

**WAC 173-401-300 Applicability.** (1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

(a) Any source required by the FCAA to have an operating permit. These include the following sources:

(i) Any major source as defined in WAC 173-401-200.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the FCAA. A small municipal waste combustion unit constructed on or before August 30, 1999, and regulated under WAC 173-400-050(5) becomes subject to this chapter on July 1, 2002.

(iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) (Prevention of Accidental Releases) of the FCAA.

(iv) Any solid waste incineration units required to obtain permits under section 129 of the FCAA.

A commercial and industrial solid waste incineration unit constructed on or before November 30, 1999, and regulated under WAC 173-400-050(4) becomes subject to this chapter on July 1, 2002.

(v) Any "affected source" regulated under Title IV (Acid Deposition Control) of the FCAA.

(vi) Any source in a source category designated by the EPA pursuant to 40 C.F.R. Part 70, as amended through April 7, 1993.

(b) Any source that the permitting authority determines may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare under RCW 70.94.161(4) using the procedures in subsection (5) of this section.

(c) Any other source which chooses to apply for a permit.

(d) A municipal solid waste landfill constructed, reconstructed or modified before May 30, 1991, and regulated under WAC 173-400-070(9) becomes subject to this chapter on September 20, 2001.

Note: Under 40 C.F.R. 62.14352(e) (in effect on July 1, 2000), an affected landfill must have submitted its chapter 401 application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), an affected source may not operate if it has not submitted a timely and complete application.

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that: The administrator completes a rule making to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operating permits and ecology completes a rule making to adopt EPA's revised applicability criteria.

(b) Subsection (2)(a) of this section shall not apply to nonmajor sources subject to a standard or other requirement established under either section 111 or section 112 of the FCAA after July 21, 1992, if, during those rule makings, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt EPA's applicability criteria.

(c) Any source listed in (a) of this subsection exempt from the requirement to obtain a permit under this section may opt to apply for a permit under this chapter.

(d) The following source categories are exempt from the obligation to obtain permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

(3) Emissions units and chapter 401 sources.

(a) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any nonmajor source, the permitting authority shall include in the permit all applicable requirements applicable to the emission units that cause the source to be subject to this chapter.

(4) Fugitive emissions. Fugitive emissions from a chapter 401 source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(5) Process for determining threat to public health or welfare. The following criteria shall be used to identify sources that are covered pursuant to subsection (1)(b) of this section:

(a) The source may cause or contribute to air pollution in such quantity as to create a violation of any ambient air quality standard as demonstrated by a dispersion modeling analysis performed in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods; or

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

(c) Small business stationary sources otherwise covered under (a) and (b) of this subsection are exempt except when all of the following requirements are satisfied:

(i) The source is in an area that currently exceeds or has been projected by ecology to exceed within five years any federal or state air quality standard. Prior to determining that any area threatens to exceed a standard, ecology shall hold a public hearing or hearings within the threatened area.

(ii) Ecology provides justification that requiring a source to have a permit is necessary to meet or to prevent exceeding a federal or state air quality standard.

(6) Permitting authorities shall develop and maintain a list of names of chapter 401 sources within their jurisdictions. This list shall be made available to the public. A chapter 401 source inadvertently omitted from this list is not exempted from the requirement to obtain a permit under this chapter.

(7) Legally and practicably enforceable limits. Any source which is defined as a chapter 401 source solely because its potential to emit exceeds the annual tonnage thresholds defined in WAC 173-401-200 shall be exempt from the requirement to obtain an operating permit when legally and practicably enforceable conditions which limit that source's potential to emit to levels below the relevant tonnage thresholds have been established for that source.

(a) In applying for an exemption under this subsection, the owner or operator of the source shall demonstrate to the permitting authority that the source's potential to emit, taking into account any legally and practicably enforceable restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200. Such demonstrations shall be in accordance with WAC 173-401-520 and shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to support the source's emission calculations.

(b) Permitting authorities may use the following approaches to establish legally and practicably enforceable limitations:

(i) Regulatory orders. At the request of the owner or operator of a source, the permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC 173-400-091.

(ii) Notice of construction approvals. The permitting authority may establish source-specific conditions in a notice of construction approval issued pursuant to state or local regulations; or

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW 70.94.161(11).

(c) A source receiving a legally and practicably enforceable limit on its potential to emit shall annually certify that its potential to emit is less than that which would require the source to obtain an operating permit. Such certifications shall contain the information specified in (a) of this subsection.

(d) Notice of issuance of any order or permit which limits a source's potential to emit shall be published in the permit register pursuant to WAC 173-401-805 (2)(e).

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-300, filed 2/3/16, effective 3/5/16. Statutory Authority: RCW 70.94.161(2). WSR 02-19-078 (Order 02-02), § 173-401-300, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-401-300, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-300, filed 10/4/93, effective 11/4/93.]