

Department of Ecology  
Air Quality Program

To: Rule Advisory Committee for Chapter 173-400 WAC  
From: Tom Todd  
Date: July 28, 2009 July 16, 2009  
Subject: First Proposal for WAC 173-400-036

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The document below shows Ecology's proposal for a new section that will regulate Nonroad Engines as a separate class of sources. Nonroad engines are not subject to New Source Review (WAC 173-400-110). And, this class of sources is not specifically addressed in the current rules. Ecology has been using WAC 173-400-035 to regulate them. The -035 section does not contain enough of a regulatory scheme to make the requirements clear. Nonroad engines are not subject to New Source Review (WAC 173-400-110). So we are proposing a new scheme.

The draft provision below reflects our current thinking; we have considered your feedback from the previous rule advisory committee meetings in developing this. This is a first draft and comments are welcome.

**WAC 173-400-030 Definitions.**

(55) "Nonroad engine" means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine

located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

**WAC 173-400-036 Nonroad engines.** (1) Applicability. (a) This section applies statewide except where an authority has adopted its own nonroad engine rule.

(b) This section applies to any nonroad engines, except for the following:

(i) Emission units and activities listed in WAC 173-400-110 (4); and

(ii) Emission units that have the potential to emit below each of the levels set by WAC 173-400-110 (5); and

(iii) Any nonroad engine that is:

(A) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function; or

(B) In or on a piece of equipment that is intended to be propelled while performing its function.

**(2) Engine review.**

(a) The owner or operator must notify the authority of their intent to operate at least 15 days prior to starting operation, and supply sufficient information to enable the permitting authority to determine that the operation will comply with WAC 173-400-112(2)(c) or WAC 173-400-113(3).

(b) The permitting authority may set specific conditions for operation, to the extent that such conditions relate to compliance with WAC 173-400-112(2)(c) or WAC 173-400-113(3). These specific conditions are limited to in use operational controls such as hours of operation limits and fuel specifications. Permitting authorities are prohibited from requiring retrofitting of used nonroad engines.

(c) Within 15 days after receiving notice, the authority will notify the applicant in writing whether the applicant may start operation or the authority will set specific conditions. If specific conditions will be set, the authority must either notify the applicant in writing that notice is complete or notify the applicant in writing of all additional information necessary to the complete the notice.

(d) If specific conditions will be set, within 15 days after receiving a complete notice of intent to operate, the authority will issue an order specifying all conditions. Such order may be combined with an order of approval issued under WAC 173-400-110.

(e) The order issued under this section is subject to the public involvement procedures in WAC 173-400-171 or WAC 173-400-740.

(f) The permitting authority must promptly mail copies of each order approving or denying a notice of intent to operate 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.

(3) **Appeals.** Any conditions contained in an order, or the denial of an order, may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW.

(4) **Change of conditions.** The owner or operator may request, at any time, a change in conditions of an order and the permitting authority may approve the request provided the permitting authority finds that the operation will comply with WAC 173-400-112(2)(c) or WAC 173-400-113(3).

(5) **Enforcement.** All persons who receive an order must comply with all conditions contained in the order.

(6) **Operation time limitations.** Nonroad engine operation may be for a limited time, but in no case will a nonroad engine remain at a location for more than twelve consecutive months.