

ARTICLE V

NEW, MODIFIED, AND TEMPORARY STATIONARY SOURCES AND REPLACEMENT OR ALTERATION OF EMISSIONS CONTROL EQUIPMENT

ADOPTED: June 9, 1969

REVISED: May 3, 2007

EFFECTIVE: June 3, 2007

SECTION 5.01 DEFINITIONS (RESERVED)

SECTION 5.02 NOTICE OF CONSTRUCTION (NOC) – WHEN REQUIRED

- A. A Notice of Construction application must be filed by the owner or operator and an order of approval issued by the permitting agency prior to the establishment of any new source or source categories. For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in Article I, Section 1.04, and "new source" shall include any modification to an existing stationary source or source category, as defined in Article I, Section 1.04. Stationary sources or source categories subject to this Section include, but are not limited to, the following:
1. Stationary sources or source categories listed in Exhibit "R" of Article IV of this Regulation, except for those that are below emission thresholds listed therein or are exempted as provided in Section 5.02.P. of this Regulation; or
 2. Any modification to an existing stationary source or source category which results in an increase in actual emissions, except for stationary sources or source categories with actual emission increases below emission thresholds listed in Exhibit "R" of Article IV of this Regulation; or
 3. Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the Authority prior to establishment of any of the stationary sources listed in Items 7 and 8 of Article IV, Exhibit "R"; or

4.
 - a. Establishment of a new major stationary source or source category;
 - b. Major modifications to an existing stationary source or source category;
 - c. Establishment of a new major temporary stationary source or source category;
 - d. Major modification of a temporary stationary source or source category that is located at an existing stationary source or source category; or
 5. Any modifications that require an increase either in a facility-wide emission limitation or a unit specific emission limit; or
 6. Replacement of existing emissions unit(s) with new or used emissions unit(s); or
 7. Restart of a stationary source or source category after “closure or shutdown”, as defined in Article I, Section 1.04;
 8. Relocation of an existing stationary source or source category, except as provided for in Section 5.02.H and as specified in Section 5.02.I; or
 9. Location for the first time of a portable, (or temporary, if applicable) stationary source or source category operates in Spokane County.
 10. Determination by the Authority that a Notice of Construction application is necessary in order to reduce the potential impact from any stationary source or source category’s air emissions on: the health, safety, and/or welfare of the public, or unreasonable interference with any other property owner’s use and enjoyment of his property, or damage to other property owner’s property or business.
- B. Stationary sources or source categories not subject to Section 5.02.A include those stationary sources or source categories listed in Sections 5.02.H, 5.02.I, 5.02.M and 5.02.N.1 of this Article.
- C. The owner, operator, or their agent shall use Authority prepared and furnished application and information request forms when applying for a *Notice of Construction and Application for Approval*.
- D. New source review of a modification shall be limited to the emissions unit or units proposed to be added to an existing or modified stationary source or source category and the air contaminants whose actual emissions would increase as a result of the modification. NOTE: Modification, as defined in Article I, Section

1.04 of this Regulation, does not have the same meaning as a Major Modification, defined in WAC 173-400-112 and WAC 173-400-113.

- E. New stationary sources' or source categories' emission calculations shall be based on a stationary source or source categories' "potential-to-emit", as defined in Article I, Section 1.04 of this Regulation. Modified stationary source or source category emission calculations shall be based on the increase in "actual emissions", as defined in Article I Section 1.04 of this Regulation.
- F. The Authority implements and enforces the requirements of WAC 173-400-114 for replacement or substantial alteration of emission control technology at an existing stationary source.
- G. A separate *Notice of Construction and Application for Approval* shall be filed for each new or modified stationary source, source category, or emissions control system, unless identical units are to be constructed, installed, or established and operated in an identical manner at the same facility, except that the owner or operator has the option to file one application for an entire facility, with a detailed inventory of stationary sources or source categories and their emissions related to that facility.
- H. A *Notice of Construction and Application for Approval* is not required for construction, installation, establishment, modification, or alteration of stationary sources or source categories, comprised of equipment utilized exclusively in connection with any structure, which is designed for, and used exclusively as, a residence with not more than four dwelling units.
- I. A *Notice of Construction and Application for Approval* is required for portable, (or temporary, if applicable) stationary sources or source categories, operating in accordance with Section 5.08 - the first time that it operates in Spokane County. Thereafter, each time that the portable or temporary stationary source or source category relocates and operates at a new site in Spokane County, it must apply for and obtain an approved *Notice of Intent to Install and Operate a Temporary Stationary Source* pursuant to Section 5.08.
- J. A person seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment, required under RCW 70.94.161, and the *Notice of Construction and Application for Approval* required by this Article. A *Notice of Construction and Application for Approval* designated for integrated review shall be processed in accordance with the provisions in Chapter 173-401 WAC.
- K. A *Notice of Construction and Application for Approval* for a major modification in a nonattainment area, or for a major stationary source in a nonattainment area, is subject to the public notice requirements of Section 5.05.

- L. An applicant filing a *Notice of Construction and Application for Approval* for a project described in WAC 173-400-117(2) (Special protection requirements for Class I areas) must send a copy of the application to the responsible federal land manager.
- M. De minimis emission levels (based on Potential-To-Emit), below which a new source or stationary source category, is not subject to a *Notice of Construction and Application for Approval*, are listed in Exhibit “R” of Article IV of this Regulation. De minimis emission levels (based on actual emissions increase), below which a modification of an existing stationary source or source category, is not subject to a *Notice of Construction and Application for Approval*, are listed in Exhibit “R” of Article IV of this Regulation. The owner or operator shall maintain sufficient documentation, as required by the Authority, to verify that the new or existing stationary source or source category is entitled to continued exemption under this section.
- N. Transfer of Ownership
 - 1. If an existing stationary source or stationary source category, with a valid Order of Approval, is transferred to new ownership per Article IV, Section 4.02.D and the stationary source category or stationary source category is unchanged by the transfer, then the existing Order of Approval is transferable to the new ownership, as written.
 - 2. An existing Order of Approval is not transferable to a stationary source or stationary source category that is installed or established at a site where a stationary source category or stationary source category was previously located and the business nature of the new source is different from the previous stationary source.
 - 3. In either of the above cases, if the stationary source or stationary source category did not have a valid Order of Approval under the prior ownership, then the owner or operator of the new source or stationary source category shall apply for, and receive approval of, a Notice of Construction prior to commencing operation.
- O. Except where Ecology is the permitting agency pursuant to WAC 173-400-141 (PSD) or Ecology’s Industrial Sector has retained specific air pollution stationary sources or source categories exclusively under their jurisdiction, pursuant to RCW 70.94.422, the Authority permits, implements and enforces WAC 173-400-112 (Requirements for new sources in nonattainment areas) and WAC 173-400-113 (Requirements for new sources in attainment areas), in Spokane County.
- P. The following new sources are exempt from the requirement to file a *Notice of Construction and Application for Approval*, provided that the source has

registered with the Authority (as required per Regulation I, Article IV) prior to placing the source in operation:

1. Batch coffee roasters with a maximum rated capacity of 10 lbs. per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

SECTION 5.03 NOC AND NOI FEES

- A. The person filing a *Notice of Construction* or *Notice of Intent to Install and Operate a Temporary Stationary Source* application shall pay a filing fee and plan review and approval fee according to Article X, Section 10.7 of this Regulation.
- B. Fees shall be paid without regard to whether a *Notice of Construction* or *Notice of Intent to Install and Operate a Temporary Stationary Source* application is approved or denied, or a threshold determination is made.

SECTION 5.04 INFORMATION REQUIRED

- A. Each *Notice of Construction and Application for Approval* or *Notice of Intent to Install and Operate a Temporary Stationary Source* shall be accompanied by appropriate documentation that provides a detailed description of the stationary source. Such information shall include, but is not limited to:
 1. The new or modified stationary source, equipment and emissions control equipment subject to the order of approval or permission to operate;
 2. Any equipment connected to, serving, or served by the new or modified stationary source, equipment, and emissions control equipment subject to the order of approval or permission to operate;
 3. A plot plan, including the distance to, length, width, and height of; buildings within 200 feet, or other distance specified by the Authority, from the place where the new or modified stationary source is or will be installed;
 4. The proposed means for the prevention or control of the emissions of air contaminants;
 5. Estimated emissions resulting from the proposal and the basis for the estimates, or sufficient information for the Authority to determine the expected emissions;
 6. Any additional information required by the Authority to show that the proposed new or modified stationary source will meet the applicable air quality requirements of Chapter 70.94 RCW the rules and regulations adopted thereunder, and the Authority's regulation(s);

7. Any additional information required under WAC 173-400-112 or WAC 173-400-113;
 8.
 - a. The owner or operator shall provide documentation that the requirements of Article XI of this Regulation (Spokane Environmental Ordinance) have been met.
 - b. If the Authority is the lead agency for review of an Environmental Checklist (SEPA) or Environmental Impact Statement (EIS) related to the Notice of Construction or *Notice of Intent to Install and Operate a Temporary Stationary Source* application being submitted, then the person filing the SEPA shall pay a SEPA review fee according to Article X, Section 10.07.E. of this Regulation. This fee shall be paid without regard to whether a Determination of Nonsignificance, Mitigated Determination of Nonsignificance or Determination of Significance is issued.
- B. Each *Notice of Construction* or *Notice of Intent to Install and Operate a Temporary Stationary Source application* shall be signed by the owner, operator, or their agent of the new or modified stationary source.

SECTION 5.05 PUBLIC INVOLVEMENT

- A. Public Notice.
1. Notice shall be published on the Authority's Internet website announcing the receipt of Notice of Construction applications (including the first time that a portable stationary source (or temporary stationary source, if applicable) operates in Spokane County) and other proposed actions. Notice shall be published for a minimum of fifteen (15) consecutive days. Publication of a notice on the Authority's website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to Subsection B. of this Section. In the event that publication on the Authority's Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. Each notice shall, at a minimum, include the following information:
 - a. The name and address of the owner or operator and the affected facility;
 - b. A brief description of the proposed action;
 - c. Authority contact information;

- d. A statement that a public comment period will be provided upon request pursuant to Section 5.05.C of this Article; and
 - e. The date by which a request for a public comment period is due.
2. Requests for a public comment period shall be submitted to the Authority in writing via letter, fax, or electronic mail. A public comment period shall be provided pursuant to Subsection C. of this Section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement.
- B. Mandatory public comment period.
1. A public comment period shall be provided pursuant to Subsection C. of this Section before approving or denying any of the following:
- a. Any Notice of Construction application (this includes the first time that a portable stationary source (or temporary stationary source, if applicable), operates in Spokane County) for a new or modified "stationary source" or emission unit that results in a "significant", as defined in Section 1.04 of this Regulation, net increase, in emissions (actual or potential-to-emit) of any air contaminant regulated by state or federal law;
 - b. Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51, as amended, as part of review under Section 5.08 and 5.02 of this Article, WAC 173-400-112, WAC 173-400-113, WAC 173-400-117, or WAC 173-400-141;
 - c. Any order to determine RACT;
 - d. Any order in which public notice is required by state (WAC 173-400-171) or federal (40 CFR 51.161), laws or regulations;
 - e. Any order for a proposed new or modified stationary source that would cause an annual increase of ten (10) tons or more of any air contaminant or precursor, for which ambient air quality standards have been established, or of any toxic air pollutant, as defined in Article I, Section 1.04 of this Regulation;
 - f. Any order for which the applicant requests approval of a risk analysis pursuant to Chapter 173-460 WAC;

- g. Any order to establish a compliance schedule or a variance. A variance shall be handled as provided in Article III of this Regulation;
- h. Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;
- i. Any order to authorize a bubble, pursuant to RCW 70.94.155 and WAC 173-400-120;
- j. Any order used to establish a creditable emission reduction, pursuant to WAC 173-400-131;
- k. Any order issued under WAC 173-400-091 which establishes limitations on a "stationary source's" potential-to-emit;
- l. Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;
- m. Any change in conditions of an existing Notice of Construction determination, except for Sections 5.10.E.1 and 5.10.E.5 of this Regulation;
- n. Any Notice of Construction application (this includes the first time that a portable stationary source (or temporary stationary source, if applicable), operates in Spokane County) for which request for public comment opportunity is made pursuant to Subsection A. of this Section; or
- o. Any Notice of Construction application or other proposed action for which the Authority determines there is a substantial public interest.
- p. Any Notice of Construction application designated for integrated review that includes a PSD permit application, an application for a "major modification" in a nonattainment area, or an application for a "major stationary source" in a nonattainment area must also comply with the public notice requirements of WAC 173-400-171 and this Section of this Regulation.

C. Public comment period.

- 1. A public comment period shall be provided only after all information required by the Authority has been submitted and after applicable preliminary determinations, if any, have been made.

2. Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and Article II, Section 2.03 of this Regulation.
3. Publication of comment period notice. Notice shall be published in a newspaper of general circulation in the area of the proposed project for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to Subsections B.1.n. or B.1.o. of this Section, publication on the Authority's Internet homepage for a minimum of thirty (30) days may be substituted for newspaper publication. Notice for a public comment period shall include the following information:
 - a. A brief description of the proposal;
 - b. The location of the documents made available for public inspection;
 - c. Identification of a thirty-day period for submitting written comment to the Authority;
 - d. A statement that a public hearing may be held if the Authority determines within a thirty-day period that significant public interest exists;
 - e. Any other information required under state or federal laws or regulations;
 - f. The length of the public comment period in the event of a public hearing; and
 - g. For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117(5)(c), the comment period notice shall explain the Authority's decision.
4. The name and address of the owner or operator and the affected facility;
5. The cost of publishing any public notice required by this Section shall be paid by the owner or applicant.
6. EPA Notification. A copy of the comment period notice shall be sent to the EPA Region 10 Regional Administrator.

7. Consideration of public comment. The Authority shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received have been considered.
 8. Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Authority may hold a public hearing if it determines significant public interest exists. The Authority will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.
- D. Public involvement for integrated review with an operating permit. Any Notice of Construction application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).
- E. Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this Section (e.g., SEPA). This Subsection does not apply to applications for a "major modification" or a "major stationary source."
- F. Public information. All information is available for public inspection at the Authority, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and Article II, Section 2.03 of this Regulation. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

SECTION 5.06 APPLICATION COMPLETENESS DETERMINATION

- A. Within thirty (30) days of receipt of a *Notice of Construction and Application for Approval* or PSD permit application (PSD permits are Ecology's jurisdiction), the Authority shall notify the applicant in writing that the application is complete or notify the applicant in writing of any additional information necessary, based on review of information already supplied, to complete the application.
1. For a project subject to PSD review under WAC 173-400-141 by Ecology, an NOC application is not deemed complete by the Authority until the application provides all information required to conduct the PSD review and a final determination on the PSD permit, by Ecology has been issued. The Authority shall ensure that its Notice of Construction review of the project is coordinated with Ecology's PSD review.

2. For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).
- B. The owner or operator shall supply sufficient information to enable the Authority to determine that the project will comply with Chapter 70.94 RCW the rules and regulations adopted thereunder, and the Authority's regulation(s).
- C. As a condition of completeness determination, the Authority may require payment of applicable fees, or a portion thereof, pursuant to Article X of this Regulation.

SECTION 5.07 ISSUANCE OF APPROVAL OR ORDER

- A. For new or modified stationary sources,
1. Within sixty (60) days of receipt of a complete *Notice of Construction and Application for Approval*, the Authority shall either issue a final determination on the application or, for those proposals subject to public notice requirements, initiate public notice and comment procedures under Section 5.05. If state or federal regulations require public notice, the public notice shall occur in a manner that complies with both Section 5.05 and those sections of the state or federal regulations that are applicable. The Authority shall issue a final determination as promptly as possible after the close of the comment period.
 2. The final determination may include:
 - a. An order of denial, if it is found that the proposal is not in accord with Chapter 70.94 RCW the rules and regulations adopted thereunder, and the Authority's regulation(s); or
 - b. An order of approval which may provide reasonable conditions necessary to assure maintenance of compliance with Chapter 70.94 RCW the rules and regulations adopted thereunder, and the Authority's regulation(s).
 3. Every final determination on a *Notice of Construction and Application for Approval* shall be reviewed, prior to issuance, and signed by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Authority.
 4. If the new source is a major stationary source, or the change is a major modification, as defined in WAC 173-400-112, where the new source is located inside of a non-attainment area, the Authority shall:

- a. Submit any Lowest Achievable Emission Rate (LAER) control technology determination, for any non-attainment criteria pollutant of concern and/or its precursor, that is included in a final order of approval to the RACT/BACT/LAER Clearinghouse maintained by the EPA; and
 - b. Send a copy of the final order of approval, with the LAER control technology determination, to EPA.
5. The owner or operator of a stationary source shall not “commence” construction or “begin actual construction”, as those terms are defined in Article I, Section 1.04 of this Regulation, until the Authority approves the *Notice of Construction and Application for Approval*.
6. The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order under this section shall not relieve any person from the obligation to comply with applicable emission control requirements or with any other provision of law.

B. Replacement or substantial alteration of emission control equipment

1. Any person proposing to replace or substantially alter the emission control technology installed on an existing "stationary source" or emission unit shall file an Notice of Construction application with the Authority. If the replacement or substantial alteration meets the definition of "new source" or "modification" then the "new source" emissions standards of Article V, Section 5.02 through 5.07.A., WACs 173-400-112 or 400-113 shall apply. If the replacement or substantial alteration does not meet the definition of "new source" or "modification", then the requirements in B.2. through B.9. of this Section shall apply.
2. For projects not otherwise reviewable under Article V, Sections 5.02 through 5.07.B.1; Subsections B.2. through B.9. of this Section shall apply.
3. Within thirty (30) days of receipt of a notice of construction application under this section the Authority shall either notify the applicant in writing that the application is complete or that additional information is necessary to complete the application.
4. Within thirty (30) days of receipt of a complete Notice of Construction application under this section the Authority shall either issue an order of approval, an order of denial, or a proposed RACT determination for the proposed project, pursuant to WAC 173-400-114.
5. The final determination may:

- a. Require that the owner of operator employ RACT for the affected emissions unit, and
 - b. Prescribe reasonable operation and maintenance conditions for the control equipment, and
 - c. Prescribe other requirements as authorized by Chapter 70.94 RCW.
6. Prior to issuance, the Notice of Construction final determination shall be reviewed and signed by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Authority.
 7. Replacement or substantial alteration shall not commence until the Authority approves the application. However, any *Notice of Construction and Application for Approval*, filed under Section 5.08.B.2 through Section 5.08.B.9, shall be deemed to be approved without conditions, if the Authority takes no action within thirty days of receipt of a complete application.
 8. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.
 9. Replacement or substantial alteration of control technology shall not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, shall not interfere with scheduled attainment of national ambient quality standards.

SECTION 5.08 TEMPORARY AND PORTABLE STATIONARY SOURCES

- A.
 1. Except as otherwise provided in 5.08.G of this Article, for portable stationary sources which locate temporarily at specific sites in Spokane County, the owner or operator, or their agent shall obtain a *Notice of Construction and Application for Approval* the first time that the portable stationary source operates in Spokane County. This Notice of Construction shall be subject to the same requirements of a new source.
 2. Thereafter, each time that the portable stationary source relocates and operates at a new site in Spokane County, the owner or operator of said portable stationary source must apply for and obtain an approved Notice of Intent to Install and Operate a Temporary Stationary Source.
 3. The owner or operator, or their agent shall file the *Notice of Construction or Notice of Intent to Install and Operate a Temporary Stationary Source* (NOI) at least ten (10) calendar days prior to starting the operation.

4. The owner or operator shall apply for the NOC or NOI on Authority prepared and furnished application and information request forms and obtain an order of approval or permission to operate, respectively from the Authority prior to operating at the site. Sufficient information, equivalent to the information required in Section 5.04.A of this Article, shall be supplied by the owner or operator, or their agent to enable the Authority to determine that the operation will be in accordance with Chapter 70.94 RCW, the rules and regulations adopted thereunder, and the Authority's regulation(s).
 5. Except for nonroad engines, based on the source type and emission quantity, temporary stationary sources, not covered under Section 5.08.A.1, may be subject to new source review at the discretion of the Authority.
- B. Permission to operate may be granted, subject to reasonable conditions necessary to assure compliance with Chapter 70.94 RCW, the rules and regulations adopted thereunder, and the Authority's regulation(s). If any conditions listed in Subsection 5.05.B. are applicable to the proposal, a public comment period shall be held pursuant to Section 5.05.C.
 - C. Permission to operate may be granted for a limited time, but in no case shall a temporary or portable stationary source remain at a location for more than twelve consecutive months, without first obtaining an approved *Notice of Construction and Application for Approval*.
 - D. Permission to operate shall be invalid if:
 1. Construction, installation, or operation does not begin within 90 days of receipt of permission; or
 2. The operation is removed from the site.
 - E. Installation or operation of a temporary or portable stationary source shall not commence until the Authority approves the *Notice of Construction* or *Notice of Intent to Install and Operate a Temporary Stationary Source* application, whichever applies.
 - F. A temporary or portable stationary source, that is required to go through new source review, shall comply with the emission standards for a new source (including BACT or LAER, whichever is applicable under Sections 5.09.C & D) (except nonroad engines) and shall not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, shall not interfere with scheduled attainment of national ambient quality standards.

- G. The following operations are exempt from this Section.
1. Abrasive blasting units that operate at a site for less than 30 days in any 12-month period and as excepted in Exhibit R.2. Abrasive blasting units anticipated to operate more than 30 days in any 12-month period, but less than 1 year are subject to the requirements of this Section, except where the owner, operator, of an abrasive blasting unit, either establishes a permanent facility or operates an abrasive blasting unit at a site for more than 365 consecutive days, in which case, a *Notice of Construction and Application for Approval* must be approved by the Authority's, prior to establishment of said unit or facility.
 2. Rock drilling operations.
 3. Blasting operations.
 4. Woodwaste chipping and grinding operations that operate at a site for less than 30 days in any 12-month period, except for operations that establish a permanent collection, storage and/or processing facility at a site or sites for purpose of future processing. All other woodwaste chipping and grinding operations are subject to the requirements of new source review and the owner or operator must obtain the Authority's approval of a Notice of Construction, prior to establishment of the stationary source.
 5. Soil and groundwater remediation projects that have insignificant air pollution impacts, as defined in Exhibit "R" of Article IV of this Regulation.
 6. All nonroad compression ignition engines.
- H. Except for nonroad engines, a temporary or portable stationary source that is considered a major stationary source or major modification within the meaning of WAC 173-400-113, must also comply with the requirements in WAC 173-400-141.

SECTION 5.09 OPERATING REQUIREMENTS

- A. All equipment, machines, devices, and other contrivances, constituting parts of, or called for by plans, specifications or other information submitted pursuant to Section 5.02, 5.04, and 5.08 shall be maintained in good working order and operated at all times that air contaminant emissions may occur, unless otherwise specified by the Authority.
- B. All conditions of approval, established pursuant to Sections 5.07 and 5.08, shall be complied with.

- C. All new and modified stationary sources shall employ Best Available Control Technology (BACT), and if applicable, Toxic Best Available Control Technology (TBACT). A new major stationary source or major modification, shall employ the lowest achievable emission rate (LAER) for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.
- D. In no event shall the application of RACT, BACT, TBACT, or LAER permit a new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable federal or state standard or regulation.

SECTION 5.10 CHANGES TO AN ORDER OF APPROVAL OR PERMISSION TO OPERATE

- A. The Authority may revoke, revise, or suspend an order of approval, permission to operate a temporary stationary source, an order of approval for substantial replacement or alteration of emissions control equipment installed on an existing stationary source, or changes thereto, if the Authority determines that the stationary source is not constructed, installed or operated as described in the *Notice of Construction and Application for Approval, or Notice of Intent to Install and Operate a Temporary Stationary Source, or changes thereto*, including the plans, specifications, or other information submitted therewith. Such proceedings shall follow the same process that apply to the initial issuance of the order of approval or permission to operate.
- B. In addition to revocation, revision or suspension of an order of approval or permit to operate of a stationary source, the Authority may issue a Notice of Violation (NOV) in accordance with RCW 70.94.211.
- C. The owner or operator may request, at any time, a change in conditions of an order of approval or permission to operate a temporary stationary source and the Authority may approve such a request provided the Authority finds that:
 - 1. The change in conditions will not cause the stationary source to exceed an emissions standard;
 - 2. No national ambient air quality standard shall be violated or if in a nonattainment area, shall not interfere with scheduled attainment of national ambient quality standards as a result of the change;
 - 3. The change will not adversely impact the ability of the Authority to determine compliance with an emissions standard;
 - 4. The revised order of approval or permission to operate will continue to require BACT, as defined at the time of the original order of approval or permission to operate, for each new source approved by the order of

approval or permission to operate, except where the Federal Clean Air Act requires LAER; and

5. The revision meets the requirements of Article V of this Regulation, WAC 173-400-112, WAC 173-400 –113 and WAC 173-400-141, as applicable.
- D. A fee, as established in Section 10.07 of this Regulation, shall be assessed to, and paid by, the applicant for requests pursuant to Subsection 5.10.C.
- E. “Order of approval” and “permission to operate” revisions may be initiated by the Authority, without fees charged to the owner or operator, as long as the stationary source continues to comply with all applicable requirements of Chapter 70.94 RCW the rules and regulations adopted thereunder, and the Authority’s regulation(s), and the Authority determines that the order of approval or permit to operate:
1. has typographical errors, or
 2. has conditions listed therein that are ineffective or unreasonable, or
 3. has conditions that no longer apply because the affected stationary source or associated process or process materials have been significantly altered, or
 4. has conditions that no longer apply due to revisions to federal, state, or local laws or regulations, or
 5. does not accurately show current ownership, name, address, phone number, or there are other minor administrative inaccuracies.
- F. The Authority may not modify, delete, or add conditions to an existing order of approval or permit to operate under Section 5.10.E, unless the owner or operator is notified in writing at least 30 days in advance of the effective date of the change. Modified, deleted or added conditions may be appealed in accordance with Chapter 43.21B RCW.
- G. Changes to conditions in an order of approval for a new source, for modifications to an existing stationary source, and replacement or substantial alteration of emission control equipment of an existing stationary source are subject to the public involvement provisions of Section 5.05 of this Regulation.
- H. This Article does not prescribe the exact form that change of condition requests must take. However, if the request is filed on an order of approval, that application must be acted upon consistent with the timelines in Sections 5.06 and 5.07 or if a permit to operate, consistent with Section 5.08 of this Article.

SECTION 5.11 NOTICE OF START-UP OF A STATIONARY SOURCE

The owner or operator of the new, modified, or temporary stationary source, or replacement or substantial alteration of emission control equipment at an existing stationary source shall notify the Authority at least seven (7) days prior to the stationary source's expected start-up date, or a shorter time, if approved by the Authority.

SECTION 5.12 WORK DONE WITHOUT AN APPROVAL

- A. Except as provided for in Subsection 5.02.H and 5.02.M, when:
1. A stationary source is constructed, installed, modified, or operated prior to receiving approval of a Notice of Construction application from the Authority; or
 2. Emission control equipment is replaced, installed, or substantially altered on an existing stationary source prior to receiving approval of a Notice of Construction application from the Authority; or
 3. A temporary or portable stationary source is installed or operated at a site prior to receiving approval of either a Notice of Construction or Notice of intent to Establish a Temporary Stationary Source application from the Authority, whichever is appropriate;

the Authority may assess a compliance investigation fee to the owner or operator, in addition to the fees required in Sections 5.03 and 5.08 of this Regulation as a part of the Notice of Construction or *Notice of intent to Establish a Temporary Stationary Source* review. The compliance investigation fee is established in Section 10.07 of this Regulation. Payment of the compliance investigation fee does not relieve any person from the requirement to comply with applicable regulations, nor from any penalties for failure to comply.

SECTION 5.13 ORDER OF APPROVAL CONSTRUCTION TIME LIMITS

- A. An order of approval, issued pursuant to Section 5.07 or 5.08.A.1 shall become invalid if:
1. Construction is not commenced within eighteen months after the receipt of the approval, or
 2. Construction is discontinued for a period of eighteen months or more, or
 3. Construction is not completed within eighteen months of commencement.

- B. The Authority may extend an eighteen-month period, as provided for in Section 5.13.A, upon a satisfactory showing that an extension is justified. The Authority may approve such a request provided that:
1. No new requirements, such as New Source Performance Standards (40 CFR Part 60), National Emissions Standards for Hazardous Air Pollutants (40 CFR Parts 61 and 63), or state and local regulations, have been adopted pursuant to Chapter 70.94 RCW or the Federal Clean Air Act (42 USC 7401 et seq.) which would change the order of approval, had it been issued at the time of the extension; and
 2. If there is a control technology requirement, pursuant to sections WAC 173-400-112, WAC 173-400-113, or WAC 173-400-114; or Section 5.09.C of this Article; that no technologies have been subsequently identified which would change the order of approval, had it been issued at the time of the extension; and
 3. The information presented in the *Notice of Construction and Application for Approval* and associated documents and the determinations that were made by the Authority during review of the application continue to accurately represent the design, configuration, equipment, and emissions of the proposed stationary source; and
 4. The applicant certifies that the stationary source will comply with all applicable requirements of Chapter 70.94 RCW, the rules and regulations adopted thereunder, and the Authority's regulation(s).
- C. Subsection 5.13.A. does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date.

SECTION 5.14 APPEALS

- A. An order of approval, permission to operate, conditions and change thereto, revocation, revision, or suspension thereof, or order of denial of an application for installation and operation of a stationary source may be appealed to the Pollution Control Hearings Board of Washington within 30 calendar days of receipt, as provided in Chapter 43.21B RCW.
- B. The Authority shall promptly mail a copy of each order, approving, denying, revoking, revising, or suspending an Order of Approval or Permit to Operate, to the applicant and to any other party who submitted timely comments on the action. The approval, denial, revocation, revision, or suspension order shall include a notice advising the parties of their rights of appeal to the Pollution

Control Hearings Board and, where applicable, to the U.S. EPA Environmental Appeals Board.

SECTION 5.15 OBLIGATION TO COMPLY

- A. The absence of an ordinance, resolution, rule or regulation, or the failure to issue an order pursuant to this Article shall not relieve any person from the obligation to comply with this Regulation or with any other provision of law.