

**Region 10 Comments Regarding the May 2006 Draft Rule Language regarding WAC 173-400-030 (Definitions), -035 (Portable/Temporary Sources) and -107 (Excess Emissions)**

**WAC 173-400-030, Definitions**

**Nonroad engine:** The definition is not approvable as written. In attempting to redefine the term nonroad engine, Ecology has inaccurately captured what is and is not a nonroad engine. The definition that is currently in effect in State law (i.e. the February 10, 2005 version) is consistent with the Federal definition and would be approvable.

**Stationary internal combustion engine or stationary engine:** Although the lead-in sentence states that a stationary internal combustion engine is any engine that is not classified as a nonroad engine or a mobile source, subsection (i) greatly expands what can be characterized as a stationary internal combustion engine, by stating that it is any engine that is permanently installed in a fixed location. In other words, the subsection (i) of this definition could include nonroad engines as stationary engines and thus stationary sources. The CAA prohibits states from regulating nonroad engines as stationary sources. It isn't clear why subsection (i) is really needed since the lead-in sentence makes clear that a **stationary internal combustion engine or stationary engine** is any internal engine that is not a nonroad engine or a mobile source. We have no problem with the lead-in sentence and subsection (ii). As such, subsection (i) must be deleted in order for EPA to be able to approve this definition.

**WAC 173-400-035, Portable and Temporary Sources**

Note that the title should reflect Portable Stationary Sources and Temporary Sources.

**Paragraph (1):** In the proposed revisions, all portable and temporary stationary sources, regardless of size, must obtain an "Order of Approval." We question whether Ecology really intended that the de minimis cutoffs not apply to portable and temporary stationary sources. If Ecology does intend to use the de minimis cutoffs in WAC 173-400-110(4) and (5), we recommend the following revision to paragraph (1): *"The owner or operator of a portable stationary source or temporary source, not otherwise exempt under WAC 173-400-110(4) and (5), must:"*

**Paragraph (1)(a):** The CAA prohibits states from regulating nonroad engines as stationary sources. Thus the following language must be added to paragraph (1)(a), *"Except for nonroad engines, prior to operating a portable stationary source or a temporary source . . ."*

The second sentence in (a) should be changed to read as follows: *"A portable stationary source or temporary source that is considered a major . . ."*

**Paragraph (1)(b):** The *"temporary source composed of only nonroad engines"* language is confusing. What happens to those nonroads that are part of a portable or temporary stationary source that includes both nonroads and portable/temporary stationary sources? Our understanding of the intent of this provision is to set forth de minimis cutoffs for nonroad engines. Therefore, we recommend simply striking the confusing language (note we believe there is also a typo regarding the *"greater than"*

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language) in order to have the provision read as follows: *“Prior to operating a ~~temporary source composed of only~~ nonroad engines with an aggregate of greater than 500 horsepower and at least one engine over 300 horsepower, file a notice of intent to operate . . .”*

Is it Ecology’s intent to only regulate nonroad engines that have **both** an aggregate of greater than 500 horsepower (HP) **and** at least one engine over 300HP? Essentially, this would allow for an unlimited number of 275HP nonroad engines to be installed and operated.

Note that it isn’t clear how you plan to deal with “emergency generators.” For example, what if the emergency generator is only needed for two (2) days during an outage? As currently drafted, if the emergency generator wasn’t rated below 300HP, it would have to apply for and receive an order (including public notice) prior to operation. Of course, Ecology could allow enforcement discretion in this instance. However, we weren’t sure if this is what you were intending.

**Paragraph (1)(f):** The second sentence is inaccurate in that it refers to compliance with *“emission standards for new sources.”* New sources by definition are “stationary sources.” As previously discussed, the CAA prohibits states from regulating nonroad engines as stationary sources. It isn’t clear why the second sentence in paragraph (1)(f) is even needed since such determinations should have already been made by the permitting authority in their initial permit pursuant to WAC 173-400-110 (see provision -035(1)(a)). We recommend striking the second sentence.

**Paragraph (2)(a), (c), & (d):** The references to “portable source” should be “portable stationary source” per the definition set forth in -030. Note that paragraph (e) has the appropriate reference to “portable stationary source.”

**Paragraph (2)(d):** Since paragraph (1)(f) sets forth an automatic 30-day prior notification requirement (unless specified otherwise in an order of approval or order), we believe the intent of paragraph (2)(d) is to allow the permitting authority to set forth a different time period for prior notification. We believe that paragraph (2)(d) could do a better job of clarifying this. Therefore, we suggest revising the language to read as follows: *“May provide a different time period in the order of approval or order for the required notification in paragraph (1)(f) to the permitting authority prior to each relocation of the portable stationary source or temporary source; and”*

**Paragraph (4):** The current language as written would require all local agencies to specifically adopt this section in order to implement it. We strongly oppose this approach because we do not feel it is a good use of all of our shrinking resources (including the state, locals, and EPA). We recommend Ecology use the language similar to what is in WAC 173-400-110(1)(a) such as: *“This section applies statewide except where an authority has its own rule regulating such sources.”*

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**WAC 173-400-107, Excess Emissions**

**Paragraph (1):** The language stating that the rule contains "*criteria by which Ecology or a permitting authority may provide*" could suggest that Ecology's or the permitting authority's determination of unavailability is final and binding on EPA and citizens in an enforcement action. Unless this section is revised to state expressly that the determination of Ecology or a permitting authority under WAC 173-400-107 is not binding on EPA or citizens in an enforcement action, this clause must be removed. As an alternative, this could be revised to say "*criteria by which a source may establish . . .*" Another alternative would be to refer to "*Ecology or the permitting authority or the decision-making authority.*"

**Paragraph (1)(c):** By including the clause "*when there are no excess emissions provisions in the permit,*" this provision essentially states that a permittee with excess emissions provisions in its PSD permit can take advantage of WAC 173-400-107 as well as any specific excess emission provisions in its permit. We assume that was not the intent and that the terms of the PSD permit would govern. You could instead include in this subparagraph language stating, "*Nothing in the previous sentence precludes the permitting authority from including appropriate excess emissions provisions in a PSD permit, in which case the permit-specific excess emission provisions would apply.*"

**Paragraph (2):** This provision is redundant with the language in paragraph (1) and should be deleted. If it is maintained, it should be consistent with the language in (1) by stating "*shall be subject to injunctive relief, but shall not be subject to penalty.*"

**Paragraph (3)(b) & (c):** Both of these provisions have language stating that they apply only when a source is seeking relief from penalty under this section, but they use different language: "*believes to be unavoidable*" in (b) versus "*for which from penalty is being sought*" in (c). Using different language to describe the same concept is confusing.

**Paragraph (4)** provides an affirmative defense to a penalty action for excess emissions during startup and shutdown if certain conditions are met. Our understanding is that Washington believes this provision is consistent with Clean Air Act requirements for such startup and shutdown provisions, as discussed in EPA's Excess Emissions Policy. See EPA's Excess Emissions Policy, Attachment p. 6. After carefully reviewing paragraph (4), we continue to believe that paragraph (4) does not contain the following elements necessary to meet the requirements of the Clean Air Act:

- The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance.
- At all times, the facility was operated in a manner consistent with good practices for minimizing emissions.
- The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.
- All possible steps were taken to minimize the impact of the excess emissions on ambient air quality (not just that you minimized emissions).
- All emission monitoring systems were kept in operation if at all possible.

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See EPA's Excess Emissions Policy, Attachment p. 6.

**Paragraph (6)** provides an affirmative defense to a penalty action for excess emissions due to a malfunction if certain conditions are met. Our understanding is that Washington believes this provision is consistent with Clean Air Act requirements for such malfunction provisions, as discussed in EPA's Excess Emissions Policy. See EPA's Excess Emissions Policy, Attachment pp. 3-4. After carefully reviewing paragraph (6), we continue to believe that paragraph (6) does not contain the following elements necessary to meet the requirements of the Clean Air Act:

- Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.
- All possible steps were taken to minimize the impact of the excess emissions on ambient air quality (not just that you minimized emissions).

See EPA's Excess Emissions Policy, Attachment pp. 3-4.

Please note that these comments contain our current views based on a preliminary review of the draft rule. These views should not be considered our final position, which we will only reach through notice and comment rulemaking after the state has submitted a rule for our approval as a SIP revision.