

# Chapter 173-400 WAC Rule Revision Committee

## April 15, 2009 meeting notes

### 1) Getting started (Sarah Rees):

#### **A. Welcome:**

Sarah Rees: Meetings and topics will be pre-scheduled and pre-determined

#### **B. Introductions:**

#### **C. Ground Rules for the rule-making process:**

Sarah Rees: Trying to keep some shape to the rulemaking. Define objectives. Outlining the scope today. Finite timeline – end stakeholder participation by end of year. Materials and meeting notes will be provided at least a week before the meeting at which they will be discussed. Ecology values the input of the stakeholders. The stakeholder input makes it a better rule in the end. This rulemaking is not a consensus process. Come prepared to discuss the materials that have been sent to you via e-mail.

Questions/Comments:

Heather Trim (People for Puget Sound): Would like to have adequate meeting notes (identify the people who speak by full name) and have the notes approved by the group.

Sarah Rees (Ecology): The meeting notes will not be submitted to the group for approval as they are not minutes, but rather a summary. We will try to provide some webinars so that people can participate without having to travel.

#### **D. Ecology Objectives and Stakeholder suggestions for the revised rule:**

Sarah reviewed the objectives for rulemaking by going over the handout titled “Chapter 173-400 WAC General Regulations for Air Pollution Sources – Objectives for rule making 2009”.

The objectives on the handout are not an exclusive list – Ecology is open to ideas.

Sarah did not go over the general housekeeping that is described on pages 2-4 of the handout but asked if anyone had questions.

Q: Matt Cohen (Stoel Rives): When was the CR101 filed?

A: Tom Todd (Ecology): The CR101 was filed in February.

Q: Tom Beam (Fluor Hanford): Is Ecology willing to revise the CR101 if some new ideas are brought up during the advisory committee process?

A: Sarah Rees (Ecology): Ecology is willing to consider resubmitting the CR101 if new good ideas come up.

Tom Beam (Fluor Hanford): Provide a definitive position when an issue is deferred.

Linda Whitcher (Ecology): The explanatory statement for 460 will come out in the next few weeks.

Tom Todd (Ecology): The explanatory statement for 460 is a response to every comment that was submitted.

Beth Hodgson (Spring Environmental): Provide a technical background document that explains our reasoning for the 400 rule revisions as well as the 460 revisions.

## **2) Discussion: WAC 173-400-107 Excess Emissions (Tom Todd):**

Concepts – what are the varying perspectives? Tom explained EPA's SIP issue and we will discuss concerns.

Tom used a Power Point presentation. Tom's slides are provided as an attachment to these notes.

EPA guidance says that certain criteria must be followed in order to get an affirmative defense. EPA believes that not be infringes upon. Not specific enough in pointing that out.

Q: Steve Van Slyke (PSCAA): Are the issues outlined by EPA in the document?

Tom Todd (Ecology): EPA responded to Ecology's concise explanatory statement and in it are the issues that we will deal with in this rulemaking (this has been an issue since 1999). The document that tells us what to do is a guidance document and guidance is not rule.

CR102 working behind the scenes to come to an agreement (Nov-Dec 2004- a copy is included in the binder)

1999 memo (back of binder)

Questions/Comments:

Sarah Rees (Ecology): Bottom line: It is not clear who has the affirmative defense and how it can be used.

Q: Ken Johnson (Weyerhaeuser): Does the document reflect the guidance or has it been expanded?

A: Tom Todd: The draft I passed out (on the web site for this rule making) reflects many but not all of the changes that EPA has asked for.

Q: Heather Trim (People for Puget Sound): What is the process for review?

Matt Cohen (Stoel Rives): Requested 5-10 minutes to discuss the opinion of the regulated community that he is representing. In many rulemakings the goal is pretty circumscribed. In this case the regulated community has a very strong opinion that there is no need to change the rule.

Matt read from the CFR. Ecology on 09/01/1992. EPA was represented on the advisory committee. Dave Bray was also on the committee. Took m\_09/92. In October 1992 Dave Bray provided comments on a lot of the rule but made only one comment on excess emissions in 107.

EPA approved the SIP on June 02, 1995. Since that time that rule has been implemented by the agencies authorized by the rule. My impression is that the criteria have been applied carefully and there has been no abuse.

In 1999 the Steve Herman guidance was published. EPA has watched with some concern. EPA reaffirmed the guidance that was provided to WA. The Herman guidance lays out some additional hoops. It acknowledges that there is affirmative defense that is binding. The criteria is binding the rule language is not.

Settlement filed in June 2001 - EPA said that it did not change the excess emission policy, but allowed that currently approved SIPs can stand.  
December 5, 2001 "Reissuance of Clarification – State Implementation Plans (SIPs): Policy regarding Excess Emissions During Malfunctions, Startup and Shutdown."

Matt's Bottom line: There is nothing wrong with 107. It would be nice if the applicability would not interfere with NSPS. Fear that revisions would incorporate the Herman Guidance. Matt said that he will provide copies of the documents that he used for his discussion.

Questions for Matt:

Q: Tom Beam (Fluor Hanford): Is it appropriate for Dan Brown to comment on Matt's comments?

C: Dan Brown (EPA, Region 10): EPA has not done an official SIP call. Dan said that there are some rules that were written that would not be today. EPA is looking for consistency. It's a very hot topic. It's all about leveling the playing field. First and foremost is to protect the NAAQS. Affirmative defense but not injunctive relief.

Q: Ken Johnson (Weyerhaeuser): What are the problems with 107?.

A: Mark Goodin (ORCAA): Hasn't really presented problems but for example for those excess emissions that you consider violations. What do you do at the end of

the year for the FCE determination – is it intermittent compliance. What happens when you get the reports submitted during the year when you excused the exceedance

A: Steve Van Slyke (PSCAA): PSCAA doesn't get many of these notifications. Many times the explanations do not meet the burden. NOVs are issued without a follow-up penalty.

Q: Pete Hildebrandt (WSPA/Alcoa): Is there any indication of an impact to public health or the environment related to the current rule – is this rule broken?

Q: Beth Hodgson (Spring Environmental): Have excess emissions caused any exceedances of the NAAQS?

C: Mark Buford (NWCAA): NWCAA does not follow-up like other local air agencies or Ecology does. He said that NWCAA gets a lot of excess emissions reports. He would appreciate some guidance. He asked what specifically in the Hermann guidance is Matt concerned about.

C: Matt Cohen (Stoel Rives): He does not have issues with the Hermann guidance but feels that EPA has gone way too far in changing the Herman guidance. Matt said that NWCAA is one of the local air agencies that he was referring to earlier when he said that his impression is that the criteria has been applied carefully and there has been no abuse.

C: Beth Hodgson (Spring Environmental): She deals mostly with the east side local air agencies. When Spring Environmental is working with their clients on compliance certifications, they use a checklist that reflects the criteria in the 107 rule. The excess emissions that were reported are reported as violations and called deviations on the annual certification.

C: Dan Brown (EPA, Region 10): Use the guidance to get consistent application of the rule.

C: Heather Trim (People for Puget Sound): Asked Matt to use good examples not the poor ones.

C: Beth Hodgson (Spring Environmental): Older facilities have been allowed the excess emissions.

C: Lucinda Penn (WRPS Tank Farms Hanford): If they have met all of the requirements they would not be penalized. In the certification it would be described as intermittent. She does not see a need to change it.

C: Ken Johnson (Weyerhaeuser): He spent time looking at Longview Pulp and Paper –many opportunities for excess emissions because of the CEMs. They

reported 8 excess emissions. One of them was for a unit that has an ESP that needs to heat up. Another example was plugged in a scrubber. These small excess emissions do not impact the environment.

They do not get a response from the regulator so they don't know if they are excused. Another issue is the confusion with NSPS.

C: Clint Lamoreaux (SWCAA): There are times when there is a parameter violation in the permit that is not covered by the excess emissions rule.

C: Doug Hendrickson(Ecology-Nuclear Waste Program): Use these conditions as surrogates.

Q: Dan Brown (EPA, Region 10): He asked Ken if they go back and look at these recurrent violations to try to fix them. They have looked at some but not many.

C: Dan Brown: EPA feels that the facility and the regulator may need to change the limits and that will avoid the excess emissions.

C: Lynette Haller (Ecology-ERO): They have never had an unavoidable that has risen to a major violation. Reoccurring exceedances –they don't send in continuing reports. Small facilities usually don't know about the rule and don't report.

C: Greg Flibbert: Not a problem.

C: Steve Van Slyke (PSCAA): Not a problem.

C: Tom Todd (Ecology): The experience from the locals is that the rule works the way we hoped it would.

C: Lynette Haller (Ecology-ERO): May need some clarification about what excused means.

C: Tom Todd (Ecology): Clarify the connection between this rule, the NSPS, and the MACT.

C: Sarah Rees (Ecology): Clarity from Ecology.

C: Heather Trim (People for Puget Sound): The public may have comments on the excess emissions and they are not represented here.

C: Steve Van Slyke (PSCAA): People implement the rule differently and that has nothing to do with the rule.

C: Matt Cohen (Stoel Rives): Aluminum smelters – you don't want to ever shut down the pots. You do have to shut down the controls occasionally for maintenance and when you do there will be excess emissions.

C: Dan Brown (EPA, Region 10): You probably wouldn't get an argument from EPA. He thinks that for recurrent excess emissions the facility should look at it, try to determine what the problem is, and work with the regulator to change the limit if necessary.

C: Matt Cohen (Stoel Rives): The startup shutdown provisions were written for these recurrent excess emissions. Startup exceedances.

Q: Heather Trim (People for Puget Sound): Asked for the Herman letter – she was told that it is provided in the folder.

Q: Greg Flibbert (Ecology-ERO): Do we have the most current information from EPA so that we are not trying to work with a moving target.

C: Chuck Studer (Spokane Regional Clean Air Agency): You may want to look at Spokane's rule.

C: Steve Van Slyke (PSCAA): We use the use 107

C: Beth Hodgson (Spring Environmental): Some other states provide a form that the facilities must complete.

Tom and Sarah: Ecology will put all of the documents that have been discussed today on the webpage.

### 3) Clear communication (Dan Brown-EPA): Several "small" SIP deficiencies. What are EPA's concerns?

C: Dan Brown (EPA, Region 10): He works in the SIP Planning section. Review them to determine if they can be approved and put into the Code of Federal Regs. They are striving for consistency among all of the states. The only thing that is official from EPA is in writing. NRDC and Sierra Club pay close attention to federal rulings and provide comments and challenge them sometimes. Dan will send the comment letter to Linda and she will distribute. Director's discretion: Does this rule meet EPA's standards – they are not likely to approve "Director's Discretion". In 1992 EPA did not approve "Director's discretion".

C: Chuck Studer (Spokane Regional Clean Air Agency): The Director's discretion would not allow them to exempt a category of sources. Example: directors were being paid on the side to exempt a category of sources.

C: Dan Brown (EPA, Region 10): Must ensure that the director's discretion does not change the meaning of the rule.

C: Chuck Studer (Spokane Regional Clean Air Agency): Spokane added a source category to their rule using the director's discretion.

C: Tom Todd (Ecology): EPA feels that Paragraph 3 in the combustion and incineration rule is not

C: Dan Brown (EPA, Region 10): He said he hadn't heard this before and asked it is ever used.

C: Matt Cohen (Stoel Rives): It is used all the time. He understands that % O2 correction is to avoid dilution of the sample. The % O2 level will vary depending on the combustion unit. If you say that the agency lacks the discretion to change the alternate number than you are going to distort the results for a properly operated unit. The purpose of the 7% is the default that works for a lot of combustion unit but not for all.

C: Chuck Studer (Spokane Regional Clean Air Agency): For example when a low NOx burner is 3% O2.

C: Dan Brown (EPA, Region 10): He understands that the % of O2 is related to the limit. He understands that you must have a correction factor because emission units don't have a consistent % of O2.

Q: Matt Cohen (Stoel Rives): What % O2 does EPA want?

C: Matt Cohen (Stoel Rives): Generically when you are going to have federal rules the state and local regulators must have "discretion". Ecology needs to preserve the kind of discretion that is necessary when you have a situation like having to change the %O2.

Q: Pete Hildebrandt (WSPA/Alcoa): What if we take out the 7% and just say that pertains to the proper operation of the unit?

Dan Brown: Corrected to the %O2 that is connected to the emission limit.

C: Chuck Studer (Spokane Regional Clean Air Agency): He would like to see it changed to the %O2 that relates to the proper operation of the respective emission units.

WAC 173-400-035 Temporary Sources and nonroad engine sources (Linda Whitcher): Review and comment on the draft rule language

Linda Whitcher:  
Clarify what these sources are.

Non-road:

- Front end loader
- Diesel generator
- Can not apply BACT

- Not subject to NSR
- < one year on location
- Cannot require emission controls
- Well driller
- Engines that power pumps

Portable stationary source:

- New Source review – initial review is subject to BACT
- Asphalt plant
- Rock crusher
- Concrete batch plant
- General orders-30 day review
- Combine w/110 and 460
- Full-faith and credit across jurisdictions – need to accommodate attainment vs. Non-attainment.
- 10 day warning to move
- 15 day notice to move (ORCAA)
- NAAQS

Temporary source:

- An unplanned emergency location
- Package boiler
- Limited duration
- No permit required
- NAAQS apply
- BACT does not apply
- <30 days on location (Spokane)
- <1 year on location

C: Llewellyn Mathews (Northwest Pulp and Paper Association): The type of source has to do with the owner's intent.

C: Mark Gooden (ORCAA): OAPCA requires temporary sources to go through NSR with a BACT determination. If they come back they must submit a notice of intent.

Q: Rich Hibbard (Ecology): Does it make sense to separate the definitions?

Q: Heather Trim (People for Puget Sound): What is PSD?

A: Rich Hibbard (Ecology): Described Prevention of Significant Deterioration.

C: Chuck Studer (Spokane Regional Clean Air Agency): Portable source. A temporary source does not have to get a permit. Spokane's rule considers a source temporary if it is less than 30 days.

C: Matt Cohen (Stoel Rives): You must define the sources so that they can't come back later.

C: Rich Hibbard (Ecology): Must define so that they don't circumvent NSR when it needs to go through NSR.

C: Chuck Studer (Spokane Regional Clean Air Agency): EPA approved Spokane's definitions. Chuck will send the rule to Linda and she will distribute it to us.

C: Beth Hodgson (Spring Environmental): What are we doing with non-road engines?

C: Matt Cohen (Stoel Rives): BACT determinations are preempted for nonroad engines

C: Chuck Studer (Spokane Regional Clean Air Agency): They have drafted a rule.

C: Chuck Studer (Spokane Regional Clean Air Agency): SWCAA has written a non-road rule that Spokane will be using in their rule

C: Greg Flibbert (Ecology-ERO): Lynette has a good vision for this. They permit these sources on a case-by-case basis.

C: Lynette Haller (Ecology-CRO): CRO is starting to do NSR on portable stationary sources. It makes sense to separate the temporary sources.

C: Matt Cohen (Stoel Rives): 035 is for stationary sources. Non-road engines are not stationary sources. You must have limits that don't allow the facility to exceed the NQAAQS. If BACT is done once use that BACT determination for the other sources that are the same.

C/Q: Greg Flibbert (Ecology-ERO): CRO splits up the NSR fees based on tons of emissions. How do you deal with a crusher that has a generator? CRO counts the emissions but does not regulate the non-road engines.

C: Mark Goodin (ORCAA): Copied SW's rule. The source goes through NSR (BACT) once. They don't revisit the BACT. They do apply conditions to ensure that the source does not exceed the NAAQS.

C: Rich Hibbard (Ecology): Temporary and Portable – they should be separate and have different requirements to get transparency to understand what we are looking for and what they need to do. We set it up so that NSR is done once – “NSR in the state of WA is NSR in the state of WA”. We would have to set up a definition of BACT. Make the rule tight enough so that it is usable in all of the jurisdictions.

C: Frank Holmes (WSPA): Look at the CA portable equipment rule.

C: Greg Flibbert (Ecology-ERO): (Ecology-ERO): We would need to go through rulemaking to do what CA did with its portable equipment rule, however it would be very difficult.

Q: Linda Whitcher (Ecology): What is the best permitting time scenario?

C: Beth Hodgson (Spring Environmental): They do 15 days.

Q: Rich Hibbard (Ecology): What should a temporary permit process look like?

C: Chuck Studer (Spokane Regional Clean Air Agency): SEPA is triggered with any action.

C: Mark Goodin (ORCAA): Temporary sources that can't ever be an NSPS source. Our hands are tied with non-road. And not tied with temporary sources.

C: Chuck Studer (Spokane Regional Clean Air Agency): Look at SWCAA 046 and 045.

4) Next steps/Focus for meeting #2 (Linda Whitcher):  
May 21 -Meeting at SeaTac  
Topic: WAC 173-400-110 NSR

C: Sarah Rees: Ecology will send the notes and handouts and other promised documents to everyone. Also will send a "doodle-poll" to determine a date for the June meeting.

C: Matt Cohen (Stoel Rives): Don't finalize the language immediately - allow the stakeholders to review and comment on the language.