

WAC 173-400-110 New source review (NSR) for stationary and portable sources.

~~(In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.~~

(1) Applicability.

(a) This section, WAC 173-400-~~112~~ 111 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

~~—(b) This section applies to sources as defined in RCW 70.94.030(22) (but does not include nonroad engines. Nonroad engines are regulated under WAC 173-400-035.~~

~~(2) Projects subject to NSR—notice of construction application.~~

~~(ab) A notice of construction application must be filed by the~~The owner or operator must file a notice of construction application and an order of approval must be issued by the permitting authority prior to ~~the establishment~~

Steve Van Slyke – Clarification of “establishment” Does it come from the RCW? The word “establishment” has been useful in some enforcement situations.

Matt Cohen –concerned about a short cut. The rule no longer tracks the RCW. “Establishment means begin actual construction”. Ecology should be careful and continue to use “establishment” so that a challenger cannot say that the rule is inconsistent with the RCW.

beginning actual construction of any new or modified source, except for ~~the following:~~

~~—(i) Thosethose new sources or modifications exempt under subsection (4) or (5) of exempted in this section.; and~~

~~—(ii) A source regulated under WAC 173-400-035.~~

(c) For purposes of this section ~~establishment shall mean to begin actual construction,~~ “new source” includes:

(i) a modification to an existing source or stationary source, as “modification” ~~that term~~ is defined in WAC 173-400-030,

Matt Cohen – Concern that NSR applies to stationary sources, not “sources”. It may be confusing to use “source” as some emission points are not subject to NSR and “source” has several definitions.

Al Newman: Will look at the question.

Chuck Studer: What sections are local subject to? 110, 111 and 113. Can a local use 113 even if they have their own NSR program?

Matt Cohen – Why are we deleting 112?

Al Newman– the provisions have been moved to the 800 section. Looking for a straight forward manner to refer the reader to the appropriate permit path. Developed a new sieve to sort out the permits.

Matt Cohen– Looking at 113. It requires an order of approval for sources in attainment. Where do we find the requirement for BACT in minor new source review? The current rule requires BACT in 112 and 113. Minor sources in nonattainment are subject to BACT.

Al Newman– (2) requires BACT. The rule is designed from the bottom up. First trigger the need for a NSR.

Matt Cohen made comments on methods to rearrange the paragraphs.

NAAQS compliance is in 111 and 113.

(ii) a portable source as defined in WAC 173-400-030, and
(iii) a new or modified toxic air pollutant source, as defined in WAC 173-460-020. ~~“new source” shall include any modification to an existing stationary source, as defined in WAC 173-400-030~~

(d) New source review of a modification is limited to the emission unit or units that will be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-113, WAC 173-400-720, or WAC 173-400-830, as applicable.

(e) New source review is required for any modification to a stationary source that requires an increase in a plant-wide cap or in a unit specific emission limit.

(2) Requirements for new sources, modifications to existing sources, new major stationary sources and major modifications to major stationary sources.

~~A particular new stationary source or major modification to an existing major stationary source may be required to obtain an order of approval, a PSD permit and a nonattainment NSR permit, depending on the location of the source and the emission rate of each regulated pollutant.~~

Chuck Studer– is concerned that the language” Depending on the location of the source” is too vague. We need more precise language that calls a source in or out of attainment.

Matt Cohen– The phrasing is too open ended. An implementer without sophisticatedn could misinterpret it.

Al Newman– Could we delete the advisory sentence the solution?

Steve Van Slyke– It can be challenging to put advise into the rule.

(a) An order of approval is required unless:

(i) The emission unit or activity is exempted in (4) below; or

(ii) The emissions are exempted in (5) below.

Matt Cohen, Rich Hibbard and AL – Discussion of the way to list exemptions (4) (5). List the exemptions clearly in parenthesis 1 and delete parenthesis 2(a).

Beth Hodges – the exemptions are relative to applicability, not NOC process.

(b) New sources, modifications to existing sources, new major stationary sources and major modifications to major stationary sources located in an area classified as attainment or unclassified, may be required to obtain a PSD permit in compliance with WAC 173-400-700 through 750. A PSD permit is required for those pollutants for which the area is classified as attainment or unclassified if:

(i) The new source is a major stationary source per the criteria in WAC 173-400-710 and 173-400-720; or

(ii) The proposal is a major modification per the criteria of WAC 173-400-710 and 173-400-720.

(c) New sources, modifications to existing sources, new major stationary sources and major modifications to major stationary sources located in an area classified as nonattainment, may be required to obtain a nonattainment new source review permit in compliance with WAC 173-400-800 through 173-400-870. A nonattainment new source review permit is required for those pollutants for which the area is classified as nonattainment if:

(i) The proposed new source is major new source per the criteria in WAC 173-400-810 and 173-400-820; or

(ii) The proposed modification to a stationary source is a major modification to a major source per the criteria in WAC 173-800-810 and 173-400-820.

Matt Cohen, Steve Van Slyke and Al Newman – discussion of when is a minor NSR review required when PSD permits are issued. This is a historic structure in the rule.

Jay Willenberg– some of the confusion in the past came from the question of who has the authority to address and enforce PSD.

Matt Cohen– Comment on (2b). It is a complete rewrite of 113(4). Only one version should survive. 113 is clear in its sending you on to the 720 and 750 sections. The new text in 2b contains advisory language that repeats portions of 113.

Rich Hibbard– we are creating a roadmap to direct people through the rule. Here are your options in the permit process. We need to keep rule and guidance clear.

Matt Cohen– complexity cannot be avoided. Focus on major stationary source and major modifications. If I have a certain situation, I need to go look at a particular section of the rule.

Steve Van Slyke – PSCAA is concerned about how his agency will be able to adopt sections of 400-110 by reference.

AL NEWMAN asked Steve to send information about the sections of 110 that he would find useful.

Al Newman – Will delete the introductory sentences in (2) b and C. Also make certain that there is not repetitive language between 110 and 113.

Matt Cohen – where is the link to major pollutants? We haven't tied back in the pollutants covered by the NOC for those pollutants not subject to nonattainment or PSD.

Al Newman – a NOC is always required

Beth Hodges – could we just say – A PSD is required if: you meet these requirements listed in a link to another section of the rule.

~~—(b) Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the permitting authority prior to beginning actual construction of any of the following new sources:~~

~~(i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except subpart AAA, Wood stoves and except subpart III (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines) and subpart JJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) as they apply to emergency stationary internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~—(ii) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants) (in effect on July 1, 2004), except for asbestos demolition and renovation projects subject to 40 CFR 61.145, and except from sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I;~~

~~—(iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories) except subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) as it applies to emergency or limited use stationary reciprocating internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~—(iv) Any project that qualifies as a new major stationary source, or a major modification to a major stationary source subject to the requirements of WAC 173-400-112;~~

~~—(v) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.~~

~~—(c) An applicant filing a notice of construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, must send a copy of the application to the responsible federal land manager.~~

~~—(3) Modifications. New source review of a modification is limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-720, as applicable.~~

(4) Emission unit and activity exemptions.

Except as provided in subsection (2) of this section, the construction or modification of emission units in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission unit exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

(iv) Paving application and maintenance, ~~excluding asphalt plants~~ Asphalt plants are not exempt from this section;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, ~~routine house keeping/housekeeping~~, ~~routine~~ plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application and maintenance;

(viii) Insulation application and maintenance, ~~excluding products for resale;~~

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that are not related to new or modified stationary sources or portable stationary sources.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage ~~tanks except those facilities that are wholesale or retail tanks.~~ Wholesale distributors of lubricating oils are not exempt from this section;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than ~~260-gallon~~260-gallon capacity (35 ~~effcubic feet~~);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, ~~as defined in listed in~~ chapter 173-460 WAC, max. VP 550 mm ~~Hg @mercury at~~ 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) ~~A project~~New or modified emission units with combined aggregate heat inputs of combustion units (excluding emergency engines exempted by subsection ~~(4)(3)(h)(i)~~(xxxix) of this section), ~~≤less than or equal to~~ all of the following:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr wood waste or paper;

(iv) ≤ 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with ≤0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

Note: Use the more stringent of fuel heat inputs to determine if multi-fuel devices are exempt.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm ~~Hg @ mercury at~~ 21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers using only gases that are not toxic air pollutants listed in chapter 173-460 WAC; not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or modification of a single laboratory fume hood;

(iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

(v) Laboratory calibration and maintenance equipment.

(g) Monitoring/quality assurance/testing:

(i) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(ii) Hydraulic and hydrostatic testing equipment;

(iii) Sample gathering, preparation and management;

(iv) Vents from ~~continuous~~ emission monitors and other analyzers.

(h) Miscellaneous:

(i) Single-family residences and duplexes;

(ii) Plastic pipe welding;

(iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(iv) Comfort air conditioning;

(v) Flares used to indicate danger to the public;

(vi) Natural and forced air vents and stacks for bathroom/toilet activities;

(vii) Personal care activities;

(viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(ix) Tobacco smoking rooms and areas;

(x) Noncommercial smokehouses;

(xi) Blacksmith forges for single forges;

(xii) Vehicle maintenance activities, not including vehicle surface coating;

(xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);

(xiv) Wax application;

(xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(xvi) Ozone generators and ozonation equipment;

(xvii) Solar simulators;

(xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

(xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(xx) Pulse capacitors;

- (xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
 - (xxii) Fire suppression equipment;
 - (xxiii) Recovery boiler blow-down tank;
 - (xxiv) Screw press vents;
 - (xxv) Drop hammers or hydraulic presses for forging or metal working;
 - (xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
 - (xxvii) Kraft lime mud storage tanks and process vessels;
 - (xxviii) Lime grits washers, filters and handling;
 - (xxix) Lime mud filtrate tanks;
 - (xxx) Lime mud water;
 - (xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
 - (xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
 - (xxxiii) ~~Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent~~ Solvent cleaners with less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg ~~@mercury at 21°C where no toxic air pollutants as listed in chapter 173-460 WAC are emitted;~~
 - (xxxiv) Surface coating, aqueous solution or suspension containing $\leq 1\%$ (by weight) VOCs, and/or total toxic air pollutants ~~as defined in listed in WAC chapter 173-460-150WAC;~~
 - (xxxv) Cleaning and stripping activities and equipment using solutions having $\leq 1\%$ VOCs (by weight) and/or total toxic air pollutants; acid solutions used on metallic substances, ~~acid solutions~~ are not exempt;
 - (xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) and/or total toxic air pollutants as ~~defined-listed~~ in chapter 173-460 WAC.
 - (xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.
 - (xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.
 - (xxxix) ~~Stationary emergency~~ Emergency generators powered by internal combustion engines with an aggregate brake horsepower that is ~~maximum power of~~ less than or equal to 500 brake horsepower.
 - (xl) Gasoline dispensing facilities with annual gasoline throughputs less than those specified in WAC 173-491-040(4)(a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC. (GDFs) regulated by chapter 173-491 WAC.
- (5) Exemptions based on emissions.
- (a) Except as provided in subsection (2) of this section and in this subsection:
 - (i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in the table contained in (d) of this subsection is exempt from new source review ~~provided that the conditions of (b) of this subsection are met.~~

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in ~~the table 110(5) Exemption levels, contained in (d)~~ of this subsection is exempt from new source review, ~~provided that the conditions of (b) of this subsection are met.~~

~~— (b) The owner or operator seeking to exempt a project from new source review under this section must notify, and upon request, file a brief project summary with the permitting authority prior to beginning actual construction on the project. If the permitting authority determines that the project will have more than a de minimis impact on air quality, the permitting authority may require the filing of a notice of construction application. The permitting authority may require the owner or operator to demonstrate that the emissions increase from the new or modified emission unit is smaller than all of the levels listed below.~~

~~(c) The owner/operator may begin actual construction on the project thirty one days after the permitting authority receives the summary, unless the permitting authority notifies the owner/operator within thirty days that the proposed new source requires a notice of construction application.~~

~~(d)~~ Table 110(5) Exemption level table levels:

POLLUTANT	LEVEL (TONS PER YEAR)
(a) Total Suspended Particulates	1.25
(b) PM-10	0.75
(c) <u>PM-2.5</u>	<u>0.5</u>
(ed) Sulfur Oxides <u>dioxide</u>	2.0
(de) Nitrogen Oxides	2.0
(ef) Volatile Organic Compounds, total	2.0
(fg) Carbon Monoxide	5.0
(gh) Lead	0.005
(hi) Ozone Depleting Substances (in effect on July 1, 2000), total	1.0
(ij) Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

Al Newman – EPA tailoring rule. We are now regulating GHGs. WE will need to develop a threshold for GHG emission to add to this table.

Steve Van Slyke – Doesn't know what the right emission level might be, but is concerned with the protocol used to determine potential to emit.

Al Newman – led discussion of how to set the emission rates. We have a choice between numerical exemptions and categorical exemptions. It looks as if we need to set a numerical exemption. This exemption will apply only to NOC it does not impact PSD.

(6) Portable source with notice of approval.

A portable source is allowed to operate without obtaining a site-specific or a permitting authority-specific approval order if the portable source complies with the provisions of WAC 173-400-035.

Matt Cohen – Using non-NSR authorizations in the NSR portion of the rule. State that this is a part of NSR applicability.

Beth Hodges – Is this really an exemption?

~~— (6) Application processing – completeness determination.~~

~~— (a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.~~

~~— (b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).~~

~~— (7) Final determination.~~

~~— (a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either issue a final decision on the application or for those projects subject to public notice under WAC 173-400-171(1), initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision.~~

~~— (b) A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must also comply with WAC 173-400-171.~~

~~— (c) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.~~

~~— (d) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-112, the permitting authority must:~~

~~— (i) Submit any control technology determination included in a final order of approval for a major source or a major modification to a major stationary source in a nonattainment area to the RACT/BACT/LAER clearinghouse maintained by EPA; and~~

~~— (ii) Send a copy of the final approval order to EPA.~~

~~— (8) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. The permitting authority must promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party~~

~~who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.~~

~~—(9) Construction time limitations. Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing that an extension is justified. The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commence construction date.~~

~~—(10) Change of conditions.~~

~~—(a) The owner or operator may request, at any time, a change in conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:~~

~~—(i) The change in conditions will not cause the source to exceed an emissions standard;~~

~~—(ii) No ambient air quality standard will be exceeded as a result of the change;~~

~~—(iii) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;~~

~~—(iv) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and~~

~~—(v) The revised order meets the requirements of WAC 173-400-110, 173-400-112, 173-400-113, 173-400-720 and 173-460-040(3), as applicable.~~

~~—(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.~~

~~—(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a notice of construction application, that application must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC 173-455-120 applies to requests filed with ecology as notice of construction applications.~~

~~—(11) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.~~