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version in the current state rule.

c) Analysis of Submittal

Predominantly language clarification changes. The changes apply to both minor and major NSR permitting and limiting the emissions of federal Hazardous Air Pollutants.

10. Section 173-400-100 WAC, “Registration program.”

a) Description (What is submitted?)

The registration program was approved into the SIP in 1993 under section number 173-400-100 WAC. Ecology has since significantly revised this section and the registration program, which is now contained in sections 173-400-099 through 104 WAC. The registration program is a state procedural requirement.

b) Action (What would Ecology like EPA to do with the submittal?)

Remove section 173-400-100 WAC from the SIP. Ecology does not propose to include new sections 173-400-099 through 104 WAC in the SIP.

c) Analysis of Submittal

SIP-approved section 173-400-100 WAC contains Ecology’s registration program for sources of air contaminants, as it existed in early 1990s. This section listed all source categories required to acquire permits prior to the start of construction. The section also allowed for an unlisted source to be required to get a permit based on a decision of the permitting authority.

The registration program in the current state rule is not linked to the NSR program, does not impose control requirements on the sources, and does not enforce or implement federal air quality standards. As such, it is not appropriate or required to be included in the SIP¹⁷. The registration program is no longer linked to NSR applicability.

¹⁷ See guidelines for including rules in implementation plans in the “State Implementation Plan Process Improvement Project” Final Report, Appendix 2.
[http://yosemite.epa.gov/r10/airpage.nsf/webpage/Region+10+SIP+Process+Improvement+Project+\(SIP-PIP\)](http://yosemite.epa.gov/r10/airpage.nsf/webpage/Region+10+SIP+Process+Improvement+Project+(SIP-PIP))

11. Section 173-400-105 WAC, “Records, monitoring, and reporting.”

a) Description (What is submitted?)

Revisions to existing SIP-approved section of the regulation.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version in the current state rule.

c) Analysis of Submittal

The revision establishes more detailed requirements on Continuous emissions monitoring (CEM) data for installed CEMs that are not required in federal standards such as NSPS, NESHAPS, or NESHAPS for Source Categories (MACT). The replacement text strengthens the criteria and requirements for installed CEMs.

Section 173-400-105, “Records, monitoring, and reporting,” contains legally enforceable provisions implementing the requirements found in 40 CFR 51. Specifically, section 173-400-105 WAC contains legally enforceable procedures requiring owners or operators of stationary sources to maintain records on the type and quantity of emissions from the source and periodically report to the permitting authority. The owner(s) or operator(s) of any air contaminant source are required to submit an inventory of emissions from the source each year. Ecology collects the emission data from all sources regulated by Ecology and all permitting authorities in Eastern Washington. This information is included in the annual emission inventory report that Ecology submits to EPA. Section 173-400-105 WAC is being submitted for inclusion in the SIP as a part of this SIP revision. A previous Ecology submittal to EPA erroneously stated the emissions reporting requirement in WAC 173-400-105 was restricted to major sources. The rule text contains no such restriction, and any source can be required to submit emissions information based on this section of rule.

WAC 173-400-105(4) contains an updated reference to “Source Test Manual – Procedures for Compliance Testing” as of September 20, 2004¹⁸. This manual was a part of the Chapter 173-400 rulemaking in 2004 and was listed in the Environmental Checklist (WAC 197-11-960) for public review.

12. Section 173-400-110 WAC, “New source review (NSR) for sources and portable sources.”

a) Description (What is submitted?)

This rule section is used to determine which sources of air pollution are required to obtain preconstruction permits prior to the start of construction or restarting after a modification. The section identifies which permitting programs (minor NSR, PSD, or nonattainment NSR) are

¹⁸ This document is also available on Ecology’s Web Site at:
http://www.ecy.wa.gov/programs/air/Source_Test/sourcetesthome.html.

applicable to a specific project. Local air quality authorities are responsible for most NSR in their jurisdictions. Local authorities may either use Ecology's regulations or write their own.

This section has been significantly revised since the last approval in the SIP. The bulk of the revisions are directed toward: a) clarifying what sources must undergo NSR; and b) identifying which types of NSR approvals a particular project must obtain prior to the start of construction.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version of the current state rule, except for:

- Ecology does not submit the following new subsections for inclusion in the SIP:
 - 173-400-110(1)(c)(ii)(C)
 - 173-400-110(1)(e)
 - 173-400-110(2)(d)
 - the part of WAC 173-400-110(4)(b)(vi) that says “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,”
 - 173-400-110(4)(e)(iii) “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”
 - 173-400-110(4)(f)(i) “that are not toxic air pollutants listed in chapter 173-460 WAC.”
 - 173-400-110(4)(h)(xviii) “, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted”
 - 173-400-110(4)(h)(xxxiii) “where no toxic air pollutants as listed under chapter 173-460 WAC are emitted”
 - 173-400-110(4)(h)(xxxiv) “, or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”
 - 173-400-110(4)(h)(xxxv) “or ≤ 1% (by weight) toxic air pollutants”
 - 173-400-110(4)(h)(xxxvi) “or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”
 - 173-400-110(4)(h)(xl) Second sentence
 - In Table 173-400-110(5) *Exemption Levels Table*, last row. Ecology does not submit the Toxic Air Pollutant de minimis level to be approved into the SIP.

c) Analysis of Submittal

(1) NSR Reform Project

Ecology began the NSR Reform Project to revise the program and establish a listing of de minimis sources of emissions in 1995. As Ecology worked with interested parties, a set of conceptual and technical issues emerged.¹⁹ As the result of the reform, Ecology made the following conceptual changes to its NSR program:

¹⁹ For the list of issues and details, see 1997 Concise Explanatory Statement: <https://fortress.wa.gov/ecy/publications/publications/97211.pdf>

- Clarified the relationship between state and local NSR programs- Ecology clarified that its rules apply state-wide unless a local authority adopts its own rules and those rules are adopted into the SIP.
- List of exempted equipment- Ecology fulfilled part of its requirements under Chapter 67, Laws of 1996 (RCW 70.94.152(10)-(12)) by categorically listing equipment that is exempt from NSR and not subject to any administrative requirements.
- De minimis thresholds- See additional discussion below.
- Remove a list of sources that is always subject to NSR- Ecology's original intent was to have a list of exemptions, a list of units that must always go through NSR, and emission thresholds by which to judge all non-listed units. Several drafts were written using this approach, but they were unclear. Because the Legislature directed Ecology to establish de minimis exemptions and required that all sources required to file a Notice of Construction must show they will use BACT, Ecology decided to use the exemption list only. Ecology removed a list of units that must always go through NSR from the rule. The effect of this change is to require all sources that are not exempt, either by listing or threshold, to file an NOC and use BACT.

(2) WAC 173-400(110)(1)(e)

The exemption specified in this subsection is based on the statutory exemption for toxic cleanup site remedial actions under Chapter 70.105D RCW, Model Toxics Control Act (MTCA). Under this exemption, sources are exempt from state and local procedural requirements contained in RCW 70.94, or implementing state and local regulations. Federal procedural requirements are not subject to this exemption.

The Director of Ecology determined²⁰, pursuant to RCW 70.105D.090(2), that Ecology cannot use the MTCA exemption for federally-required air emissions permits. Remedial actions at MTCA cleanup sites that are sufficient to trigger the need for the following permits are not exempt: Title V air operating permits (AOPs), prevention of significant deterioration permits (PSD permits), or nonattainment new source review permits (nonattainment NSR permits).

Ecology's minor new source review (NSR) program incorporates federal requirements by requiring eligible sources to obtain a permit (Notice of Construction Order of Approval). In order to include the exemption from state and local procedural requirements for remedial actions which emissions are subject to minor new source review, Ecology must show that the emissions from subject sources are sufficiently de minimis that failure to permit this category, along with consideration of other source categories and emission units exempt from Ecology's minor NSR program, would not interfere with attainment or maintenance of the NAAQS or violate applicable portions of the SIP control strategy as provided in 40 CFR 51.160. Because of variability within the source category, such demonstration is difficult. An alternative would be to show how those sources would still meet federal procedural requirements if they are exempt

²⁰ See Appendix D.

from permitting. The showing must include enforceable procedures. At this time, the rule language in WAC 173-400-110(1)(e) does not allow for differentiation between state and federal procedural requirements in the minor NSR program. Thus, Ecology does not submit this exemption in the SIP at this time.

The Director of Ecology determined²¹, pursuant to RCW 70.105D.090(2), that until the MTCA exemption for minor source permits is approved in the SIP, application of the minor NSR permit exemption RCW 70.105D.090(1) to remedial actions at MTCA cleanup sites that emit NAAQS pollutants or their precursors would result in the state's loss of federal authorization to implement these CAA permitting requirements in Washington. This determination applies solely to NAAQS pollutants that would be emitted into the air from remedial actions at MTCA cleanup sites and is not intended to apply to any other circumstance.

(3) WAC 173-400-110 (4) and (5), "De minimis emission rates and emission units/sources."

Historically, the New Source Review (NSR) rules required 1) all new sources listed as being required to register with the state or the local air pollution control authority and 2) existing sources being modified and having emission increases to undergo permitting and receive an order of approval prior to construction. State law was amended in 1996²² to require Ecology develop a listing of de minimis emission sources which would not require a permit. The development of a de minimis source list and de minimis emission thresholds allows for some minor changes at a facility without triggering NSR requirements. Ecology defined de minimis levels (thresholds) for the NSR Program. The de minimis emission source listing is comprised of two parts: 1) a list of exempt equipment and 2) an annual emissions threshold level for non-listed equipment and modifications. The emission threshold is equal to five percent of the Prevention of Significant Deterioration (PSD) significance levels defined in 40 CFR 52.21(b)(23), as they existed in 1997.

Background

Ecology began the NSR Reform Project in 1995. Ecology worked with interested parties to produce a set of refined conceptual issues prior to beginning the formal rulemaking process. In 1996, the Washington State Legislature amended the Washington Clean Air Act and directed that Ecology establish de minimis exceptions to the state's NSR program.

Ecology added this directive to the issue resolution phase of rulemaking process already underway. The Concise Explanatory Statement for Chapter 173-400 WAC Amendments to Washington's New Source Review Regulations (November 1997) outlines Ecology's "conceptual framework" analysis and further describes the process used to identify de minimis exemption levels.

²¹ See Appendix D.

²² RCW 70.94.152

De Minimis Framework

Ecology developed two de minimis pathways to satisfy a legislative directive, which were included in the NSR regulations adopted in 1997. Upon initial review and evaluation, de minimis levels appeared to apply best to equipment, resulting in an exempted equipment list. Ecology soon discovered, however, that it became impossible to list all equipment and modifications. To fill this gap, Ecology also identified and proposed emission threshold levels for non-listed equipment and modifications.²³

De minimis Equipment: Ecology developed an initial list using a combination of typical equipment from registration sources and the de minimis activities exempted from permitting by other states. Ecology then asked industry to review and comment on the list. The list was also distributed for review to local air authorities and representatives from the environmental community. The resulting equipment list was very similar to the lists of insignificant emission units found in Chapter 173-401 WAC. Additionally, Ecology evaluated whether a unit should be de minimis using emissions thresholds and historical permitting requirements. Ecology reached the determination that units passing both criteria were also placed on the de minimis list.²⁴

De Minimis Criteria Pollutant Threshold Levels

As stated above, Ecology discovered that identifying all equipment and modifications became impossible and another method was needed to supplement the equipment list. Ecology evaluated and ultimately chose de minimis threshold levels for criteria pollutants as levels equal to 5% of the Prevention of Significant Deterioration (PSD) significance levels defined in 40 CFR 52.21(b)(23), as it existed in 1997.

Since 1997, both the de minimis equipment list and the de minimis emission rates were modified. The de minimis equipment list had minor additions, deletions, and changes in threshold sizes. The de minimis emission rates were modified to include a greenhouse gas and a PM_{2.5} emission threshold. The PM_{2.5} threshold is based on the 5% of the PSD significance threshold for PM_{2.5}. The current greenhouse gas emission threshold is the same as the PSD threshold.

Comparison of de minimis emission rates and equipment to SIP approved de minimis standards

There are many other states in the U.S. that have instituted programs that exempt certain sources from permitting requirements based on emission rates, specific equipment, or type of activity. Ecology compared its de minimis requirements to the de minimis requirements approved into the SIPs of 12 other states, chosen more or less at random. All 12 states are outside of EPA's Region 10 jurisdiction.

²³ See p. 9 of the 1997 Concise Explanatory Statement available at: <https://fortress.wa.gov/ecy/publications/publications/97211.pdf>

²⁴ Detailed discussions on pages 9 & 10 of the 1997 Concise Explanatory

Most of these states have a de minimis emission rate threshold above which NSR permitting is required. The de minimis rates of these other states vary considerably, but all are higher than the rates in WAC 173-400-110(5). The states reviewed almost all utilize the thresholds in 40 CFR 51.166(b)(21) to define when to require minor NSR permits. Separately, the Tribal Permitting rule at 40 CFR 49.153(b)(3) Table 1 exempts from permitting sources with emissions larger than exempted by Ecology.

A comparison of de minimis emission units and equipment and activities from 12 other states plus EPA's national Tribal Air Rule is part of the submittal information at Appendix E. In most cases, similar trivial activities and sometimes non-trivial emission units and activities are exempted from permitting. The various exemption lists clearly reflect the priorities of the states and the mix of industries they host. There are many categories that are the same (usually with Washington having the smallest threshold size, when applicable), but most de minimis equipment lists are different. As noted, the differences clearly reflect the mix of industries in a particular state, the relative activism of particular industrial groups, and differences in scale of some industrial activities. For example, there are states that exempt sawmills from permitting requirements, or exempt them if they are below a specific size or emission rate threshold. Many states have an exemption for certain kinds of graphic arts and printing activities, while Washington does not.

Criteria Pollutant Modeling and Results

Ecology evaluated this threshold level to determine the likely "overall- effect" on pollution levels in the state. Ecology started by applying the 5% of PSD criteria to the various criteria pollutant emissions data. The end product was a chart identifying the state-wide emission threshold levels for specific criteria pollutants.

Ecology then identified the threshold levels for insignificant emission units and modeled these levels using EPA's SCREEN 3 model. Ecology applied conservative parameters for the model, which are specifically identified in the 1997 Concise Explanatory Statement. Ecology compared the modeling results with the NAAQS. The modeling indicated that the de minimis emission rates and insignificant emission units would not cause or contribute to an exceedance of the NAAQS.

As a final step, Ecology evaluated and compared the proposed de minimis emission rate, based on 5% of the PSD significant emission rate levels, with what other states included in their rules. Washington's proposed de minimis emission rate fell in the middle range of the de minimis levels found in other states.

Given all the factors, Ecology concluded that using 5% of the PSD significant emission rate as a threshold is a reasonable de minimis level for criteria pollutants.

Comparison to ambient monitoring results

Over the past 15 years, Washington State has come into attainment for all NAAQS, with one exception. This occurred while implementing the exemptions from minor NSR permitting in the state rule and in individual local agency regulations. While not definitive, this is an indication that the exemptions from permitting are not impeding our ability to assure the quality of the air in Washington continues to improve.

The one exception is the Tacoma PM_{2.5} nonattainment area. This area is nonattainment primarily due to particulate from wood-fired residential heating, not industrial/commercial activities that could utilize the equipment exempted from permitting.

The current (2012) design values for all the ambient monitors (except Tacoma “L” Street) in the state are below the ambient standards²⁵. This also indicates that the permitting exemptions are not having an adverse impact on state and local authorities’ ability to meet the ambient standards.

Conclusion

Washington State defined de minimis levels for the NSR Program using a combination of methodologies and approaches. Through a multi-step evaluation process, Ecology concluded the best approach features an equipment exemption list and a criteria pollutant threshold level for non-listed equipment and modifications. In 1997, Ecology adopted rules identifying de minimis levels—an equipment exemption list and a 5% of PSD levels threshold for criteria pollutants.

Use of the rule has not resulted in an increase in incidence of nonattainment. Since 1997, all areas of the state were returned to attainment for all pollutants. All Washington permitting authorities have utilized the de minimis emission unit and emission threshold concepts in their permitting. Even though NAAQS have become more stringent, Washington State still attains the NAAQS (with one exception).²⁶

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

a) Description (What is submitted?)

A new section of regulation addressing how to process Notice of Construction applications (minor NSR).

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP, except for:

²⁵ 2012 Ambient Air Monitoring Network Report, Ecology Report No 12-02-008.

²⁶ The Tacoma-Pierce County area has become nonattainment for PM_{2.5} due to home heating emissions. It had not been in violation of the PM_{2.5} NAAQS before.

- 173-400-111(3)(h) and (i) – references to different chapters of the WAC that are not a part of the SIP.
- The part of 173-400-111(8)(a)(v) that reads “and 173-460-040,” – this reference is to a different chapter of the WAC that is not a part of the SIP.
- 173-400-111 (9) – fees provision required under a different chapter of the WAC that is not a part of the SIP.

c) Analysis of Submittal

The new section is composed of the permit processing and issuance criteria formerly located in WAC 173-400-110, 112, and 113. These permit processing and issuance criteria are now gathered into one location rather than being distributed in multiple locations in the rule, for the convenience of both the permitting authority and the permit applicants. Application and permit processing steps are clearly delineated in the section, including references to the other sections of the rule that describe the requirements.

14. Section 173-400-112 WAC, “Requirements for new sources in nonattainment areas.”

a) Description (What is submitted?)

Revision to existing SIP-approved section of regulation.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version of this section in the current state rule, except for:

- 173-400-112(8) – This subsection was not approved in the SIP in 1993. Ecology removed this language from the state rule.

c) Analysis of Submittal

In the SIP-approved state rule, this section contains all of the permitting requirements (including applicable definitions) for nonattainment permitting. Subsequent to approval in the SIP, EPA significantly revised the permitting requirements for nonattainment areas, including implementation of the 2002 NSR Reform requirements.

On the whole, the nonattainment NSR permitting program and requirements have been moved to WAC 173-400-800 through -850. The intent of the current form of Section 112 is to point to the various requirements in other sections of Chapter 173-400 WAC, including the major nonattainment NSR permitting program WAC 173-400-800 through -850.

15. Section 173-400-113 WAC, “Requirements for new sources in attainment or unclassifiable areas.”

a) Description (What is submitted?)

All of this section has been revised since SIP-approval in 1993. All subsections in the section are being submitted except for (5), which addresses requirements for permitting of toxic air pollutants located in Chapter 173-460 WAC. The reference to Chapter 173-460 WAC is not part of the SIP now since it addresses permitting of toxic air pollutants.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the revised section²⁷ except for the second sentence in subsection (3).

c) Analysis of Submittal

To be consistent with the U.S. Court of Appeals for the District of Columbia decision in *Sierra Club v. EPA*, 705.F.3d 458, Ecology is not submitting the second sentence in WAC 173-400-113(3) to EPA for inclusion in the SIP. For additional details, please see discussion in Section 173-400-720 WAC, “Prevention of signification deterioration (PSD).” on page 36 of this document.

Significant changes and clarifications were made to section (4) which implements 40 CFR 51.165(b). The changes enable the state rule to better match the requirements in federal rule. The rule revision clarified the requirement that each major new source cannot cause or contribute to an ambient air quality standard violation.

Subsection (5) (as numbered in the approved SIP) is not part of the SIP-approved regulation now and is not proposed for submission to EPA.

16. Section 173-400-116 WAC, “Increment protection.”

a) Description (What is submitted?)

New section of regulation requiring PSD Increment protection in the state.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

The new section implements increment protection and correction requirements found in 40 CFR 51.166(a). This section includes allowable exemptions from increment protection contained in 40 CFR 51.166(f).

²⁷ Subsection (5) is no longer a part of this subsection. It was relocated to Section 173-400-110 WAC; it was not submitted previously and continues to be excluded from the SIP.

17. Section 173-400-117 WAC, “Special protection requirements for federal Class I areas.”

a) Description (What is submitted?)

New section of regulation requiring protection of visibility in federal Class I areas in and near Washington.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

The intent of this section is to implement the federal visibility protection requirements found in 40 CFR 52.27 and 52.28.

18. Section 173-400-118 WAC, “Designation of Class I, II, and III areas.”

a) Description (What is submitted?)

New section of regulation that codifies 51.166(g) related to redesignation of areas.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section incorporates the process to redesignate an existing Class II area to Class I or Class III. The state rule section is the same as 40 CFR 51.21(g).

19. Section 173-400-131 WAC, “Issuance of emission reduction credits.”

a) Description (What is submitted?)

New section that implements a program to issue emission reduction credits useable for offsets required by the nonattainment New Source Review (NNSR) permitting program.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section has been revised since the last submittal to EPA for approval in the SIP. EPA disapproved that submittal and stated that it did not meet the requirements of its “Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986). In its disapproval statement, EPA noted that an emission reduction credit and trading program is not a required element of a nonattainment permitting program. However, for use of the emission reduction credits issued under this program, the credits would have to meet the criteria in 40 CFR 51.166 for use as emission offsets and netting.

20. Section 173-400-136 WAC, “Use of emission reduction credits (ERC).”

a) Description (What is submitted?)

New section that implements the requirements for the use of emission reduction credits, including their use as offsets required by the NNSR permitting program and other uses allowed in this section of rule.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section has been revised since last submittal to EPA for approval into the SIP. See analysis in 19.c) above for more information.

21. Section 173-400-151 WAC, “Retrofit requirements for visibility protection.”

a) Description

Revised regulation language to implement the Best Available Retrofit Technology (BART) program for existing stationary sources.

b) Action Ecology is requesting EPA to approve the revised section.

Replace the SIP-approved section with the revised version in the current state rule.

c) Analysis of Submittal

This section was modified in 2001 in response to the recommendations contained in the 1997 Reasonably Attributable Visibility Impairment SIP review²⁸. This review indicated the state rule contained a number of inconsistencies with the requirements of 40 CFR Part 51, sections 51.301 – 306. The pre-2001 versions of WAC 173-400-151 utilized incorrect terms, most importantly the interpretation of the federal definition of “existing stationary facility.” In reviewing the language of WAC 173-400-151 in the SIP, the 1997 SIP Review Report²⁹ noted a number of differences between the state rule and federal requirements. The report stated, “Further evaluation of why the exclusionary clause [in the definition of ‘existing stationary facility’] was omitted from the WAC needs to be made. If it is determined that it was an oversight or is no longer applicable, then the definition of “existing stationary facility” in WAC 173-400-030(26) should be revised to be consistent with the federal definition.” The exclusionary clause is the criteria limiting BART applicability to the 26 listed source types and categories and to those facilities that came into existence between 1962 and 1977.

²⁸ Review of the Washington State Visibility Protection State Implementation Plan Final Report, April 1997, Publication No. 97-206

²⁹ Ibid, see Section 7. Appendix C of this report contains a copy of the 1985 Washington State Visibility Protection Plan.

The subsequent review of the rule resulted in a decision to implement the federal rule criteria for what is an “existing stationary facility” for BART. This change better allowed Ecology to implement its BART responsibilities under the Regional Haze program.

As a result of historical non-application of the rule as it appears in the SIP, the state rule change has had no substantive effect on the actual implementation of the BART process or defining which sources could be potentially subject to BART in Washington. State rules were changed in 2001 to reflect the recommendation in the 1997 SIP Review Report. The revised Ecology rule now implements the federal definition of “existing stationary source.” This revision was used to develop the 2010 Regional Haze State Implementation Plan for Washington.

22. Section 173-400-171 WAC, “Public notice.”

a) Description (What is submitted?)

Revised and restructured public involvement requirements from the requirements in the existing SIP-approved section.

b) Action (What would Ecology like EPA to do with the submittal?)

Replace the SIP-approved section with the revised version in the state rule, except for:

- the following words in 173-400-171(3)(b) “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”.
- 173-400-171(12). This is a new section related to Ecology only actions. Ecology does not propose to include it in the SIP.

c) Analysis of Submittal

The revisions establishes a procedure to inform the public of the receipt of Notice of Construction applications and criteria that would result in a public notice and public comment period on the permitting agency’s proposed action. The procedure to notify the public of applications received is based on the state of Idaho’s SIP-approved procedure.

The content of WAC 173-400-171(12) mirrors and references requirements included in 40 C.F.R Part 51. These requirements list actions that Ecology is required to perform in relation to public comment periods and hearings for SIP actions and similar types of actions.

23. Section 173-400-175 WAC, “Public Information.”

a) Description (What is submitted?)

This new section was adopted in the state rule in 2005.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section in the SIP.

c) Analysis of Submittal

The new section states that all information, except information protected from public disclosure under any applicable law, is available for public inspection.

24. Section 173-400-200 WAC, “Creditable stack height and dispersion techniques.”

a) Description (What is submitted?)

Minor revision to existing SIP-approved section of regulation.

b) Action (What would Ecology like EPA to do with the submittal?)

Update this section in the SIP.

c) Analysis of Submittal

The minor revisions do not change the intent or application of this section, in practice. One change is to replace ‘open burning’ with ‘outdoor burning’; these terms are identical in the open burning regulation. The other is the addition of the word “permitting” to modify an outdated term referring to local air pollution control authorities.

25. Section 173-400-560 WAC, “General order of approval.”

a) Description (What is submitted?)

Section 173-400-560 WAC provides the alternative minor NSR permit path.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP, except for:

- Part of 173-400-560(1)(f) that reads: “for 173-460 WAC”.

c) Analysis of Submittal

The Washington State Clean Air Act (Chapter 70.94 RCW) provides for the issuance of an order of approval for the establishment of a new source. General orders of approval are one of the tools Ecology uses to approve the establishment of new sources. These general orders fulfill all the requirements of an order of approval issued under the authority of WAC 173-400-110, 173-400-111, 173-400-112, or 173-400-113.

Background

Section 560 of Chapter 173-400 WAC became effective on February 10, 2005. The concept of a general order of approval was developed and implemented with the overall goal of improved efficiency in the review and issuance of minor NSR permits. Ecology strives to improve its permitting program with the ultimate goal of issuing preconstruction approvals to its customers in the most cost-effective and time-efficient way while continuing to protect the air quality in Washington.

Not every source category is eligible for a general order of approval. Ecology selected source categories where it had considerable experience in issuing approvals. The selected source categories are where BACT emission controls have not been changing or anticipated to change in the near future and the use of BACT emission controls will protect the NAAQS. The principle result has been to save time and money for the applicant and Ecology while protecting ambient air quality.

All general orders of approval are issued under the authority of WAC 173-400-560 and 173-400-110.

Elements of a General Order

The rule contains a number of criteria that must be met in order to issue a general order. The following is a list of the elements for issuance of a general order in WAC 173-400-560. Each general order shall consider:

- 1) Applicable emissions limitations and/or control requirements;
- 2) Best available control technology;
- 3) Appropriate operational restrictions, such as:
 - (i) Criteria related to the physical size of the unit(s) covered;
 - (ii) Criteria related to raw materials and fuels used;
 - (iii) Criteria related to allowed or prohibited locations; and
 - (iv) Other similar criteria determined by a permitting authority;
- 4) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;
- 5) Appropriate initial and periodic emission testing requirements;
- 6) Compliance with chapter WAC 173-400-112 and 173-400-113 as applicable;
- 7) The application and approval process to obtain coverage under a general order of approval; and
- 8) Compliance with WAC 173-400-171 is required for a proposed new general order of approval or modification of an existing general order of approval.

Ecology intentionally limited the use of general orders in specific circumstances. General orders are not available to an emission unit or source if:

- 1) The requested emission unit or source is part of a new major stationary source or major modification subject to the requirements of WAC 173-400-700 through -750.
- 2) The requested emission unit or source is part of a new major stationary source or major modification subject to the requirements of WAC 173-400-800 through -860.
- 3) The requested emission unit or source triggers applicability of the operating permit program under Chapter 173-401 WAC or triggers a required modification of an existing operating permit.
- 4) Non-road engines, as defined in section 216 of the Federal Clean Air Act, are not included in general orders of approval.

The limitation on not using general orders for portions of a major NSR project is to assure that an applicant does not piecemeal a project into less than significant projects to avoid a major NSR permit. Similarly, the limitation on using a general order on the project that would require a source to obtain an Air Operating Permit (aka Title V) or triggers a mandatory modification of an air operating permit is because these are major actions that trigger numerous additional requirements found in WAC 173-401, Air Operating Permits.

Current General Orders of Approval

Ecology has issued a number of general orders of approval since 2005. The following is the list of general orders of approval that have been issued and are available to sources proposing to operate in counties regulated by Ecology.

- Dairy anaerobic digesters
- Concrete batch plants
- Gas-powered emergency electric generators
- Rock crushers
- Small water heaters and steam generating boilers
- Auto body shops
- Asphalt plants

The General Order for small water heaters and steam generating boilers has been modified several times since initial issuance to reflect changes in scope and the other emission requirements these units are required to meet.

General orders of approval issued under the authority of WAC 173-400-560 also meet all the requirements of an order of approval issued under the authority of WAC 173-400-110.

26. Section 173-400-700 WAC, “Review of major stationary sources of air pollution.”

a) Description (What is submitted?)

New rule section addressing the PSD program requirements in Washington.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This new section provides an overview of the PSD program requirements and establishes the relationship of the requirements in WAC 173-400-710 through -750 to local authority PSD delegations or SIP-approved PSD programs and the EFSEC major source permitting requirements.

27. Section 173-400-710 WAC, “Definitions”

a) Description (What is submitted?)

New rule section addressing the Prevention of Significant Deterioration program requirements in Washington.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section establishes the priority of potentially conflicting definitions between the PSD and state NOC program requirements. This section establishes that for purposes of the PSD program, the definition in 40 CFR 52.21, as adopted by reference in WAC 173-400-720, is to be used.

28. Section 173-400-720 WAC, “Prevention of signification deterioration (PSD).”

a) Description (What is submitted?)

New rule section addressing the PSD program requirements in Washington.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section in the SIP, except for:

- WAC 173-400-720(4)(a)(i) through (iv).
- 2 specific sub-sections of 40 CFR 52.21 adopted by reference in 40 CFR 52.21, in WAC 173-400-720(4)(a)(vi). The specific subsections we request that EPA not approve are 52.21(i)(5)(i) defining a significant monitoring concentration for PM_{2.5} and in 52.21(k)(2) establishing a PM_{2.5} significant impact level.

c) Analysis of Submittal

This section adopts by reference 40 CFR 52.21, with listed exceptions, as the PSD permitting program in Washington. It also substitutes some state regulatory requirements for requirements in § 52.21 implementing the 2003 new source reform package. These are the basic program requirements that have been the basis for PSD delegations from EPA for the past 10 years.

Ecology intends to amend WAC 173-400-720(4)(a)(i)-(iv) in the near future to clarify the meaning of the language, and will submit the revised provisions for inclusion in the SIP once they have been finalized. Ecology notes that other provisions proposed for inclusion in the SIP ensure that each of the requirements listed in WAC 173-400-720(4)(a)(i) through (iv) must be addressed in the process to issue a PSD permit, regardless of whether the requirements are listed in WAC 173-400-720(4)(a)(i) through (iv). For more information, please see Attachment B to Appendix F titled “Ecology’s letter to EPA from November 1, 2013”.

The two subsections, § 52.21(5)(k) and § 52.21(i)(5)(i), included in the version of 40 CFR 52.21 which Ecology has adopted by reference have been vacated or remanded by the courts to EPA for revision. As such, they are not part of an approvable PSD program. More details are below:

Significant Impact Leves (SILs) / Significant Monitoring Concentration (SMCs)

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 705 F.3d 458, vacated and remanded the provisions at 40 CFR 51.166(k)(2) and 52.21(k)(2) (concerning implementation of the PM_{2.5} SILs) and vacated the provisions at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) (adding the PM_{2.5} SMC) that were promulgated as part of the 2010 PM_{2.5} PSD Rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM_{2.5}) -Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)," 75 FR 64864 (October 20, 2010).

Consistent with the court decision, Ecology is not submitting the PM_{2.5} SILs and SMC provisions adopted by reference in WA's regulations at WAC 173-400-720(4)(a)(vi) (specifically, the adoption by reference of 40 CFR 52.21(k)(2) and 40 CFR 52.21 (i)(5)(i)(c) in WAC 173-400-720(4)(a)(vi)) and asks that the EPA approve all other aspects of WAC 173-400-720.

The PM_{2.5} SILs and SMC provisions adopted by reference at WAC 173-400-720 still appear in the state regulations until amended by future action and Ecology plans to do so at the first opportunity.

In light of the court decision and until Ecology has revised its state regulations, Ecology confirms that, consistent with authorities in State law, it will not apply either the PM_{2.5} SILs provisions at 52.21(k)(2) or the PM_{2.5} SMC provisions at 52.21 (i)(5)(i)(c) (as incorporated by reference by Ecology at WAC 173-400-720(4)(a)(vi)) to pending or future PSD permit actions. Specifically, with respect to SILs, consistent with the Court's decision in *Sierra Club v. EPA* and statements by EPA in the preamble to the 2010 final rule, Ecology does not interpret 40 CFR section 52.21(k)(2), as incorporated by reference in Ecology's rules to preclude Ecology from exercising discretion to determine when it may be appropriate to conclude that an impact below the PM_{2.5} SIL values in section 52.21(k)(2) will cause or contribute to an air quality problem and to seek remedial action from the proposed new source or modification. Such discretion is necessary to ensure a PSD project meets the requirement of the Clean Air Act and that a PSD project not cause or contribute to a violation of any NAAQS or any applicable increment. Based on this interpretation, Ecology affirms that it will not read section 52.21(k)(2), as incorporated by reference in its rules as an absolute "safe harbor", but will exercise discretion to determine whether a particular application of the PM_{2.5} SIL values is appropriate when a substantial portion of the PM_{2.5} NAAQS or increment is known to be consumed.

Ecology retains the discretion to require additional information from a permit applicant as needed to assure that the source will not cause or contribute to a violation of any NAAQS or applicable increment pursuant to section 52.21(k)(1) and will consider the approach outlined in

the Draft Guidance for PM_{2.5} Permit Modeling released by the agency for public comment and any final guidance regarding the appropriate application of the PM_{2.5} SIL going forward. With respect to SMC's, 40 CFR 52.21(i)(5)(i)(c) provides Ecology with the discretion to determine whether it is appropriate to apply the SMC for PM_{2.5} to exempt a permit applicant from the requirement to compile and submit preconstruction ambient monitoring data for PM_{2.5} as part of a complete PSD application. Consistent with the Court's decision in *Sierra Club v. EPA* vacating the PM_{2.5} SMC, Ecology affirms that it will not exercise its discretionary authority to use the PM_{2.5} SMC in order to exempt PSD permit applicants from the requirement in Clean Air Act section 165(e)(2) that ambient monitoring data for PM_{2.5} be included in applications subject to the PSD program for PM_{2.5}. Additionally, that Ecology will require all applicants requesting a PSD permit, including those having already applied for but have not yet received the permit, to submit ambient PM_{2.5} monitoring data in accordance with the Clean Air Act requirements whenever proposed increases of direct PM_{2.5} emissions or any emissions of a PM_{2.5} precursor equal or exceed a significant amount.

Biogenic CO₂ Deferral

On July 12, 2013, the U.S. Court of Appeals for the District of Columbia, in the *Center for Biological Diversity v. EPA*, No. 11-1101 (D.C. Cir. July 12, 2013), vacated the Biogenic CO₂ Deferral Rule (76 Fed. Reg. 43490 (July 20, 2011)). At the time this notice for public comment was published, the court had not issued the mandate in that case, and the deadline for parties to seek rehearing or appeal has not arrived.

If the mandate is issued at some point in the future, and consistent with the court decision, Ecology intends to inform EPA that the submittal does not include the Biogenic CO₂ Deferral.

29. Section 173-400-730 WAC, "Prevention of significant deterioration application processing procedures."

a) Description (What is submitted?)

New rule section addressing the processing of applications for permits under the Prevention of Significant Deterioration program requirements in Washington.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section establishes the procedures for submittal of applications and the processing of those applications for PSD permits. Procedures are based on the requirements in 40 CFR 51.166 and 40 CFR Part 124.

30. Section 173-400-740 WAC, “PSD permitting public involvement requirements.”

a) Description (What is submitted?)

New rule section addressing the public involvement requirements for PSD permitting decisions.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section establishes the procedures for submittal of applications and the processing of those applications for PSD permits. Procedures are based on the requirements in 40 CFR 51.166(q) and 40 CFR Part 124.

31. Section 173-400-750 WAC, “Revisions to PSD permits.”

a) Description (What is submitted?)

New rule section addressing how to revise requirements in PSD permits after issuance.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP, except for the reference in subsection (2), second sentence that says: “The fee schedule found in chapter 173-455 WAC also applies.”

c) Analysis of Submittal

This section establishes when a permit holder may request revisions to an existing PSD permit. Establishes criteria to determine if the requested revision is a minor revision not requiring public involvement or is more involved and a public comment period is involved. Also contains criteria used to determine the amount of permit processing fee that is to be charged. Subsection (2) has a reference to a WAC chapter that is not approved into the SIP, thus Ecology does not propose to include this reference in the SIP.

32. Section 173-400-800 WAC, “Major stationary source and major modification in a nonattainment area.”

a) Description (What is submitted?)

New rule section addressing nonattainment new source review requirements in Washington.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section outlines the nonattainment area new source review program requirements and establishes the relationship of the requirements in WAC 173-400- 810 through 850 to a local authority’s SIP-approved nonattainment area NSR programs.

33. Section 173-400-810 WAC, “Major stationary source and major modification definitions.”

a) Description (What is submitted?)

New section that contains the definitions used in the nonattainment new source review program.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section mirrors the definitions contained in 40 CFR 51.165 and reorganizes them alphabetically. This section also establishes priority for the definitions in this section to be used for the NNSR program, even when a term may be defined differently elsewhere, such as in WAC 173-400-030 or -720.

34. Section 173-400-820 WAC, “Determining if a new stationary source of modification to a stationary source is subject to these requirements.”

a) Description (What is submitted?)

New section that establishes the procedures to determine if a proposed project in a nonattainment area is subject to the nonattainment area permitting requirements.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section mirrors the emission calculations found in 40 CFR 51.165 to determine if a project in a nonattainment area is subject to nonattainment area NSR requirements due to an increase in its emissions. The section also includes an identical version of the EPA ‘reasonable possibility’ test included in the PSD program.

35. Section 173-400-830 WAC, “Permitting requirements.”

a) Description (What is submitted?)

New section establishing the permitting requirements that must be met for any project requiring nonattainment are NSR permitting.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section copies portions of previous requirements in WAC 173-400-112, as approved into the SIP, plus additional requirements added to 40 CFR 51.165 after 1993.

36. Section 173-400-840 WAC, “Emission offset requirements.”

a) Description (What is submitted?)

New section establishing and making enforceable requirements to offset emissions.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section makes enforceable requirements to offset emissions and establishes the minimum offset requirements. This section establishes a relationship on the use of emission reduction credits issued under Chapter 173-400 WAC and emission reductions for emission reduction credits that have not been issued to be useable as emission offsets.

37. Section 173-400-850 WAC, “Actual emissions plantwide applicability limitation.”

a) Description (What is submitted?)

New section establishing the opportunity for a source to obtain a plant-wide applicability limit for the nonattainment area pollutant (and precursors).

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section adopts by reference the plant-wide applicability limit process and requirements of 40 CFR Part 51, Appendix S.

38. Section 173-400-860 WAC, “Public involvement procedures.”

a) Description (What is submitted?)

New section describing the public involvement process for nonattainment area NSR.

b) Action (What would Ecology like EPA to do with the submittal?)

Approve the new section into the SIP.

c) Analysis of Submittal

This section directs that the public involvement procedures to be followed are in WAC 173-400-171.

IV. Appendices

Appendices are in separate documents within the SIP submittal package. Appendix E is a large spreadsheet that is designed to be viewed electronically; it is included in the enclosed CD.

- Appendix A: Overview Table
- Appendix B: Strikeout SIP Approved Rule Language
- Appendix C: Environmental Checklist for “Amendments to Chapter 174-400 WAC, General Regulation for Air Pollution Sources”
- Appendix D: Determination of Applicability of MTCA Exemption to Air Quality Permitting Programs
- Appendix E: Comparison of emission units and rates exempt from permitting in Washington, some other states, and the EPA Tribal NSR rule
- Appendix F: Response to Comments
- Appendix G: Public Involvement
1. Affidavit of Publication in The Daily Journal of Commerce
 2. SIP Revision Public Notice
 3. Ecology’s News Release
 4. Ecology’s Public Involvement Calendar
 5. Notice in Ecology’s Toxic Cleanup Program Site Register
 6. Hearing Summary Memorandum
- Appendix H: SIP Adoption Order