



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: OAQ-107

NOV 04 2002

Mr. Wess Safford
Southwest Clean Air Agency
1308 NE 134th Street
Vancouver, WA 98685-2747

Re: EPA's Comments on the proposed NSR Revisions to SWCAA's Regulations

Dear Mr. Safford:

Thank you for the opportunity to review and comment on SWCAA's NSR rule revisions. SWCAA clearly put a lot of thought and work into revising its rules and in creating the supporting documentation. We truly appreciate your efforts. The documents that you provided to us were all extremely helpful in our review of your rules. Our comments on SWCAA's rules follow:

General

While we recognize SWCAA's attempt to fix the source/stationary source problem, we will not be able to approve the way SWCAA has defined stationary source. Minor NSR cannot regulate plant-wide "sources". We recommend that SWCAA delete the definition of "source" and revise the definition of "stationary source" to match Ecology's definition. Then, throughout SWCAA's NSR rules, use either stationary source (minor) or major stationary source. When regulating non-road engines, specifically state that they are included for the purposes of that section (e.g., SWCAA 400-045 and -046). We have made the same recommendations to Ecology, which they are now considering.

As discussed below, EPA does not believe sections 400-109 and 400-110 are approvable. It is difficult to give specific comments and suggestions until we are able to discuss these sections with SWCAA to understand the intentions behind the rule structure. We would like to set up a conference call to discuss these sections in more detail.

There are some sections that EPA does not need to IBR (incorporate by reference) into the SIP, such as rules describing agency enforcement authority. This avoids any potential conflict with EPA's independent authorities. We do, however, still need to review these sections when they are revised as they are necessary to ensure that SWCAA maintains adequate enforcement authority and other authorities required by the Clean Air Act. In addition, although such provisions will not be IBR'd, they must be included by SWCAA as part of the SIP submittal.

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Examples of this type of rule include the following: Section 400-010 Policy and Purpose, 400-230(2) Regulatory Actions and Civil Penalties, 400-240 Criminal Penalties, 400-220 Requirements for Board Members, 400-250 Appeals, 400-270 Confidentiality of Records and Information, and 400-280 Powers of Agency.

Throughout SWCAA's rules, there are provisions that allow alternatives to test methods to be approved by SWCAA in its discretion. These types of provisions are not approvable, because the Clean Air Act regulations require that alternative test methods to SIP requirements must be approved by EPA. See 40 CFR 51.212(c)(2). For example, the definition of TRS, 400-050(1), 400-060, 400-105(4)(f), and 400-106(1)(b) authorize SWCAA to approve changes to test methods without EPA approval. To the extent possible, the rules themselves should identify any alternative test methods.

We recommend submitting the rule sections that have been revised since the SIP-approved version of the rule, but are not NSR provisions, such as 400-020 Applicability and 400-074 Gasoline Transport Tankers. These sections contain only minor changes, and therefore it would take little effort to approve these sections with the NSR rules.

Please include the Technical Support Document when these rules are submitted to EPA for approval.

In your rulemaking action, make sure to indicate what sections SWCAA is withdrawing from the SIP.

SWCAA 400-030 Definitions

General: We could not find where some of SWCAA's defined terms were used (e.g., adverse impact on visibility, visibility impairment of Class I Area, deviation from approval conditions, global warming, pipeline quality natural gas, and upgraded. Are these definitions necessary?

Air contaminant: Is the second sentence necessary? If you keep this sentence, add NSPS pollutants (Section 111 of the CAA) and Ozone Depleting Substances (Title 6 of the CAA).

Allowable emissions: This definition is not approvable as written because subsection (d) does not require federal enforceability.

BACT: There are two parts of the definition that SWCAA is proposing to delete that must be kept ("or which results from" and "Part 63"). For example, construction emissions need to be considered, and they are not emitted from the new or modified stationary source, but result from the new or modified stationary source.

Criteria pollutant: We question whether the last sentence regarding VOCs is necessary, and are concerned that this statement may cause problems in SWCAA's ozone regulations. If SWCAA keeps this sentence, we recommend adding a sentence explaining that VOCs and NOx are

regulated as precursors to ozone.

Deviation from approval conditions: Under this definition, a deviation is always a violation. Note that under CAM and part 70, there can be deviations that are not violations. For example, going outside of a parameter range can (depending on how the permit is written) be a deviation that is not a violation. It may be less confusing to promulgate a definition of deviations that is consistent with the way the term is used under CAM and part 70. See 40 CFR 71.61(a)(3) (definition of deviation).

Emission unit: Note that a non-road engine cannot be an emission unit.

Existing stationary facility: If SWCAA changes to definition of stationary source as suggested above, the paragraph that SWCAA is proposing to strike, beginning with "For purposes of determining whether a stationary source is an existing stationary facility . . ." must be included.

Federally enforceable: We recommend revising the definition to read, ". . . 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, any permit established under 40 CFR 52.21 or under a SIP approved new source review regulation, WAC 173-400-091, or SWCAA 400-091 and expressly requires adherence to any permit issued under these programs." EPA has already determined that, in the case of Washington's NSR and voluntary limit on PTE, the program requires adherence to any permit issued under these programs.

Maintenance Area: If SWCAA intended to refer to the redesignation process, the definition should be revised to read, ". . . as an attainment area as provided under Section 107(d) of the Clean Air Act." If SWCAA intended to refer to where the areas are listed, then the definition should be revised to read, ". . . as an attainment area as listed in 40 CFR Part 81."

Major Stationary Source: In both (a)(iv)(H) and (b)(i)(I), 250 tons of refuse per day must be revised to 50 tons of refuse per day. In both (a)(v) and (b)(vi), the reference to the Standard Industrial Classification Manual should be 1972, as amended by the 1977 supplement. These comments have also been made to Ecology, and will be fixed in the next rulemaking.

Modification: The term stationary source (as revised as discussed above) must be used in this definition.

New source: Delete paragraph d or else revise this paragraph to meet EPA guidance on restarting after a permanent shutdown (e.g., change five years of non-operation to two years, and have that two years be a presumption).

Nonroad engine: SWCAA must revise paragraph (a) to read, "Except as discussed in (b) of this subsection, a non road engine is any internal combustion engine: . . ." This phrase is included in Ecology's definition, and without it, paragraphs (a) and (b) conflict.

Notice of Construction application: Revise the first sentence to read, “. . .for installation, replacement, modification, or other alteration of an emission unit at an air contaminant source or replacement or substantial alteration of control technology at an existing stationary source.”

Order, Order of Approval and Regulatory Order: Revise the first sentence to read, “. . . order issued by Ecology or the Agency . . .” Throughout SWCAA’s rules, ensure that Ecology’s regulatory orders are referred to when needed to include PSD permits.

Upgraded: The last sentence states that “Modification of a gasoline dispensing facility means the same as upgraded.” We do not understand the purpose of this statement and are concerned that there may be NSR implications. We want to ensure that modifications to gasoline dispensing facilities other than those described in the definition still get permitted.

VOC: There is a typo - CFC-22 should be HCFC-22 instead.

SWCAA 400-040 General Standards for Maximum Emissions

Paragraph (1): The first sentence is confusing when it states “in accordance with Appendix A” and then again states, “in accordance with EPA Method 9 “Visual Determination of the Opacity of Emissions from Stationary Sources” as specified in 40 CFR Part 50 Appendix A except:”. The first phrase seems unnecessary. Also, SWCAA must include Methods 9A and 9B. It may be better to simply refer to the Ecology Source Test Manual so all the reference test methods identified in the method are included here. SWCAA’s rule is less stringent than the WAC if it does not include all the reference test methods.

The subsections that are not a part of the SIP currently will still not be approved into the SIP.

SWCAA 400-045 Air Discharge Permit Application for Air Contaminant Sources

It isn’t clear what specific sources are being regulated under SWCAA 400-045 & 046. Our understanding is that the intent of SWCAA 400-045 & 046 is to set up a program, much like a registration program, that tracks minor portable and temporary sources, which may include nonroad engines. If so, this intent should be more clearly reflected in the rules so as to provide better direction to sources.

Paragraph (2)(a) states *“The requirements of this section do not apply to emission units located at “stationary sources”. Air discharge permit applications for emission units located at “stationary sources” shall be submitted in accordance with SWCAA 400-109.”*

There are a couple of problems with the “located at stationary sources” language. The first one has to do with nonroad engines. What happens to nonroad engines located at stationary sources? The way it reads it implies that nonroad engines located at a stationary source would fall under SWCAA 400-109 & 110. This is problematic since the 1990 Clean Air Act Amendments and EPA’s implementing regulations (40 CFR Part 85, Subpart Q -- “Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles”) preclude States/locals from

regulating nonroad engines and nonroad vehicles as stationary sources. States/locals may not count emissions from nonroad engines or nonroad vehicles when determining applicability of stationary source permitting programs, nor may SIP emission limits for stationary sources or stationary source permitting requirements apply to nonroad engines or nonroad vehicles. States/locals are still free to regulate nonroad engines and nonroad vehicles through “in-use” standards such as fuel sulfur content and portable equipment registration programs. However, States/locals may not establish “tailpipe” emission standards for nonroad engines or vehicles.

The second problem has to do with a temporary/portable source that is a major stationary source in of itself. The Act and EPA regulations specifically address the need for permits for portable stationary sources in 504(e), 40 CFR 51.166(i)(4)(iii), and 52.21(i)(4)(viii) and clearly indicate that such sources must demonstrate compliance with PSD increments. Therefore, SWCAA must add language providing linkage that a major stationary in of itself must also comply with WAC 173-400-141.

Paragraph (2)(c): “Any applicable exemption claimed by the source” should be added to the list of information required to be submitted.

Paragraph (5)(b): Is the intent of the last sentence regarding written notification that the exemption isn’t valid until confirmed by SWCAA in writing? If so, that should be more clearly stated.

SWCAA 400-046 Application Review Process for Air Contaminant Sources

Paragraph (1)(b) states “*The requirements of this section do not apply to emission units located at “stationary sources”. Air discharge permit applications for emission units located at “stationary sources” are reviewed and processed in accordance with SWCAA 110.*”

This section has the same problems with the “located at stationary sources” language. See SWCAA 400-045 comments above.

Paragraph (2)(a): This paragraph must be revised to read, “The Agency shall require that all review requirements be met and an air discharge permit be issued . . .” We can not approve a program where the state or local agency has authority to decide whether sources subject to the program (i.e., non exempt sources) need to meet the review requirements or obtain a permit. Such a structure is in essence a “director’s discretion” provision.

Paragraph (2)(c) states that “Each air discharge permit application shall demonstrate that all applicable emission standards have been or will be met by the proposed unit.” Does “applicable emission standards” include BACT for new temporary/portable sources that are not nonroad engines? SWCAA must include language similar to WAC 173-400-035 that addresses compliance with emission standards for a “new source” that is not a nonroad engine.

Paragraph (2)(c) -- the last sentence “*If the proposed emissions unit is a nonroad engine, each*

air discharge permit application shall demonstrate that it complies with the standards found in 40 CFR 89.112 (effective July 1, 2002).” isn’t accurate and needs to be struck. Not all nonroad engines are subject to 40 CFR 89.112. Those engines that are subject to 40 CFR 89.112 are only subject at the time they were manufactured, not after being in use.

This section should include a more explicit link to the public involvement requirements in SWCAA 400-171 (more than the reference in paragraph 4). The reference in paragraph 8(c) only applies to actions under paragraph 8. Similar language should be provided for the issuance and denial of permits.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units

Paragraph (1): The second sentence should read, “. . . an emission unit combusting wood derived fuels for the production of steam in excess . . .” Note the problem with SWCAA’s discretion to change the test method is discussed in the general comments above.

Paragraph (4): Although this paragraph is not being submitted for approval into the SIP, we have two comments. In subsection (b)(iii), revise the sentence to read, “. . . exempt under 4(c) of this subsection.” In subsection (c)(iii)(A) and (B), remove “adopted on December 6, 2000” as it is not needed and differs from the WAC and how Federal rules are referenced elsewhere in SWCAA’s regulations.

SWCAA 400-052 Stack Sampling of Major Combustion Sources

Paragraph (1): Revise the end of the first sentence to read, “. . . major for the affected pollutant(s) under this section.” Also, we recommend changing the term used in this section to “large combustion source” instead of “major” as it may be confused with major under NSR.

Paragraph (2): Revise the first sentence to read, “The owner or operator of a stationary source subject to this section shall test the stationary source. . .” As currently written, it is not clear who has the obligation to conduct the test.

Although paragraph (5) has a “director’s discretion” provision, it is not a problem because it relates to a change in timing on a minor issue and does not change the standard (as does a change in the reference test method) or the scope of sources subject to a requirement.

SWCAA 400-070 Emission Standards for Certain Source Categories

Paragraph (4): It would be helpful to clarify that there are no existing CCU’s “in SWCAA’s jurisdiction.”

Paragraph (6): We do not believe we can approve the limits on MTBE into the SIP because the SIP can only regulate the level of oxygenates, not specific oxygenates. Have these MTBE limits been approved by Ecology to apply state-wide?

SWCAA 400-081 Startup and Shutdown

SWCAA has previously made changes to this provision that change the meaning from the provision of the WAC on which it is based. As an initial matter, the sole intent of WAC 173-400-081 is to require permitting authorities to consider start up and shut down conditions in establishing case-by-case technology based emission limits *in orders* under new source review and other relevant programs. It was not intended to provide authority for a permitting authority to excuse emissions in excess of generally applicable SIP requirements during start up /shutdown or to imply that different emission limits or requirements would apply during start up or shutdown in the case of generally applicable requirements in WAC 173-400. By separating the first two sentences into separate subparagraphs, SWCAA 400-081 suggests that the two sentences address two separate situations. In fact, the second sentence is an elaboration on what the permitting authority must do under the situation addressed in the first sentence: the permitting authority must first consider whether it is possible for a source to comply with a source specific technology based limit during start up and shut down and, if it is not possible, the permitting authority must create alternative source specific requirements that would apply during start up and shut down.

The language changes SWCAA made in subparagraph (2) compound the problem. By stating that SWCAA must include such startup and shutdown provisions in *regulatory orders and operating permits* (as oppose to in 'the standard' as stated in the WAC), SWCAA's rule implies that it has authority to change SIP-approved emission limits in reg orders and title V permits without meeting requirements for changing the SIP. Neither a title V permit or a reg order can be used to excuse a source from complying with generally applicable SIP requirements during start up and shutdown. A regulatory order can have different emission limits and requirements during startup and shutdown only if the emission limit is established in the first instance in the regulatory order.

SWCAA 400-091 Voluntary Limits on Emissions

Since both this rule and WAC 173-400-091 apply to sources getting a voluntary limit, SWCAA must always ensure that the rules are equivalent or that both rules are met.

SWCAA 400-100 Registration Requirements

We do not think that this registration system is a good regulatory set-up. It puts the responsibility on the Agency to provide the source with the information to be "verified". What about initial registration? What if there is a source that SWCAA does not know about? How often is the registration information required to be submitted (annually)? What type of information needs to be submitted initially/annually (if instead of describing this information in rule, it is listed on the registration forms, we will need to review these forms)? Registration should be the obligation of the facility, not of SWCAA.

Paragraph (4): The sentence beginning "At the discretion of the control officer..." is confusing because it does not state the conditions under which the Control Officer can invalidate permits (i.e., if fees are not paid). In addition, this sentence seems to cover the same topic as 400-230(g), but does not reference it.

SWCAA 400-101 Emission Units and Sources Exempt from Registration Requirements

Paragraph (1): This paragraph suggests that an emission unit that is exempt from registration does not need to be addressed in a title V permit. That is not correct. No SIP rule can modify the universe of sources or emission units that must be addressed in a title V permit. Although WAC 173-401-530, -532, and -533 exempt emission units identified as “insignificant emission units” under those provisions from certain permit application requirements, Washington’s approved part 70 program makes clear that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. See WAC 173-401-530(1) and (2)(b).

Paragraph (1)(a): The language in subparagraph (a) is very subjective. We recommend it be revised to read “maintain documentation to verify that the emission unit....”

Paragraph (1)(b): This subsection must be revised to make clear that it does not extend to PSD or Part D NSR. This could be accomplished by adding to the end of that sentence: “unless the emission unit is a part of a major stationary source or a major modification.”

Paragraph (4): It is unclear whether SWCAA intends to exempt sources that emit less than 1 ton per year of criteria pollutants and VOCs combined or that emit 1 ton per year of each criteria pollutant and VOCs.

General: SWCAA must provide a justification for its exemptions from registration in subparagraphs (4) and (5). This need not be extensive, but must be sufficient to support a determination that exempting these sources from registration will not interfere with the requirements of 40 CFR 51.114 and 40 CFR 51.321. In addition, subparagraph (k) must be deleted. Exceptions to registration and other SIP requirements must be established through rulemaking and not through director’s discretion provisions. Although this is currently approved as part of the SWCAA SIP, it was done so at a time that WAC 173-400-101 applied statewide and all local rules were certified by Ecology as being at least as stringent as the WAC.

SWCAA 400-102 Transfer of Ownership/Termination of Operation of Registered Equipment

Paragraph (1): Should “permanently ceasing operation” be replaced with “closure” since closure is a defined term?

SWCAA 400-105 Records, Monitoring and Reporting

This section must apply to title V sources in addition to registered sources unless SWCAA adopts a similar provision that applies only to title V sources. WAC 173-401 does not provide all of this authority.

Paragraph (1): The requirement for emission inventory reports for smaller and larger sources should set an outside limit for submittal (for example, the Executive Director may allow an

extension of up to 60 days of the March 15 . . .).

Paragraph (1): The two categories (a) and (b) are confusing. What is the difference between what is required for smaller and larger sources? What is the purpose of the link to 40 CFR 51.322? This section could be set up by first identifying what must be submitted by sources to SWCAA, with different requirements for small and large sources if determined appropriate by SWCAA. If SWCAA want to reference its obligation to submit information to EPA as provided in 40 CFR 51.320, that obligation should be addressed in a separate paragraph, not as part of the paragraph discussing the source's submission obligations.

Because the rules do not identify the information that must be submitted, but instead references the form provided by SWCAA, the emission inventory form will need to be submitted to EPA for review.

Paragraph (h): Note that EPA will be discussing with Ecology its concerns with the lack of criteria for this monitoring exemption in the comparable provision of the WAC.

SWCAA 400-106 Emission Testing and Tuning at Sources

Paragraph (1)(b): The adoption by reference of the EPA test methods should refer to a certain version of the CFR (add a date).

SWCAA 400-107 Excess Emissions - Penalty Exclusion

We appreciate SWCAA's proposed changes that make clear that the excess emission excuses the source from penalties if the conditions are met, but does not excuse the underlying violation. You should be aware, however, that EPA has other concerns regarding whether WAC 173-400-107 is consistent with EPA's policy on SIP excess emissions provisions that EPA intends on discussing with Ecology in the next several months.

SWCAA 400-108 Upset Conditions, Excess Emissions and Deviations from Approval Conditions

The first sentence in subsection (3) talks only about upset conditions whereas subparagraphs (b) and (c) discuss startup, shut down and scheduled maintenance. The lead in sentence should be rewritten to be broad enough to encompass the circumstances discussed in the latter subparagraphs. Subparagraphs (4) and (5) should include a time frame for when the recordkeeping must occur (contemporaneously, for example).

SWCAA 400-109 Air Discharge Permit Application for Stationary Sources

EPA does not believe sections 400-109 and 400-110 are approvable. It is difficult to give specific comments and suggestions until we are able to discuss these sections with SWCAA to understand the intentions behind the rules structure. We would like to set up a conference call to discuss these sections in more detail. Below are a few specific comments that we were able to make.

If exempt sources are required to submit a notification, there needs to be a timeframe for when SWCAA will determine the source is indeed exempt, and after which time the source can begin construction.

Paragraph (2)(a): “Commenced” must be revised to “begun actual construction”.

Paragraph (2)(d): RCW 70.94.151(11) and (12) authorize the exemption of sources that have a de minimis impact on air quality, which is defined as new sources with trivial levels of emissions that do not pose a threat to human health or the environment. SWCAA must submit a justification of its de minimis levels when these rules are submitted for SIP approval.

Paragraph (3): As identified in previous SIP approvals, we have concerns with (b), (c), (f), (g) and (h). If SWCAA is concerned regarding whether it has authority to request an application and issue a permit for a source that already constructed but failed to get a permit, language could be added to state simply that and to also make clear that submission of the application and issuance of the permit does not excuse past non-compliance.

Paragraph (4): The first sentence of the second paragraph should be revised to read, “. . . utilize actual or proposed allowable emissions, after controls . . .”

Paragraph (5): This section is confusing as it relates to issues that are addressed elsewhere in (6) and 400-110. Also, the reference to a “complete application” should be sufficient. The use of the term “acceptable” suggests there are other criteria. If there are other criteria, they should be referenced.

Paragraph (6)(b): Is the intent of the last sentence regarding written notification that the exemption isn’t valid until confirmed by SWCAA in writing? If so, that should be more clearly stated.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

Paragraph (1): This paragraph should be titled “Review Process” instead of “Applicability” as applicability is covered under 400-109.

Some of the requirements in this section should be moved to 400-109 as they seem to deal with applicability.

Paragraph (1)(b): The two sentences need to be linked so that the second sentence is clearly identified as an exception to the first (for example, adding “providing, however, that,” to the end of the first sentence and then continuing with the second sentence).

Paragraph (1)(d): Subsections (i) and (ii) are not approvable as they do not use the right NSR test (actual to potential). Subsections (iii) and (iv) would not be approved into the SIP as they do not regulate criteria pollutants.

Paragraph (2)(a): "May" must be revised to "shall". EPA cannot approve a new source review program where a permit for non-exempt sources is discretionary. All non-exempt sources must be permitted.

Paragraph (2)(b): This section must also make clear that the review requirements must be met "regardless of any other provision of this section, 400-101 or 400-109..."

Paragraph (2)(c): It is not clear whether "ambient air quality standards as identified in Table A below", is referring to the NAAQS and the Washington Ambient Standards, or to all of the items in the Table. Is the "completed determination" referenced in the third sentence a determination under WAC 197-11?

In the paragraph following Table A, the first sentence must be revised to read, "If the ambient impact in a Class II area of a proposed project (i.e., changes in ambient concentrations resulting from the proposed project or modification alone) is predicted to be less than the Class II significant impact criteria . . ." The second sentence must be revised to read, ". . . the Agency shall require that compliance with . . ." Although compliance with the increments could be discretionary, compliance with the NAAQS is mandatory.

Paragraph (3): The last sentence of the opening paragraph must be revised to read, "The Agency may request additional information or clarifications submitted by the applicant. . ." SWCAA is not limited to requesting additional clarification of information.

Paragraph (3)(b): The equivalent provision in the WAC refers to WAC 173-400-117(2), while SWCAA refers to WAC 173-400-117(2)(b). Why is (2)(a) not included?

Paragraph (4)(a): "SWAPCA" was overlooked in the changes to SWCAA.

Paragraph (6): Portable equipment -- this section should be moved to the temporary/portable source review section of SWCAA 400-046 Application Review Process for Air Contaminant Sources.

The last paragraph of this section states "*Emission units that do not operate within the jurisdiction of the Agency for a period of 5 years shall be nonoperational and may be removed from active registration.*" SWCAA should replace "5 years" with "2 years" in order to be consistent with EPA guidance regarding restart of a source.

Paragraph (8): The last sentence states, "The Agency may specify an earlier date for commencement of construction in an air discharge permit." What does this provision mean?

Paragraph (10): This section is less stringent than Ecology's rules, and cannot be approved. The notice of construction rule cannot allow for the process to be bypassed for temporary, emergency, or substitution situations. These situations can be handled on a case-by-case enforcement

discretion approach. Although this is currently approved as part of the SWCAA SIP, it was done so at a time that WAC 173-400-110 applied statewide and all local rules were certified by Ecology as being at least as stringent as the WAC.

SWCAA 400-111 Requirements for Sources in a Maintenance Plan Area

Paragraph (1): In subsection (b), does SWCAA mean violation or exceedence?

Paragraph (7)(a): The last sentence is confusing in that it can be read to mean LAER is required for the maintenance pollutant(s) and the “major” pollutant(s) or it can be read to mean that LAER is required only if the source is major for the maintenance pollutant. Assuming SWCAA intended the latter, we recommend revising the sentence to read, “If the new source is a major stationary source of the maintenance pollutant or the proposed modification is a major modification for the maintenance pollutant, it must achieve LAER for the maintenance pollutant.”

Paragraph (7)(b): What is “sufficient demonstration” to allow reinstatement of growth allowance emissions? Should there be a reference to another subsection?

Paragraph (8)(d)(i): Is it that the “demonstration may require” or that “SWCAA may require that air quality modeling be conducted according to the procedures specified in 40 CFR Part 51, Appendix W” for the demonstration....”

Paragraph (8)(d)(ii): This offset provision lists all of the criteria pollutants plus the term “and other pollutants”, which is confusing because it suggests that more than the maintenance pollutant needs to be offset.

Paragraph (8)(d)(iii)(D): This link to PSD is unnecessary and may be misleading, since all major stationary sources and major modifications need to comply with WAC 173-400-141 (as stated in paragraph 9), not just those with CO emissions greater than 250 tpy. Therefore, we recommend revising the sentence to read, “New major stationary sources or major modifications with CO emissions greater than 250 tpy are required to obtain offsets.

Paragraph (8)(d)(iv): The sentence that states that “Sources of PM10 shall be offset with particulate in the same size range” is not necessary as there are no PM10 maintenance areas in SWCAA’s jurisdiction.

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas

Paragraph (5): SWCAA is missing the part of the WAC that states, “Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application).” This must be included in SWCAA’s rule. See CAA Section 173(a)(1)(A).

Paragraphs (8) and (10): Clarify that major modification and major stationary source are as defined in SWCAA 400-030 (58)(b) and (59)(b). This clarification is needed since the definitions that apply to SWCAA 400-112 are different.

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

Paragraph (3): Delete "or unclassifiable" in the first sentence. In the last sentence, it is unclear whether SWCAA intended to require that any source inside or outside a maintenance area meet the significant impact levels within the maintenance area. If this was the intention, the end of the sentence should read, ". . .has been designated nonattainment or maintenance." If this was not the intention, then "or maintenance plan" should be deleted.

SWCAA 400-114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source

EPA will send comments on this section in a separate letter.

SWCAA 400-115 Standards of Performance for New Sources

SWCAA has not adopted 40 CFR part 60, subpart A, the general provisions of the NSPS, by reference, as does the WAC (except for 60.4 and 60.5). The general provisions are essential to implementation of the NSPS standards and necessary for delegation of the NSPS standards. Also, the WAC states that the list of NSPS included in the regulation is provided for informational purposes only. This is a good idea in the event there is a conflict between the description in SWCAA's rules and the language in the CFR.

SWCAA 400-130, 131, and 136

EPA will send comments on these sections in a separate letter.

SWCAA 400-140 Protection of Ambient Air Increments

We believe this section should be included in the SIP. EPA will send specific comments on this section in a separate letter.

SWCAA 400-141 PSD

Paragraph (3): This paragraph is unclear in scope. Is the intent to require the facility to submit to SWCAA all reports required to be submitted under the PSD permit to Ecology (monitoring and recordkeeping isn't required to be submitted unless there is a reporting requirement) or is the intent to also require that the PSD source also submit copies of application information to SWCAA. If both types of information are intended, this section could read: "A source located within SWCAA's jurisdiction that is subject to WAC 173-400-141 shall submit to SWCAA copies of all documents required to be submitted to Ecology under WAC 173-400-141 or the PSD permit, including applications and reports of required monitoring."

Paragraph (4): We suggest the reference to the "PSD program" be replaced with "the requirements of WAC 173-400-141". In addition, if SWCCA is going to include this provision in its rules, its should be included in the SIP.

SWCAA 400-171 Public Involvement

Paragraph (1): The term express interest is ambiguous. We recommend SWCAA replace “express interest in” in the first sentence to “request an opportunity for public comment on any air discharge permit applications. . .”

Paragraph (1): Replace the last sentence in subsection (a) with, “The public may request an opportunity for public comment on any particular permit application or proposed action by submitting a request to SWCAA in writing via letter, fax, or electronic mail.”

Paragraph (1): Replace subsection (c)(v) with “The date by which the request for an opportunity for public comment is due; and”.

Paragraph (1): Revise the first sentence of subsection (d) to read, “Any application or proposed action for which a request for public notice has been received shall be given public notice . . .” The reference to “general public” is confusing. SWCAA is providing public comment if anyone requests it.

Paragraph (2)(a): We recommend adding “any change of conditions to permit issued under 110, 111, 112, and 113” to the list of actions needing public notice, which would make this consistent with SWCAA 400-110(9).

Paragraph (2)(b)(i): It is not clear what the purpose of this paragraph is.

Paragraph (2)(c): This paragraph is unapprovable as written because it does not have sufficient safeguards. EPA has proposed to approve a provision in Idaho that allows a source to commence construction (but not operation) prior to receipt of a construction permit under certain circumstances. That provision, however, has many more safeguards than the SWCAA provision. For example, the Idaho provision applies only to construction of certain non-major sources and non-major modifications. The Idaho provision also includes numerous requirements which are intended to limit its applicability to sources which have sufficiently demonstrated that they will be able to comply with all requirements and therefore will be able to receive a final permit to construct. These include more comprehensive and rigorous permit applications (including dispersion modeling meeting EPA’s Guideline for Air Quality Models) than would normally be required of minor sources and minor modifications; a requirement to hold a public meeting in the community; and written approval of the Department before it can commence construction on this provision. Importantly, the provision precludes any actual operation of the new or modified source before the final permit to construct is issued. Finally, the Idaho provision also makes it clear that if the permit is ultimately denied, the source has been in violation of the requirement to have a permit from the date that it actually commenced construction. We also note in our proposed approval that Idaho (unlike Washington) does not have a requirement for a case-by-case control technology determination (e.g., BACT) for new or modified minor sources, so the likelihood of equity in the ground arguments are significantly reduced.

Paragraph (2): We recommend combining paragraphs (d) and (e) which both deal with integrated review.

Paragraph (2)(e): SWCAA 400-171 should also be added as it covers applications for major stationary sources and major modifications in nonattainment areas.

Paragraph (3)(a): SWCAA's confidentiality regulation should be referenced in addition to RCW 70.94.205.

Paragraph (3)(b): In the second sentence, should the references be to (2)(a)(xi) and (2)(a)(xii)?

Paragraph (4): The first sentence should be revised to read, ". . . and any comments received during the public comment period have been considered."

Paragraph (7): SWCAA's confidentiality regulation should be referenced in addition to RCW 70.94.205.

SWCAA 400-230 Regulatory Actions & Civil Penalties

The list of orders identified in subsection (1) that may be issued by SWCAA is confusing because the various types of orders identified are often covered by other provisions of SWCAA's rules. Where there is an overlap, it is unclear whether the same or different procedures apply to the issuance of such orders under the authority of SWCAA 400-230(1) and such orders issued under the authorities of the other provisions of SWCAA's rules. SWCAA is apparently concerned that the authorities identified elsewhere in SWCAA's rules may not cover all situations that may come up and where issuance of an order may be appropriate. A better way to address this concern would be to replace the current text of subsection (1) with a single "catch all" along the lines of the following:

"(1) The Agency shall have the power to issue such orders and take such actions as are necessary to affect the purpose of RCW 70.94 and RCW 43.21B, including but not limited to: RCW 70.94.141, RCW 70.94.152, RCW 70.94.153, RCW 70.94.332 and RCW 43.21B.300. Issuance of an order for an action not specifically authorized elsewhere in this regulation shall be subject to the notice and public comment procedures set forth in SWCAA 400-171 [identify subsection (1) or (2) as desired]."

Our specific concerns with the types of orders identified in subsection (1) are as follows:

(a) Order of Approval: This paragraph simply duplicates information that is contained elsewhere in the rules. To the extent something in this provision is not contained in SWCAA 400-046 or 400-110, the information could easily be moved to SWCAA 400-046 and/or 400-110 (as appropriate). The statement, "An Order of Approval may not identify all applicable regulations,"

is confusing. Does it mean that the order is not allowed to identify all applicable regulations or that it does not need to identify all applicable regulations? If this concept is even needed, it is better located in the sections of the regulations dealing with such orders, SWCAA 400-046 and 400-110. The statement that "All Orders of Approval may be subject to the public notice and comment procedures set forth in SWCAA 400-171 is also confusing. Are they or aren't they? SWCAA 400-171 already addresses this issue.

(b) Order of Denial: The only information that is new here are the standards for when issuance of an order of denial is appropriate. That information would make more sense if it were included in SWCAA 400-046 and 400-110(4).

(c) Order of Violation: How is an Order of Violation different than a Notice of Violation? Is it the order or complaint that assesses a penalty? If it is just another document that identifies the alleged violations, it seems redundant with a Notice of Violation and unnecessary. If it is intended as the order or complaint that assesses a penalty, the name (Order of Violation) is misleading.

(d) Order of Prevention: This order could be accomplished as well by a compliance order issued under the authority of 400-230(6) (e.g, comply by stopping work until you get a permit authorizing construction). It is unclear whether the phrase "that may otherwise endanger public health" is a condition to issuance of an Order of Prevention. If so, SWCAA does not have necessary authority for an EPA approved new source review program. 40 CFR 51.160(b) requires that a state or local agency responsible for final decisionmaking on an application for approval to construct or modify have authority to prevent construction or modification if it will violate the SIP or interfere with attainment or maintenance of the NAAQS, regardless of whether the construction or modification will endanger public health. If SWCAA's concern is that the authority to issue a stop work order is unclear, SWCAA could add a provision to the end of the first sentence of SWCAA 400-230(6)(Compliance Orders) along the lines of the following: "including, but not limited to, an order to prevent the construction or modification of a source that does not conform to the requirements of this SWCAA 400."

(e) Consent Order: The purpose of this provision is unclear. Is it intended to apply only when a source is out of compliance or is it broader than that? Is it intended to make clear that SWCAA can agree to settle penalty actions? How is such a Consent Order different from an Assurance of Discontinuance under SWCAA 400-230(3)? The authority in this provision is so broad that it would seem to allow SWCAA and a facility to agree to any requirements, regardless of the substantive provisions of SWCAA 400. Although the provision does attempt to ensure that this provision not trump the requirements of SWCAA 110, there is no assurance that the requirements of SWCAA 400-046 and 400-090 be followed. The last sentence could take an action outside of the public involvement requirements if the owner and SWCAA agree to the needed action and the Control Officer decides in his discretion not to require public involvement, even though SWCAA 400-171 might require public process. Air quality control requirements can not be established merely upon the consent of SWCAA and the facility owner. The specific

purpose sought to be addressed by this provision should be identified and then, if needed, a more narrowly tailored provision drafted.

(f) Compliance Schedule Order: How is this provision different than a compliance schedule issued under SWCAA 400-161 or 400-230(6)? Although this section does reference 400-161, it is confusing and not necessary to reiterate some (but not all) of the requirements of that provision here.

(g) Order of Discontinuance: To the extent this provision discusses authority in the case where a source has discontinued operations or not maintained registration, this provision does appear to provide SWCAA authority that is not specifically set forth elsewhere in the rules. It would be better included as a separate section of the rules. To the extent that this provision addresses sources that operate in violation of applicable regulations and requirements, this provision overlaps with authority in 400-230(4) and (6). It might be best to have a procedure for revocation of existing orders based on discontinuance of operations, failure to pay fees, and continued operation in violation of requirements, rather than an order of discontinuance.

(h) Corrective Action Order: This authority overlaps with authority already provided in 400-230(4) and (6), especially when those authorities are used in connection with the requirement of SWCAA 400-040(5)(emissions detrimental to health, welfare or property).

(i) Administrative Orders: A catch all would be best addressed as recommended above.

In subparagraph (2)(a), the last sentence is confusing to the extent it does not identify which of the regulatory orders in subparagraph (1) constitute "enforcement action." Also, that reference ignores the fact that subparagraphs (3), (4), and (6) of SWCAA 400-230 also constitute enforcement actions.

Subparagraph (2) will not be incorporated by reference, but it should be submitted as part of the SIP and will be considered as part of the basis for EPA's determination that SWCAA has adequate enforcement authority.

SWCAA 400-240 Criminal Penalties

Although this criminal authority provision will not be incorporated by reference, if it is on SWCAA's books, it should be submitted as part of the SIP and will be considered as part of the basis for EPA's determination that SWCAA has adequate enforcement authority.

SWCAA 400-250 Appeals

As an initial matter, we question whether SWCAA has authority as a matter of state law to have an appeal procedure separate from the appeal procedure to the PCHB that is clearly authorized by State law. This is especially true in the case of title V permits. RCW 70.94.161(8) states that the procedures contained in chapter 43.21B shall apply to appeals of title V permits. It also seems unnecessary. The fact that the appeal process is exclusively to the PCHB does not prevent

SWCAA from working with the permittee to settle the appeal during the appeal process. We discussed this issue with Laurie Halvorson, PSCAA's in-house attorney, and she said that PSCAA does not have any formal within agency appeal procedures and she does not think they are advisable, but that PSCAA does routinely work informally with appellants to settle appeals during the formal appeal process.

In any event, this appeal provisions must make clear that reversal or modification of any order must meet the procedural and substantive requirements of the relevant rules. Subsections (1)(b) and (2) suggest the decision, notice or order can be reversed or modified even if the underlying decision, notice or order was subject to public involvement requirements. A few more minor points:

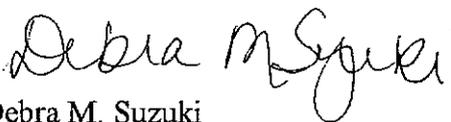
- (a) The words used to describe what the rule applies to are used inconsistently throughout the rule ("decision, permit, order" in subparagraph (1); "decision, Notice of violation or Order" in subparagraph (1)(a); "Order" throughout the rest of the provision).
- (b) In subparagraph (1)(a), the rule should make clear that the petition must be in writing.
- (c) In subparagraph (3) and (4), there is no RCW 43.21B.120.

SWCAA 400-270 Confidentiality of Records and Information

Again, we question whether SWCAA has authority to change or add to state law requirements for public access to information or a source's ability to claim information as confidential. In addition, subparagraph (2) references the Freedom of Information Act. There is a federal Freedom of Information Act that governs the release of information held by federal agencies to the public. Is the state law governing the release of information to the public also called the Freedom of Information Act? Only state law governs documents held by SWCAA. In subparagraph (3), there seem to be some words missing; the sentence, which is drawn from RCW 70.94.205, does not make sense as written. RCW 70.94.205 governs the release and withholding of information held by all permitting authorities in Washington. It is doubtful that SWCAA could have provisions that allowed for the release of more or the withholding of less information to the public than authorized by RCW 70.94.205 and other relevant provisions of State law. With respect to the references to the federal law in subparagraph (3), State law, not federal law, governs the release and withholding of information from the public.

Thank you for the opportunity to comment, and again thank you for your efforts in your rulemaking. Please give me a call at (206)553-0985 at your earliest convenience once you have had a chance to go over our comments.

Sincerely,



Debra M. Suzuki
Environmental Engineer
Office of Air Quality

cc: Elena Guilfoil