

WAC 173-400  
Advisory Committee Meeting #4  
Tuesday, September 15, 2009  
9:30 – 3:00

Welcome: Sarah Rees

Announcements: Ken Johnston

Attendees: Lindsay Blain, Sarah Rees, Rich Hibbard, Kay Shirey, Nichol Pettis, Jay Willingberg, Judy Schwieters, Linda Whitcher, Al Newman, Dan Brown, Greg Flibbert, Holly Bowers, Paul Mairose, Lynnette Haller, Pete Hildebrandt, Tom Todd, Steve Van Slyke, Doug Hendrickson, Ken Johnston, Tom Beam, Lynn Billington, Chuck Studer, Aaron Day

Meeting Objectives:

Review and comment on concepts and draft rule language for:

New sources in non-attainment areas

New source review for stationary and portable stationary sources

New source review in non-attainment areas  
WAC 173-400-800 & WAC 173-400-112

Presenter: Al Newman

WAC 173-400 Revisions Project Sections  
112, 113, 120, 131, 136, PSD

Overview of today's discussion

- Update on outstanding PM2.5 questions from last meeting
- Section 112 and 113 editing
- Section 131 and 135 editing
- Proposed addition to PSD section for SIP approval

PM2.5 issues, Update

- Modeling protocol for nonattainment and PSD modeling
  - EPA and NACAA jointly developing modeling protocol for use in PM2.5 modeling
- PSD increment, monitoring thresholds, modeling thresholds
  - EPA intends on issuance of the final rule language in late spring/summer 2010 time period
- Condensable particulate stack test method revision
  - Proposal has been issued, EPA anticipates final method to be published well before the 2011 deadline in current rule

Revisions to Section 112 Proposal from last meeting

- Included section 112 language relating to interaction of the NNSR program and the minor NSR and PSD programs.
- Added linkages to other permitting sections

**C: Do you have flow charts?**

**R: Yes, we can do flow charts.**

Section 113 proposal

- No changes since last meeting

Section 131, Issuance of Emission Reduction Credits

- In (1) Please comment on whether to retain general language copied from EPA's text or to indicate that the pollutant must be in tons/year
  - OR and ID language specifies tons per year
- How best to define "old actual emissions rate" for determining emissions that can receive a credit.
  - Current approach has been average of most recent 2 years before the request
  - An Alternate could be most recent 2 years before the change occurred.
- New (3)(c) added to replace statement that the emissions for which the credit is requested must be 'surplus'.
  - Also added EPA requirement that the reduction be federally enforceable.
- New (3)(f) added to meet a missing federal requirement
- New sentence added to end of (5)(b) to match requirement of state law that the credit must be issued for less than the actual reduction.
  - Does this need further clarification? i.e. no more than 99% of request?

Section 136 Use of Emission Reduction Credits

- Fixing linkages to other rule sections
- New (3)(c) is to address a number of related EPA requirements related to emission offsets that are applicable to ERCs
- In (5) adjust the lifetime of a credit to match the time period for contemporaneous changes when determining the net emissions increase.
  - 52.21 has 5 years
  - 51.165 and 166 allow for a reasonable time period determined by the state
- In (6) adjust the text to more closely match the EPA requirement.

Section 120

- Had conversation with EPA on current language and EPA approval concepts
  - Current law and rule language are based on outdated 1979 policy
  - 1979 policy has been replaced by a variety of market trading programs for nonattainment areas
  - If state rule language redrafted to be more like the major NSR PAL program, it might be SIP approvable

- Question, if the program were reincarnated as a PAL 'light', would anybody use it?
- If not, should we delete the concept from our rule?

**C: Which Facility has a bubble?**

**R: BP has a bubble**

Proposed addition to the PSD requirements

- For PSD SIP program, need to include protection of PSD increments
  - Copied SIP approved language from Oregon and Idaho SIPs
- In 40 CFR 51.166(f), EPA listed a number of actions that states could designate as exempt from increment consumption
- EPA did not include these exemptions in its implementation of 51.166.
- Propose to include these actions in state rule, looking to SIP approved program

**C: Question in paragraph 3. Should we go to 113 or 460?**

**R: We can go to 113 and then go to 460.**

**C: It just seems that we are adding a step.**

**R: You do need to make a linkage to the attainment process.**

**C: So we are talking about NSR and not attainment areas. Can I get an update?**

**R: EPA is looking at the ozone standard and revises it and makes it lower. It will be a larger scale, involving a few counties.**

**C: What about in Southwest? Is the air clean down there?**

**R: We skated by at 2.5. Working heavily on the woodstove buyback program, we received grant money for this. Our levels are high enough that if the levels get done we will be in non attainment.**

**C: What about NW?**

**R: Because ozone didn't violate it we are okay for right now.**

**C: Spokane is coming up high on ozone but we think EPA will lower the standard to 7 and we will be okay. If it goes down to 6.5 we might not be okay.**

**C: Yakima's levels are high in PM2.5 due to wood smoke, just like in Tacoma.**

**C: Item 3 should be 2E? Needs to be part of 2 or re-word it.**

**C: I would suggest taking out "are complied with"**

**C: Al this is general language without reference to major minor? Intent?**

**R: If you have this pollutant you go to PSD, for this pollutant to go to NSR etc.**

**C: Matt suggested taking this whole section to 800. And have 800 deal with major sources and leave 112 to talk about minor sources. Need something to explain how this section applies. "This section is for minor sources only, if you are a major source go to 800."**

**C: Are there any offset provisions?**

**C: Do we think it's a good idea?**

**C: If you could would you use offsets for minor sources?**

**C: You have offsets in 113 and we have to tie in 112 to 113.**

**C: The offset in 113 doesn't care if it's a major/minor source just how it ties in with non attainment.**

**C: If you non attainment you're not going to make any process if you get with minor sources.**

**C: Most non attainments are area problems.**

**C: Should move the table to 112 and then put something in 113 that states if your numbers do fall about the values in the table in 112, if not here is what you do.**

**C: My intent was not to change anything that it says today except the one paragraph was missing.**

**C: If a major source located in an attainment area and impacts another source....but not for a minor source.**

**C: We might want to add some regulator text that refers to the table.**

PSD Increments (Section 113) #8 PSD

**C: This language is in the Oregon and Idaho SIP approved NSR documents.**

**C: We are just working off that if EPA had just said this was okay within the past two years, then it should still be okay now for us to use.**

**C: Might not be the right place for this text, we will look to see where it should go and move it if we decided it needs to be moved.**

**C: Could this be put up in 110?**

**R: There are a few places it could go. We will figure it out and when you see the complete text we will have found the perfect place for it.**

**C: Take out “particulate matter”. It does not apply.**

**R: Okay**

Proposal to add to 720:

**C: I would propose that we do not do this addition.**

**C: If it’s useful I would leave it in. You don’t want sources to have to have multiple documents open just to find out what they need to do.**

**C: Issuance of emission reduction credits:**

**C: I don’t think emission reduction credits have anything to do with PSD do I would tie it together.**

**C: I have a question about Emission Accounting  
What happens if you have a permit based on allowables?**

**C: What is “Issues a certificate of emission reduction credit”? It’s a document with a gold star tell you are entitled to XXX # of emissions. We issue it as an order.**

**C: Al and Dan Brown will talk about the relevance of 120 and its need to keep it. We need to come up with more current trading policies in order to get this SIP approved.**

**C: Should retain it until we figure out what the deficiencies are and find a way to correct them.**

Presenter: Tom Todd

Changes to Section 110 and Creation of Section 111

- Our thoughts of why?
  - Section 110 is very large; a smaller section should be easier to navigate.
  - There is a logical break after paragraph (5)
  - (1) through(5) deal with applicability; the rest of the subsections deal with Notice of Construction application processing.

Section - 110

- Moved text about use of a General Order to -110(1)(d) – moved to improve the flow and readability of this section.

- Paragraph -110(3) moved to -110(1)(c) – the treatment of modifications does not need its own paragraph.
- Should we retain the subsection (3) as reserved? If we do that we would not have to correct references in Ch. 173-460 WAC

## **AGREED**

- Adds the regulation of portable sources to a NOC under -110 – moved from existing section -035.
- (b) This section applies to stationary sources as defined in RCW 70.94.030(23), and portable stationary sources as defined in WAC 173-400-030

**CHANGE TO PORTABLE IN PSD. NEED TO MAKE SURE DEFINITIONS ARE THE SAME. THE ONLY DIFFERENCE BETWEEN PORTABLE AND TEMPORARY IS THE INTENT BY THE OWNER ON WHAT HE IS USING IT FOR. WE DON'T CARE WHAT THE INTENT IS. THERE IS A NEED TO KEEP THIS LANGUAGE IN AND ALLOW FOR DISCRETION BY COMPANIES.**

- Subsection (4) Emission unit and activity exemptions
- Some are re-written to clarify the language.
- Others are policy additions or changes.
  - 110(4)(a)(x) Construction and maintenance not related to new or modified source
  - 110(4)(c) added note for multi-fuel combustion units
  - 110(4)(g)(iv) removed “continuous” from de minimis for “continuous emissions monitors and other analyzers”

**WALKING ON DANGEROUS GROUND WHEN TALKING ABOUT MAINTENANCE. IT IS AN ADDED EXEMPTION. WHAT IS THE MEANING OF MAINTENANCE? ITS HELPFUL TO HAVE CLEAR EXEMPTIONS. VOTES FOR DROPPING THE WORD MAINTENANCE IN (x).**

**SHOULD WE PUT IN GASOLINE? I DON'T SEE PEOPLE USING GASOLINE IN BOILERS. JUST BECAUSE YOU DON'T SEE IT IN APPLICATION DOESN'T MEAN THAT IT ISN'T HAPPENING.**

**SUGGESTION TO LEAVE “CONTINUOUS” IN. PUT IN CEMS AND OTHER EMISSION MONITORS.**

- 110(4)(h) de minimis for abrasive blasting (recently covered in 460) was moved to section 070.
- 110(4)(h)(xxxvii) Emergency generators replaced with any emergency engine.

**GENERATORS ARE NOT THE EMISSION POINT. NEED TO HAVE MORE INTERNAL ECOLOGY CONVERSATIONS.**

- Subsection (5)

- Paragraphs (b) and (c) need to be eliminated. These paragraphs require reporting of de minimis emissions units that are derived from the tables in (d).
- RCW 70.94.152(11) does not mention any requirement for de minimis sources being reported to the permitting authority.
- Table changed “sulfur oxides” to “sulfur dioxide.”

**UNDERSTAND THE CONCERNS. WE ARE GOING TO GO BACK AND TAKE A LOOK AT IT.**

Proposed Section -111

- We included an introductory statement
- Added a statement (1)(c) explaining what a completeness determination is.
- Moved the text about integrated review into (1)(d).
- Add a statement about requesting additional information
- If the source is submitting a non-road engine and a stationary source permit; the longer timeline applies.
- Distribution of order of approval is changed from “must promptly mail” to “must promptly provide.”
- This is done in an attempt to move the distribution to electronic format.
- In practical terms this can only be done when the recipient has access to the internet.

[WAC 173-400-111 Notice of construction procedures for sources and portable sources. The purpose of this section is to outline the procedures for permit processing for those sources and portable sources subject to review under WAC 173-400-110, WAC 173-400-111, WAC 173-400-112, and WAC 173-400-113.](#)

[\(1\) ~~\(6\) 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\(3\).](#)

[\(c\) For those projects subject to review under WAC 173-400-110, WAC 173-400-111, WAC 173-400-112, and WAC 173-400-113, the completeness determination includes a determination that the application includes all information required for review under those sections.](#)

[\(d\) 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 comply with WAC 173-400-171.](#)

[\(e\) The permitting authority may request additional information or required studies as necessary to complete the application review.](#)

(f) A non-road source that is integrated with NOC follows the NOC timeline.

- (2) (7) Final determination – time frame and signature authority.

(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.~~ A professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority must review and sign every final determination on a notice of construction application prior to issuance.

(3) Distribution of the final decision.

(a) The permitting authority must promptly provide 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.

(b) 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 or WAC 173-400-800 - 850, 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.

~~(4) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW and chapter 371-08 WAC. 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) (5) Construction time limitations.

(a) 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.

**(b) Permit extension in a non-attainment area.** A permit extension is subject to 30-day public notice and comment under WAC 173-400-171(2) if the project is either a major stationary source in a nonattainment area or a major modification in a nonattainment area. 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.

**(c)** 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) (6)** 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) The change will not cause ambient air quality standards to be exceeded;
  - (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 [this section](#), WAC 173-400-110, 173-400-112, 173-400-113, 173-400-720 and 173-460-040(3), [173-400-800-850](#), 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 that requests for a change in condition must take. If the request is filed as a NOC application, it must be acted upon using the timelines found in subsections **(6) and (7) (1) and (2)** of this section. The fee schedule found in WAC 173-455-120 applies to requests for any change of conditions.
- **(11) (7)** Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

#### *Changes to -035 – Portable Sources*

Ecology and the Control Officers want to create a system where portable sources are able to relocate easily in different jurisdictions.

WAC 173-400-110(1)(b) is proposed to require processing of applications for portable sources, through the -111 process.

-035 creates the frame work for permit transportability.

- First principle – local jurisdictions must opt out, if they do not want to participate.

- Limited to one year in any one location.
- Operator can operate without a new NOC approval, by notifying new jurisdiction, pay fees, and properly operate the equipment
- When a unit needs to be modified, the jurisdiction where the unit is currently located, is the appropriate jurisdiction to issue a new permit. The old permit would be void.

WAC 173-400-035 Portable Sources. This subsection applies statewide except where a permitting authority has adopted a resolution or rule stating that they are not participating in this subsection.

(1) Portable sources are subject to the requirements and permitting procedures in this section, WAC 173-400-110, WAC 173-400-112, and WAC 173-400-113, as applicable.

(2) A portable source is limited to a maximum of one year at any location.

(3) An owner or operator who obtains a notice of construction approval for a portable source from any permitting authority in Washington may use that notice of construction approval in any location in Washington provided that:

(a) The appropriate fees have been paid, and

(b) The owner /operator provides notification to the new permitting authority at least ten days prior to the start of operation at the new location. If the NOC specifies a different notification period, you must comply with the NOC, and

(c) The portable source is operated in compliance all conditions in the notice of construction and all applicable air quality state and federal rules and laws.

(4) The notification must contain the following information:

(a) A copy of the notice of construction approval issued to the portable source;

(b) The location where the portable source will operate;

(c) The proposed date to start operation at the new location;

(d) The anticipated date to end operations at that location; and

(e) The name and phone number of the onsite contact person responsible for operation of the portable source at the new location.

(5) Change of conditions or modification to a portable source. Changes to the conditions in a NOC or modifications to the operating parameters of a portable source require a new notice of construction application that must be processed in compliance with the rules and regulations of the permitting authority with legal authority.

(6) Appeals of orders. Any order or the denial of a notice of construction may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW and chapter 371-08 WAC.