AMENDATORY SECTION (Amending WSR 11-17-037, filed 8/10/11, effective 9/10/11)

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) **"Affected source"** means a source that includes one or more affected units.

(2) **"Affected states"** are the states or federally recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) **"Affected unit"** means a fossil-fuel fired combustion device or a source that opts-in under 40 C.F.R. part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) **"Applicable requirement"** means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 C.F.R. 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, un-

less the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) **"Chapter 401 permit"** or **"permit"** means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) **"Chapter 401 source"** means any source subject to the permitting requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

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

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

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

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

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

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

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

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

(i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

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

(a) Carbon monoxide;

(b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

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

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

(a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representa-

tive of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 C.F.R. Part 70.

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

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

(a) Is owned or operated by a person that employs one hundred or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit fifty tons or more per year of any regulated pollutant; and

(e) Emits less than seventy-five tons per year of all regulated pollutants.

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

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

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

waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

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

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

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

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

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 C.F.R. 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation <u>under this chapter</u> unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions <u>and the source is otherwise required to have an operating permit</u>.

(b) The term "tpy (tons per year) CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 C.F.R. part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO_2e. For purposes of this subsection (b), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

(36) **"Title I modification"** or **"modification under any provision of Title I of the FCAA"** means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

AMENDATORY SECTION (Amending WSR 02-19-078, filed 9/16/02, effective 10/17/02)

WAC 173-401-300 Applicability. (1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

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

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

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

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

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

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

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

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

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

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

(d) ((~~Deferral. A source subject to the secondary aluminum production requirements in 40 C.F.R. Part 63, Subpart RRR (in effect on July 1, 2000) that is not a major source and is not located at a major source as defined under 40 C.F.R. 63.2 and is not otherwise required to obtain a chapter 401 permit is deferred from chapter 173-401 WAC until December 4, 2004. This category includes sweat furnaces, aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, group 2 furnaces (processing clean charge only and no reactive fluxing), dross-only furnaces, and rotary dross coolers.~~

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

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

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that: ((~~(i) Ecology completes a rulemaking to deter-~~

~~mine whether nonmajor sources should be required to obtain permits. During this rulemaking, ecology will consider the compliance information contained in individual permit applications when evaluating the regulatory effectiveness and administrative feasibility of issuing operating permits to nonmajor sources relative to other regulatory options. This rulemaking must be completed no later than three years after the effective date of the permit program; or~~

~~(ii)~~)) The administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operating permits and ecology completes a rule making to adopt EPA's revised applicability criteria.

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

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

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

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

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

(3) Emissions units and chapter 401 sources.

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

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

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

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

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

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any ((~~class A or class B~~)) toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with

EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

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

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

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

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

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

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

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

(i) Regulatory orders. At the request of the owner or operator of a source, the permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC ((~~173-400-090~~)) 173-400-091.

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

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW 70.94.161(11). ((~~Following EPA approval of the general permit, limitations on potential to emit become federally enforceable against a particular source after that source applies for, and receives coverage under the general permit.~~))

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

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

AMENDATORY SECTION (Amending WSR 94-11-105, filed 5/17/94, effective 6/17/94)

WAC 173-401-510 Permit application form. (1) Standard application form and required information. Ecology shall develop a standard application form or forms to be used by each permitting authority. The application shall include information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units ((~~shall be included in the application~~)) and unregulated emission units at nonmajor sources, as described in WAC 173-401-300 (3)(b). However, an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the permitting authority's fee schedule.

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

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

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

(c) The following emissions-related information:

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

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

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

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

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

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

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

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

(d) The following air pollution control requirements:

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

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

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

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

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

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

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

(ii) A description as follows:

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

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

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

(iii) A compliance schedule as follows:

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

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

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

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

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a

compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 94-11-105, filed 5/17/94, effective 6/17/94)

WAC 173-401-531 Thresholds for hazardous air pollutants. General. The following tables provide thresholds for hazardous air pollutants:

(1) Carcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/ year)
189-55-9	1, 2, 7, 8-dibenzopyrene	0.005
107-06-2	1, 2-dichloroethane	0.4
78-87-5	1, 2-dichloropropane	0.5
540-73-8	1, 2-dimethylhydrazine	0.004
122-66-7	1, 2-diphenylhydrazine	0.045
106-99-0	1, 3-butadiene	0.035
1120-71-4	1, 3-propane sultone	0.003
106-46-7	1, 4-dichlorobenzene (p)	0.5
123-91-1	1, 4-dioxane (1, 4-diethyleneoxide)	0.5
94-75-7	2, 4-d salts & esters	0.5
95-80-7	2, 4-toluene diamine	0.01
584-84-9	2, 4-toluene diisocyanate	0.05
53-96-3	2-acetylaminofluorene	0.0025
119-90-4	3, 3'-dimethoxybenzidine	0.5
119-93-7	3, 3-dimethyl benzidine	0.004
101-14-4	4, 4'-methylenebis (2-chloroaniline)	0.5

CAS Number	Chemical Name	Threshold Levels (tons/ year)
75-07-0	acetaldehyde	0.5
107-13-1	acrylonitrile	0.15
62-53-3	aniline	0.5
C7440-38-2	arsenic and inorganic arsenic compounds	0.002
1332-21-4	asbestos (fibers/ml)	0.00004
71-43-2	benzene	0.5
92-87-5	benzidine (and its salts)	0.00015
56-55-3	benzo(a)anthracene	0.005
50-32-8	benzo(a)pyrene	0.005
205-99-2	benzo(b)fluoranthene	0.005
7440-41-7	beryllium and compounds (except salts)	0.004
117-81-7	bis (2-ethylhexyl) phthalate	0.5
542-88-1	bis (chloromethyl) ether	0.00015
75-25-2	bromoform	0.5
7440-43-9	cadmium and compounds	0.005
56-23-5	carbon tetrachloride	0.5
57-74-9	chlordane	0.005
510-15-6	chlorobenzilate	0.2
67-66-3	chloroform	0.45
107-30-2	chloromethyl methyl ether	0.1
126-99-8	chloroprene	0.5
C7440-47-3	chromium, hexavalent metal	0.001
218-01-9	chrysene	0.005
———	coke oven emissions	0.015
3547-04-4	DDE	0.005
53-70-3	dibenz(a, h)anthracene	0.005
132-64-9	dibenzofuran	0.5
111-44-4	dichloroethyl ether	0.03
75-09-2	dichloromethane	0.5
77-78-1	dimethyl sulfate	0.1
———	dioxins & furans (tcdd equivalent)	3e-07
106-89-8	epichlorohydrin	0.5
107-06-2	ethylene dichloride	0.4
106-93-4	ethylene dibromide (dibromethane)	0.05
75-21-8	ethylene oxide	0.1
96-45-7	ethylene thiourea	0.3
76-44-8	heptachlor	0.01
118-74-1	hexachlorobenzene	0.005
58-89-9	hexachlorocyclohexane, gamma	0.005
302-01-2	hydrazine	0.002
193-39-5	indeno (1, 2, 3-cd) pyrene	0.005
———	lead & compounds (except those listed)	0.005
58-89-9	lindane	0.005
75-09-2	methylene chloride	0.5
62-75-9	n-nitrosodimethylamine	0.0005
C7440-02-0	nickel and compounds (except those listed)	0.02
13463-39-3	nickel carbonyl	0.1
95-53-4	o-toluidine	0.5
87-86-5	pentachlorophenol	0.35
127-18-4	perchloroethylene	0.5

CAS Number	Chemical Name	Threshold Levels (tons/ year)
1336-36-3	polychlorinated biphenyls	0.0045
75-56-9	propylene oxide	0.5
8001-35-2	toxaphene	0.005
79-01-6	trichloroethylene	0.5
75-01-4	vinyl chloride	0.1
79-34-5	1, 1, 2, 2-tetrachloroethane	0.15
79-00-5	1, 1, 2-trichloroethane	0.5
57-14-7	1, 1-dimethyl hydrazine	0.004
96-12-8	1, 2-dibromo-3-chloropropane	0.004
79-06-1	acrylamide	0.01
98-07-7	benzotrichloride	0.003
62-73-7	dichlorvos	0.1
79-44-7	dimethyl carbamoyl chloride	0.5
140-88-5	ethyl acrylate	0.5
51-79-6	ethyl carbamate	0.5
151-56-4	ethylene imine	0.5
87-68-3	hexachlorobutadiene	0.5
67-72-1	hexachloroethane	0.5
60-34-4	methyl hydrazine	0.03
684-93-5	n-nitroso-n-methylurea	0.5
12035-72-2	nickel refinery dust	0.08
———	nickel subsulfide	0.02
82-68-8	pentachloronitrobenzene	0.15
91-22-5	quinoline	0.003
1582-09-8	trifluralin	0.5
593-60-2	vinyl bromide	0.5
75-35-4	vinylidene chloride	0.2
189559	1, 2: 7, 8-dibenzopyrene	0.005
121142	2, 4-dinitrotoluene	0.01
88062	2, 4, 6-trichlorophenol	0.5
91941	3, 3-dichlorobenzidene	0.1
57596	7, 12-dimethylbenz(a)anthracene	0.005
50000	formaldehyde	0.5

(2) Noncarcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
75-34-3	ethylidene dichloride (1, 1-dichloroethane)	0.5
75-55-8	1, 2 propylenimine (2-methyl aziridine)	0.003
120-82-1	1, 2, 4-trichlorobenzene	0.5
106-88-7	1, 2-epoxybutane	0.5
542-75-6	1, 3-dichloropropene (dichloropropene)	0.5
51-28-5	2, 4-dinitrophenol	0.5
111-76-2	2-butoxyethanol	0.5
110-80-5	2-ethoxyethanol	0.5
109-86-4	2-methoxyethanol	0.5
92-93-3	4-nitrobiphenol	0.5
100-02-7	4-nitrophenol	0.5
75-05-8	acetonitrile	0.5
98-86-2	acetophenone	0.5
107-02-8	acrolein	0.04

CAS Number	Chemical Name	Threshold Levels (tons/year)
79-10-7	acrylic acid	0.5
107-05-1	allyl chloride	0.5
C7440-36-0	antimony & compounds as sb	0.5
1309-64-4	antimony trioxide, as sb	0.5
7784-42-1	arsine	0.1
100-44-7	benzyl chloride	0.1
92-52-4	biphenyl	0.5
156-62-7	calcium cyanamide	0.5
105-60-2	caprolactam, dust	0.5
105-60-2	caprolactam, vapor	0.5
133-06-2	captan	0.5
63-25-2	carbaryl	0.5
75-15-0	carbon disulfide	0.5
463-58-1	carbonyl sulfide	0.5
120-80-9	catechol	0.5
7782-50-5	chlorine	0.1
79-11-8	chloroacetic acid	0.1
532-27-4	chloroacetophenone, alpha-	0.06
108-90-7	chlorobenzene	0.5
C7440-47-3	chromium (ii) compounds, as cr	0.5
C7440-47-3	chromium (iii) compounds, cr	0.5
10210-68-1	cobalt carbonyl, as co	0.1
7440-48-4	cobalt, as co metal dust, fume	0.1
1319-77-3	cresols/cresylic acid, (isomers and mixture)	0.5
95-48-7	o-cresol	0.5
108-39-4	m-cresol	0.5
106-44-5	p-cresol	0.5
98-82-8	cumene	0.5
51-12-5	cyanides, as cn	0.5
84-74-2	dibutyl phthalate	0.5
111-42-2	diethanolamine	0.5
60-11-7	dimethyl aminoazobenzene	0.5
121-69-7	dimethylaniline	0.5
68-12-2	dimethylformamide	0.5
131-11-3	dimethylphthalate	0.5
100-41-4	ethyl benzene	0.5
75-00-3	ethyl chloride	0.5
107-21-1	ethylene glycol	0.5
111-76-2	ethylene glycol monobutyl ether	0.5
———	glycol ethers (except for listed ones)	0.5
77-47-4	hexachlorocyclopentadiene	0.1
822-06-0	hexamethylene, 1, 6-diisocyanate	0.02
110-54-3	hexane (n-hexane)	0.5
110-54-3	hexane, other isomers	0.5
7647-01-0	hydrogen chloride	0.5
7664-39-3	hydrogen fluoride, as f	0.1
123-31-9	hydroquinone	0.5
78-59-1	isophorone	0.5
108-31-6	maleic anhydride	0.5
C7439-96-5	manganese dust & compounds (except listed)	0.5
748-79-4	mercuric chloride	0.01

CAS Number	Chemical Name	Threshold Levels (tons/year)
10045-94-0	mercuric nitrate	0.01
C7439-97-6	mercury, elemental	0.01
72-43-5	methoxychlor	0.5
67-56-1	methyl alcohol	0.5
74-83-9	methyl bromide	0.5
74-87-3	methyl chloride	0.5
71-55-6	methyl chloroform (1, 1, 1-trichloroethane)	0.5
78-93-3	methyl ethyl ketone (mek)	0.5
74-88-4	methyl iodide	0.06
108-10-1	methyl isobutyl ketone	0.5
624-83-9	methyl isocyanate	0.1
80-62-6	methyl methacrylate	0.5
1634-04-4	methyl tert-butyl ether	0.5
12108-13-3	methylcyclopentadienyl manganese tricarbonyl	0.1
101-68-8	methylene bisphenyl isocyanate	0.1
91-20-3	naphthalene	0.5
98-95-3	nitrobenzene	0.5
106-50-3	p-phenylenediamine	0.5
56-38-2	parathion	0.1
108-95-2	phenol	0.1
62-38-4	phenyl mercuric acetate	0.01
75-44-5	phosgene	0.1
7803-51-2	phosphine	0.5
7723-14-0	phosphorus	0.1
85-44-9	phthalic anhydride	0.5
57-57-8	propiolactone, beta-	0.1
123-38-6	propionaldehyde	0.5
114-26-1	propoxur	0.5
106-51-4	quinone	0.5
C7782-49-2	selenium compounds, as se	0.5
7783-79-1	selenium hexafluoride, as se	0.5
7488-56-4	selenium sulfides (mono and di)	0.5
100-42-5	styrene monomer	0.5
78-00-2	tetraethyl lead, as pb	0.01
75-74-1	tetramethyl lead, as pb	0.01
7550-45-0	titanium tetrachloride	0.1
108-88-3	toluene	0.5
121-44-8	triethylamine	0.5
108-05-4	vinyl acetate	0.5
593-60-2	vinyl bromide	0.5
1330-20-7	xylenes (m-,o-,p-isomers)	0.5
79469	2-nitropropane	0.5
540841	2, 2, 4-trimethylpentane	0.5
95954	2, 4, 5-trichlorophenol	0.5
92671	4-aminobiphenyl	0.5
101779	4, 4'-methlenedianiline	0.5
534521	4, 6-dinitro-o-cresol and salts	0.1
60355	acetamide	0.5
1345046	antimony trisulfide	0.1
7783702	antimony pentafluoride	0.1
28300745	antimony potassium tartrate	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
133904	chloramben	0.5
((~~2~~)) ———	chromium compounds, except hexavalent and trivalent	0.5
10025737	chromic chloride	0.1
334883	diazomethane	0.5
64675	diethyl sulfate	0.5
62207765	fluomine	0.1
680319	hexamethylphosphoramide	0.01
12108133	methylcyclopentadienyl manganese	0.1
101688	methylene diphenyl diisocyanate	0.1
69892	N-nitrosomorpholine	0.5
90040	o-anisidine	0.5
———	polycyclic organic matter	0.01
151508	potassium cyanide	0.1
14339	sodium cyanide	0.1
10102188	sodium selenite	0.1
13410010	sodium selenate	0.1
96093	styrene oxide	0.5

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-630 Compliance requirements. (1) General. Consistent with WAC 173-401-615, all chapter 401 permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a chapter 401 permit shall contain a certification by a responsible official that meets the requirements of WAC 173-401-520.

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

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

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

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

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

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

(4) Progress reports. For those sources required to have a schedule of compliance, the permit shall require progress reports consistent with an applicable schedule of compliance and WAC 173-401-510 (2)(h) to be submitted at least semiannually, or at a more frequent

period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

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

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

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

(a) A requirement that compliance certifications be submitted once per year. Permitting authorities may require that compliance certifications be submitted more frequently for those emission units not in compliance with permit terms and conditions or where more frequent certification is specified in the applicable requirement;

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

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

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

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

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

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

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

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

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

<u>AMENDATORY SECTION</u> (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-724 Off-permit changes. (1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.

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

(3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes

that qualify as insignificant under ((~~Appendix A of this chapter~~)) WAC 173-401-530. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

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

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

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

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-800 Public involvement. (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

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

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

(ii) Intended denial of a permit application;

(iii) Issuance of a draft permit modification;

(iv) Issuance of a draft general permit;

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

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

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

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive such notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists

based on geographical location. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

(i) Name and address of the permitting authority;

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-820 Review by affected states. (1) Notice. The permitting authority shall give notice of each draft permit, permit revi-

sion, or permit renewal to any affected state on or before the time that the permitting authority provides this or permit revision notice to the public under WAC 173-401-800 and 173-401-805, except to the extent WAC 173-401-725 (2) or (3) requires the timing of the notice to be different.

(2) Response. The permitting authority, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under WAC 173-401-725 (2) and (3)), shall notify the administrator and any affected state in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this chapter.

(3) British Columbia notification. The permitting authority shall notify British Columbia of draft permits, permit revisions, or permit renewals at sources located within 100 kilometers of the Washington-British Columbia border. Such notice shall be concurrent with notification of EPA and affected states.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-900 Fee determination—Ecology. (1) Fee determination. Ecology shall develop a fee schedule, consistent with the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover ecology's permit administration costs and its share of ecology's development and oversight costs. The fee schedule shall also indicate the shares of ecology's development and oversight costs that are to be collected by each delegated local authority. Opportunities for public participation shall be afforded throughout the fee determination process, as provided in WAC 173-401-920(1).

(2) Fee eligible activities. The costs of the permit administration and development and oversight activities are fee eligible.

(a) Permit administration. Permit administration costs are those incurred by each permitting authority, including ecology, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Permit administration costs are those enumerated in WAC 173-401-940(1).

(b) Development and oversight. Development and oversight costs are those incurred by ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are those enumerated in WAC 173-401-940(2).

(3) Workload analysis. Ecology shall conduct a workload analysis projecting resource requirements, organized by categories of fee-eligible activities, for the purpose of preparing the budget. Ecology shall, for the two-year period corresponding to each biennium, identify the permit administration and development and oversight activities that it will perform during that biennium. The workload analysis shall

include resource requirements for both the direct and indirect costs of the permit administration activities enumerated in WAC 173-401-940(1) and the development and oversight activities enumerated in WAC 173-401-940(2). Ecology shall publish a draft workload analysis together with the draft budget for the following biennium on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). Ecology shall publish a final workload analysis together with the final budget for the following biennium on or before June 30 of each even-numbered year.

(4) Budget development. Ecology shall, for the two-year period corresponding to each biennium, prepare an operating permit program budget for that biennium. The budget shall be based on the resource requirements identified in the workload analysis for the biennium and shall take into account the projected operating permit program account balance at the start of the biennium. Ecology shall publish a draft budget for the following biennium together with the draft workload analysis on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). The draft budget shall include data on unit costs (e.g., salary schedules and the indirect cost rate) used in preparing budget projections. Ecology shall publish a final budget together with the final workload analysis for the following biennium on or before June 30 of each even-numbered year.

(5) Allocation methodology.

(a) Development and oversight costs. Ecology shall allocate its development and oversight costs among all permitting authorities, including ecology, based upon the number of permit program sources under the jurisdiction of each permitting authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed by that authority.

(b) Permit administration costs and ecology's share of development and oversight costs.

(i) Fee allocation. Ecology shall allocate its permit administration costs and its share of ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered structure based upon:

((~~(i)~~)) (A) Tier 1: The number of sources under its jurisdiction;

((~~(ii)~~)) (B) Tier 2: The complexity of the sources under its jurisdiction; and

((~~(iii)~~)) (C) Tier 3: The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant (for fee calculation) emitted.

((~~The complexity of each source shall be determined based on a ranking system under which ecology assigns to each source a complexity value of 1, 2 or 3, corresponding to ecology's assessment of~~)) (ii) Each of the three tiers shall be equally weighted.

(iii) Complexity level determination in (b)(i)(B) of this subsection.

(A) Ecology must annually assign a complexity level to each source based on ecology's operating permit related work activity.

(B) A source's complexity level determination must correspond to the relative difficulty of issuing and maintaining an operating permit ((~~for that source~~)) and the time spent in permit related activities.

(C) Ecology must annually determine the complexity portion of the fee for each source.

(iv) Public process for complexity determination. Ecology must use the following process when determining the complexity portion of the fee:

(A) Ecology must post on ecology's web site on or about October 31st of each year the basis for the complexity level determination.

(B) Ecology must provide thirty days for public comment.

(C) Ecology has thirty days to respond to comments after the close of the public comment period.

(D) If ecology concludes adjustments are necessary, ecology will provide revised fee statements based on updated calculations.

(v) The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available. ((~~Each of the three tiers shall be equally weighted.~~))

(c) WAC 173-401-300(7) Sources. Ecology shall allocate to permit program sources that qualify for an exemption pursuant to WAC 173-401-300(7) after the effective date of the date of the state operating permit program the portion of ecology's permit administration costs and ecology's share of its development and oversight costs that results from including such sources in the first tier of the allocation structure described in (b)(i) of this subsection. After ((~~federally~~)) legally and practicably enforceable limits have been established and for so long as a source continues to meet the requirements for exemption under WAC 173-401-300(7), that source shall pay registration program fees pursuant to RCW 70.94.015(2) in lieu of paying operating permit program fees.

(6) Fee schedule. Ecology shall issue annually a fee schedule reflecting the permit administration fee and the share of the development and oversight fee to be paid by each permit program source under its jurisdiction and reflecting the development and oversight assessment to be paid by each permitting authority. The fee schedule shall be based on the information contained in the final source data statements, as provided in WAC 173-401-925(3), for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with WAC 173-401-925. Ecology shall publish the fee schedule for the following year on or before October 31 of each year.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-920 Accountability—Ecology and delegated local authorities. (1) Public participation during fee determination process. Ecology shall provide for public participation in the fee determination process described under WAC 173-401-900, which provision shall include, but not be limited to, the following:

(a) Ecology shall provide opportunity for public review of and comment on each biennial workload analysis and budget.

(b) Ecology shall publish in the *Permit Register* notice of issuance of its draft biennial workload analysis and draft biennial budget and issuance of its annual fee schedule.

(c) Ecology shall make available for public review, on or before February 28 of each even-numbered year, copies of its draft biennial

workload analysis and draft biennial budget. Ecology shall make available for public review, on or before October 31 of each year, copies of its annual fee schedule, including information on availability of the data used for the determination. Ecology shall maintain a mailing list of persons requesting opportunity for review under this subsection or under WAC 173-401-925(1). Ecology may, from time to time, inform the public of the opportunity to be placed on the mailing list and may delete from the list persons who fail to respond to an inquiry regarding continued interest in receiving materials.

(d) Ecology shall provide at least sixty days for public comment on the draft biennial workload analysis and draft biennial budget. Such sixty-day period for comment shall run from the date ecology mails the draft workload analysis and draft budget as provided in (c) of this subsection.

(2) Tracking of revenues, time and expenditures.

(a) Revenues. Ecology shall track revenues on a source-specific basis.

(b) Time and expenditures. Ecology shall track time and expenditures on the basis of source categories and functional categories, except that, as part of a demonstration project undertaken pursuant to RCW 70.94.162, ecology will track time and expenditures on a source-specific basis for at least three but no more than five sources.

(i) Sources will be grouped into five categories, as follows:

(A) Kraft pulping mills;

(B) Sulfite pulping mills;

(C) Metal processing and related industries;

(D) Sources located on the Hanford Reservation; and

(E) Other sources, including those sources under the jurisdiction of ecology's central and eastern regional offices.

(ii) Functions will be grouped into several categories and subcategories, as follows:

(A) Program management and support;

(B) Program development;

(C) Permit processing;

(I) Application assistance and review;

(II) Preparing draft and final permits;

(D) Permit management and compliance activities;

(E) Technical assistance; and

(F) Outreach and education.

(c) Use of information obtained from tracking revenues, time and expenditures.

(i) Ecology shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during the biennial review provided for under WAC 173-401-900.

(ii) The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

((~~(3) Periodic fiscal audits, reports and performance audits. A system of regular, periodic fiscal audits, reports and performance audits shall be conducted in order to evaluate the implementation of the operating permit program by ecology and delegated local authorities. Ecology and each delegated local authority shall gather baseline data, where appropriate, to which the various evaluation criteria will be compared.~~

~~(a) Fiscal audits. Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a~~

~~standard fiscal audit of ecology's and each delegated local authority's operating permit program every other year.~~

~~(b) Annual routine performance audits. Ecology and each local authority shall be subject to annual routine performance audits, except that the routine performance audit shall be incorporated into the extensive performance audit, conducted pursuant to subsection (3)(d) of this section, in each year during which an extensive performance audit is conducted. Ecology shall conduct the audits of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible, and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The annual routine performance audits shall incorporate by reference information contained in the relevant annual report and, every other year, in the relevant fiscal audit. The annual routine performance audits shall address the following questions and measures of performance:~~

~~(i) How many permits lapsed?~~

~~(A) Explanation of lapse;~~

~~(B) Comments;~~

~~(ii) What is the total number of permit applications or applications for permit modifications?~~

~~(A) Average application processing time;~~

~~(B) Number of disapproved applications and reason for disapproval;~~

~~(C) Number of permit applications regarding which permitting authority had to return to source to request additional information. Number of times permitting authority had to return to source before permit deemed complete;~~

~~(iii) To how many permits did the EPA object? To what percentage of permits did EPA object (including objection upon petition from public)?~~

~~(A) Grounds for objection;~~

~~(B) Agency response;~~

~~(I) Deficiency remedied;~~

~~(II) Timeliness (that is to say, within ninety days? Did administrator issue permit?)~~

~~(iv) How many permits were subject to legal/administrative challenge? What percentage of permits were subject to legal/administrative challenge?~~

~~(A) Challenging party;~~

~~(B) Grounds for challenge;~~

~~(I) Substantive;~~

~~(II) Procedural;~~

~~(C) Outcome of challenge/prevailing party;~~

~~(D) Agency response;~~

~~(v) How many administrative enforcement actions were taken for failure to meet permit requirements? How many notices of violation were issued?~~

~~(A) Date issued; time elapsed since violation discovered;~~

~~(B) Reason;~~

~~(C) Result (that is to say, penalties? Orders of agreement? Legal challenge?)~~

~~(D) Source returned to compliance; date; (if not, explain);~~

~~(vi) What was the frequency of inspections at each facility?~~

~~(A) Announced;~~

~~(B) Unannounced;~~

~~(C) Comparison with baseline data;~~

~~(vii) How many accidental releases, as defined in Section 112(r) of the Federal Clean Air Act, occurred?~~

~~(A) Reason identified;~~

~~(B) Agency response;~~

~~(C) Resulting changes to terms of permit, if any;~~

~~(D) Comparison with baseline data;~~

~~(viii) What was the amount of the expenditures per permit issuance?~~

~~(A) Average for program;~~

~~(B) Average for source category;~~

~~(c) Annual random individual permit review. Five percent of the permits issued by each permitting authority, or if five percent of the permits issued by a permitting authority is equal to or less than one, at least one permit issued by the permitting authority shall be subject to review each year in conjunction with the annual routine performance audit. The permit to be reviewed shall be selected at random. Ecology shall conduct the review in the case of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The annual random individual permit review shall address the following questions and measures of performance:~~

~~(i) Can reviewer, from information available in permit, determine all requirements to which the source is subject?~~

~~(ii) Does permit include all applicable requirements?~~

~~(iii) Can reviewer, from information available in file, determine compliance status for each emission point? For facility?~~

~~(iv) Does the file include technical reviews, source tests, CEM performance specification tests, permit applications, record of citizen complaints, correspondence with facility and other supporting documentation?~~

~~(v) Are all major emissions points identified in permit?~~

~~(vi) Are all pieces of control equipment identified in permit?~~

~~(vii) Does the permit specify operation and maintenance requirements?~~

~~(viii) Does the permit specify all monitoring, recording, reporting and certification requirements to which source is subject?~~

~~(ix) Are alternative operating scenarios specified in permit? Are the conditions adequately specified?~~

~~(x) Is the permit expiration date noted?~~

~~(xi) Does the permit indicate which requirements are enforceable by federal/state mechanisms? Does the permit state the existence of~~

~~opportunity for PCHB and other judicial review and opportunity to petition EPA?~~

~~(xii) Were all procedural requirements, including notice to public and affected states, satisfied in issuing/modifying permit?~~

~~(xiii) Did permit writer work with source to identify and consider opportunities for pollution prevention? Were any pollution prevention measures implemented?~~

~~(xiv) Evaluation of overall performance:~~

~~(A) Is permit complete and understandable? Assess completeness, clarity, etc.;~~

~~(B) Assess procedural adequacy of permit issuance process.~~

~~(d) Periodic extensive performance audits. Ecology and each local authority shall be subject to extensive performance audits every five years. In addition, ecology or a delegated local authority may be subject to an extensive performance audit more frequently under the conditions of WAC 173-401-920 (3)(e). Ecology shall conduct the audits of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The extensive performance audits shall incorporate by reference the information contained in the annual reports and the routine performance audits for the relevant period and shall take the place of the routine performance audit every fifth year (that is to say, they gather the routine performance audit information in addition to the information indicated below). The extensive performance audits shall address the following questions and measures of performance:~~

~~(i) What was the number of modifications?~~

~~(A) Comparison with projection;~~

~~(B) Applicable to how many sources;~~

~~(ii) Did the permitting authority have personnel adequate to complete workload in timely fashion?~~

~~(iii) Were the total fees assessed adequate to fund program?~~

~~(A) Amount of shortfall or overcharge;~~

~~(B) Explanation;~~

~~(iv) Were the total fees collected equal to total fees assessed?~~

~~(A) Amount/percentage of shortfall;~~

~~(B) Reason for shortfall;~~

~~(v) Was there a program budget increase or decrease over period?~~

~~(A) Percentage increase or decrease;~~

~~(B) Explanation (for example, sources no longer part of operating permit program; new federal requirements implemented through permit program);~~

~~(vi) What was the number of instances of late fee payment?~~

~~(A) Agency response;~~

~~(B) Result (that is to say, was the fee paid? Penalty assessed? Time interval between payment and date fee amount due?)~~

~~(vii) How many sources were in compliance with all applicable requirements? What percentage of sources were in compliance with all applicable requirements? How do the number and percentage of sources in~~

~~compliance with all applicable requirements compare with baseline compliance data?~~

~~(viii) What was the number of businesses availing themselves of services offered by state or local business assistance programs? What level of effort was required to provide assistance?~~

~~(ix) Were inspection results adequately documented?~~

~~(x) Were the methods used to ascertain compliance and the frequency of required reporting and related activities appropriate for each facility?~~

~~(A) Frequency of inspections appropriate for relevant facility;~~

~~(B) Monitoring requirements appropriate for relevant facility;~~

~~(xi) Were the operation and maintenance plans adequate?~~

~~(xii) Were public information efforts adequate?~~

~~(A) Public notice for actions relating to permitted sources meets/exceeds statutory requirements;~~

~~(B) Agency/permit writers accessible to regulated community, to environmental community, and to stakeholders and general public;~~

~~(C) Other outreach efforts;~~

~~(xiii) Evaluation of overall performance:~~

~~(A) Is permitting authority issuing quality permits?~~

~~(B) Is permitting authority issuing/renewing permits in timely fashion?~~

~~(C) Is permitting authority ensuring that sources are in compliance with terms and conditions of permit?~~

~~(D) Is permitting authority effectively using operating permit as a tool for securing environmental improvements?~~

~~(E) Is permitting authority efficiently administering program (includes, in the case of ecology, statewide program)? Indicate inefficiencies, where these exist;~~

~~(F) Evaluation of particular questions identified in annual report/routine performance audit for further examination;~~

~~(e) Finding of inadequate administration or need for further evaluation. If, in the process of conducting a fiscal audit, annual routine performance audit, or annual random individual permit review, the entity conducting the audit finds that ecology or a delegated local authority is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit shall be conducted, as provided in WAC 173-401-920 (4)(d).~~

~~(f) Preaudit public meeting with auditor. Ecology and each delegated local authority shall provide the opportunity for interested individuals to provide comment to the entity conducting an annual routine performance audit, annual random permit review or extensive performance audit prior to the audit. Such opportunity shall consist of a single, informal meeting at which at least one representative from the regulated community and at least one representative of the environmental community are present. Ecology and each delegated local authority shall provide notice of the preaudit meeting in the *Permit Register*.~~

~~(g) Annual reports. Ecology and each delegated local authority shall prepare an annual report evaluating its operating permit program administration. Such report shall include any findings resulting from the relevant fiscal audits, annual routine performance audits, annual random individual permit reviews or periodic extensive performance audits. Ecology shall submit its annual report to the appropriate standing committees of the legislature. Each delegated local authority shall submit its report to its board of directors and to ecology.~~)) (3) Fiscal audits and reports.

(a) Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a fiscal audit of ecology's and each delegated local authority's operating permit program every other year.

(b) Fiscal audits shall address the following:

(i) Determine how much operating permit fee revenue was collected each fiscal year.

(ii) Determine whether operating permit fee revenue covered all authorized program expenses.

(iii) Determine whether the fees were computed correctly.

(iv) Determine whether invoices were sent out in a timely manner.

(v) Determine whether billed fees were collected.

(vi) Determine how fee revenues and expenses were accounted for, including amounts of shortfalls and overages and an explanation for them.

(vii) Determine if there was a program budget increase or decrease over the period being audited.

(viii) Determine whether operating permit fee revenues were used only for authorized activities.

(4) Performance audits and reports. Ecology and each local authority (the agencies) shall have a performance audit at least every three years.

(a) Overview performance audit. Every three years, the agencies shall:

(i) Conduct an overview audit using data collected in previous years. Each agency shall collect and analyze their data and provide a summary to the air operating permit performance audit advisory committee (the committee).

(ii) Consider program efficiencies that could reduce costs or improve performance of the operating permit program and report any identified efficiencies to the committee.

(b) Intensive performance audit.

(i) The committee, as established in subsection (5) of this section, may recommend an agency participate in a more intensive audit.

(ii) The public may submit a request for an intensive audit to the committee. The request must identify issues of concern and explain how the overview performance audit does not address them.

(iii) An intensive audit will not take place more frequently than every six years.

(iv) Ecology shall determine final recommendations for the requirements of the overview and intensive performance audits.

(c) Performance audit elements. The following are intended to serve as a guideline for operating permit program intensive performance audits.

Intensive performance audits may include, but are not limited to, assessing the following elements:

(i) Administration of program - Review of activities such as program administration, training, data management, fee administration, and clerical support.

(ii) Permit processing - Review of activities such as review of required permit elements, adequacy of statement of basis, adequacy of technical support document, timeliness of permit processing, permit modifications, permit amendments, and permit appeals.

(iii) Permit management - Review of activities such as inspections, stack test oversight, reports, complaint investigations, administrative enforcement, and compliance.

(iv) Technical assistance - Review of the operating permit technical assistance program.

(v) Education and outreach - Review of activities such as public notification, permit register maintenance, notifications to EPA and affected states, and publications.

(d) Reports on the overview and intensive audit results.

Ecology shall publish a report for each audit. The report shall include:

(i) Recommendations from the committee members.

(ii) Ecology's final recommendations for performance audit requirements.

(iii) Audit results. Ecology shall distribute a copy of the report to the delegated local authorities and the committee members. Ecology shall also post the report on their web site.

(5) Air operating permit performance audit advisory committee (the committee).

(a) Ecology shall establish the committee.

(b) The committee shall operate under a written charter. In consultation with the committee, ecology shall establish the committee charter.

(c) The committee shall meet at least once every three years and begin the first overview performance audit no later than January 2017.

(d) Ecology shall appoint committee members.

(e) Committee membership shall include, at a minimum:

(i) Representation from ecology.

(ii) Representation from the regulated community.

(iii) Representation from a delegated local authority.

(iv) The following representation is desirable:

(A) Environmental group(s).

(B) General public.

(f) The committee shall:

(i) Develop a timeline for the schedule of agency reviews, collecting reports, reviewing reports, and submitting recommendations to ecology.

(ii) Every three years, review data reports prepared by the agencies.

(iii) Submit to ecology:

(A) Recommendations for evaluating and improving program performance statewide.

(B) Observations from the data review, including trends analysis (identifying trends).

(C) Recommendations for intensive audit content if an intensive audit is recommended.

(g) Public process. The committee meetings shall be open to the public. Ecology shall announce the public meeting and opportunity to comment on performance audit recommendations.

(6) Conducting intensive performance audits.

(a) If ecology determines that an intensive performance audit is needed, ecology shall establish the intensive audit schedule.

(b) Ecology shall audit the delegated local authorities. A delegated local authority shall audit ecology. An independent contractor may be used to conduct a required intensive audit.

(c) Performance audit contractor requirements.

(i) If an independent contractor is used to conduct an intensive performance audit, the contractor must have experience with the operating permit program.

(ii) To the extent possible, the contractor shall be free of any conflicts of interest. A contractor applying to conduct the audits shall disclose any potential conflicts of interest in its application.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-925 Source data statements and petition for review of statements——Ecology and delegated local authorities. (1) Preliminary source data statements. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-401-920 (1)(c), or to those requesting receipt of source data statements under this subsection a preliminary statement of emissions and other data from that source upon which ecology intends to base its allocation determination under WAC 173-401-900(5) as well as a preliminary statement of emissions and other data from each of the permit program sources under ecology's jurisdiction upon which ecology intends to base its allocation determination. Such preliminary statement shall be provided to the permit program sources and to other persons on the mailing list on or before July 31 of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under subsection (2) of this section regarding the accuracy of the data contained therein.

(2) Petition for review of statement. A permit program source or other individual may petition ecology to review for accuracy the data contained in any preliminary source data statement provided for under subsection (1) of this section. Such petition shall be lodged on or before August 31 of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom ecology may direct inquiries regarding the request. Upon receipt of such a petition, ecology must issue its written response to the petitioner and any other affected party on or before September 30 of each year. Such response shall state the ((~~conclusions~~)) observations of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by ecology's response.

(3) Final source data statement. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-491-920 (1)(c), or to those requesting receipt of source data statements under this subsection a final statement of emissions and other data from that source upon which ecology will base its allocation determination under WAC 173-401-900 on or before October 31 of each year. In addition, the final source data statements shall include a final statement of emissions and other data upon which ecology intends to base its al-

location determination from each of the permit program sources under its jurisdiction. The final source data statement will be accompanied by a fee schedule reflecting the fee to be paid by each source. Ecology may include with the fee schedule an invoice, or a notice stating that fees listed in the fee schedule must be paid by February 28th of the following year.

(4) Delegated local authorities. Delegated local authorities shall establish procedures for administrative dispute resolution for disputes pertaining to fees.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-935 Development and oversight remittance by local authorities—Ecology and delegated local authorities. (1) Collection. On or before October 31 of each year, ecology shall provide to each delegated local authority a statement of the share of ecology's development and oversight costs for which the authority is responsible for collecting from sources under its jurisdiction.

(2) Remittance. Each delegated local authority shall remit to ecology ((~~one-half of~~)) the share of ecology's development and oversight costs for which ((~~it~~)) the delegated local authority is responsible for collecting from sources under its jurisdiction on or before March 31 ((~~of each year and shall remit to ecology the balance of its share of ecology's development and oversight costs on or before June 30 of each year~~)).

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-940 Fee eligible activities—Ecology and delegated local authorities. (1) Permit administration activities shall include:

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspections, testing and other data-gathering activities necessary for the development or a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management; ((~~and~~))

(p) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act; and

(q) Provision of assistance to small business consistent with RCW 70.94.162.

(2) Development and oversight activities shall include:

(a) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(b) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(c) Administering enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(d) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(e) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(f) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(g) State codification of federal rules or standards for inclusion in operating permits;

(h) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States Environmental Protection Agency for approval, including ongoing coordination activities;

(i) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(j) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(k) Tracking of time, revenues and expenditures, and accounting activities;

(l) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(m) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(n) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(o) Provision of assistance to small business as required under Section 507 of the Federal Clean Air Act as it exists on the effective date of this act or its later enactment as adopted by reference by the director by rule;

(p) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(q) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(r) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.