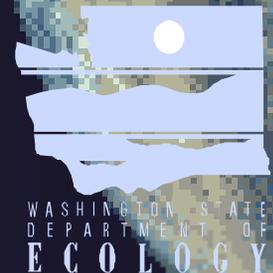


# Changes to Chapter 173-400 WAC, General Regulations

Rule Advisory Committee  
Meeting 1

April 15, 2009



# Section 107 – Excess Emissions



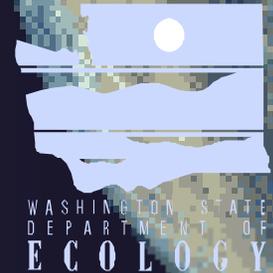
WASHINGTON STATE  
DEPARTMENT OF  
ECOLOGY

# WAC 173-400-107 Excess Emissions

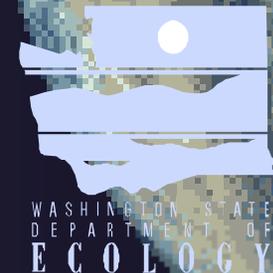
## RCW 70.94.431

(8) “By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable *in accordance with the state implementation plan.*” (emphasis added)

Current **WAC 173-400-107** was effective on September 20, 1993

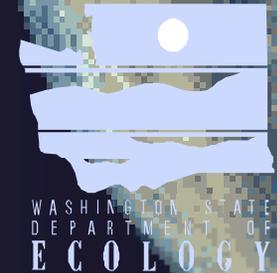


- The current version is in the SIP, effective on June 2, 1995.
- On September 20, 1999, EPA issued guidance on what the required elements of an excess emissions rule must include.
- EPA has told us that the old version is no longer approvable and we must re-write this section.
- Ecology was unsuccessful at reaching a mutually acceptable compromise in 2004/2005 rule making.
- Eventually EPA's patience will expire.



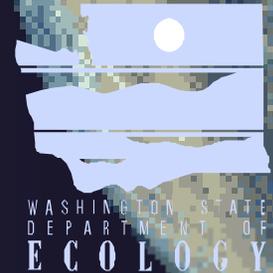
# Ecology's Point of View

- We recognize that the current 107 needs updating.
- EPA wants states to adopt the provisions of the Guidance into state rules.
- We also understand that a Guidance document is guidance not a rule.



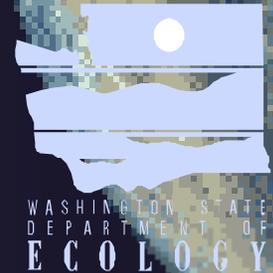
# What are EPA's main points in the guidance?

- Most importantly, excess emissions should not cause an exceedance of the NAAQS and PSD increments.
- Excess emissions are violations of the applicable emissions limits, but permitting authorities may choose to grant relief, as long as EPA and citizens retain their ability to sue in response to the violation.



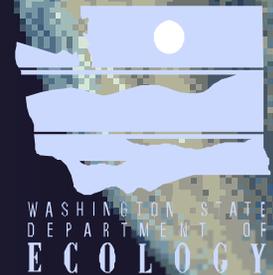
# What are EPA's main points in the guidance?

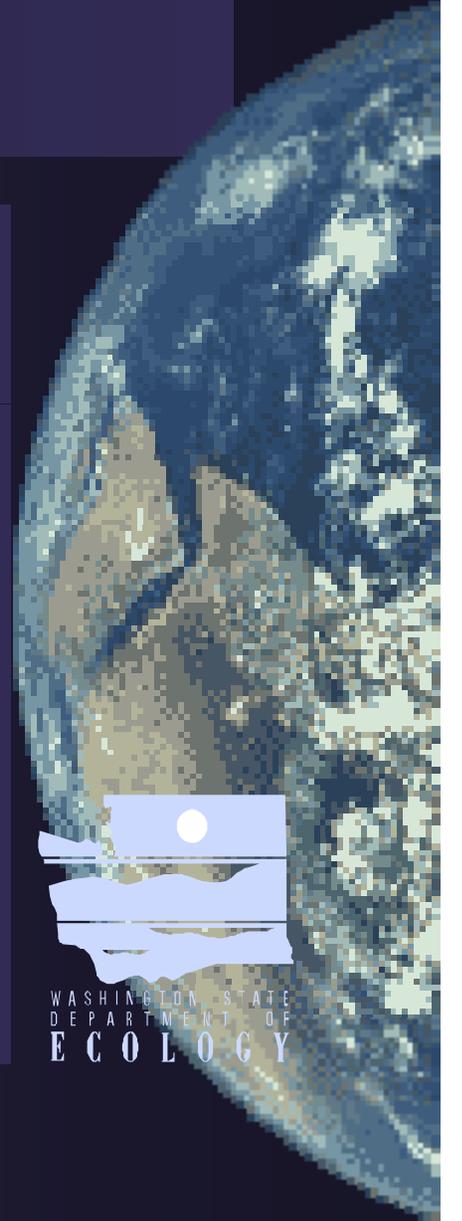
- The 1999 memo adds contemporaneous record keeping and notification criteria in order to be consistent with EPA's enforcement approach.
- EPA says in general excess emissions during startup and shutdown are foreseeable and not be excused, except in rare cases. In some cases, the emissions standard can be written to incorporate startup and shutdown (WAC 173-400-081).



# What are EPA's main points in the guidance?

- The Guidance does not address maintenance activities; the current -107 does.
- For both startup & shut down and malfunctions, the Guidance has about 10 tests (each) to determine if the incident would qualify for an affirmative defense.





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