

operator of such source must propose allowable emission limits for the source that represent all known available reasonable control technology, apply all known available air toxic pollution prevention methods, and demonstrate that the proposal will result in a greater benefit to the environment as a whole. The source may also propose measures that would reduce community exposure to comparable toxic air pollutants. WDOE's decision on any request for a risk management decision will follow a public notice and opportunity for public comment, including a public hearing, and appropriate conditions on emission controls, pollution prevention, or other measures, shall be included in the approval of the notice of construction.

WAC 173-460-110 "Acceptable source impact levels" establishes the process that the WDOE uses to establish the acceptable source impact levels in this regulation. WAC 173-460-120 "Scientific review and amendment of acceptable source impact levels and lists" establishes an ongoing process for the scientific review of information on toxic air pollutants and acceptable source impact levels. WAC 173-460-130 "Fees" authorizes the WDOE or local air authority to charge fees for the review of notices of construction. WAC 173-460-140 "Remedies" establishes the civil and criminal enforcement authorities for violations of WAC 173-460. Finally, WAC 173-460-150 "Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels" and WAC 173-460-160 "Class B toxic air pollutants and acceptable source impact levels" list the acceptable source impact levels for the toxic air pollutants regulated by WAC 173-460. Note that these levels are criteria used in a permit review process and are not standards which would be enforceable against sources by either the State or EPA.

EPA is proposing to approve WAC 173-460 under section 112(l) of the Act in order to recognize regulatory orders approving notices of construction as Federally enforceable. EPA is also proposing to approve the provisions of WAC 173-400 that are used to implement the requirements of WAC 173-460 (specifically, WAC 173-400-110, -112, -113, and -171) under section 112(l) of the Act. If approved, permitting authorities would be able to utilize regulatory orders issued pursuant to WAC 173-460 to establish Federally enforceable limits on potential to emit for new and modified stationary sources of HAP and to make any case-by-case MACT determinations required under section 112(g) of the Act.

The EPA believes it has authority under section 112(l) to approve State preconstruction review programs for HAP directly under section 112(l). The EPA is therefore proposing approval of WAC 173-460 now so that permitting authorities in Washington may begin to issue Federally enforceable regulatory orders as soon as possible.

EPA is aware that WAC 173-460 was not designed specifically to implement section 112(g) of the Act. Furthermore, EPA has acknowledged that States may encounter difficulties implementing section 112(g) prior to promulgation of final EPA regulations (see June 28, 1994 memorandum entitled, "Guidance for Initial Implementation of Section 112(g)," signed by John Seitz, Director of the Office of Air Quality Planning and Standards). However, EPA believes that WAC 173-460 can serve as a procedural vehicle to make Federally enforceable any case-by-case MACT determinations required by section 112(g) during the transition period between title V approval in Washington and EPA approval of WDOE regulations to implement EPA's final section 112(g) regulations. EPA believes WAC 173-460 will be adequate for this transition period because it applies to any new source of HAP and any modification to an existing source of HAP. As such, any major source which would be subject to section 112(g) of the Act would be required by WAC 173-460 to obtain a regulatory order containing a T-BACT determination. Furthermore, WAC 173-460 allows permitting authorities to select control measures that would meet MACT, as defined in section 112 of the Act, and after EPA approval, to incorporate these measures into a Federally enforceable regulatory order.

b. SWAPCA Regulation 460 "Controls for New Sources of Toxic Air Pollutants" adopts WAC 173-460 by reference as a local regulation. As discussed in Section III.B.1. above, this WAC 173-460 meets all of EPA's requirements for a permit to construct program to establish Federally enforceable limitations on new and modified stationary sources of HAP. EPA is therefore proposing to approve SWAPCA Regulation 460 under the authority of section 112(l) of the Act. Note that EPA is proposing to approve WAC 173-460 which is applicable statewide and, by State law, remains in effect in all areas of the State regardless of any local agency regulations. If SWAPCA Regulation 460 is revised or revoked, SWAPCA is approved to implement WAC 173-460 as the new source review program for HAP in SWAPCA's jurisdiction until such time

as EPA approves the revision or revocation of SWAPCA Regulation 460.

c. PSAPCA Regulation I, Article 6 "New Source Review" and Regulation III, Article 2 "Review of Toxic Air Contaminant Sources" contain requirements for the construction and modification of stationary sources of HAP. Regulation I, Article 6 establishes a comprehensive new source review program that sets forth the process for submitting a "Notice of Construction and Application for Approval" and granting an "Order of Approval" or "Order to Prevent Construction." It applies to new and modified sources of any air contaminant and includes requirements for the content of applications, payment of "Notice of Construction" review fees, and requirements for public notice and comment. Furthermore, Section 6.07(c)(3) requires the utilization of the best available control technology (BACT) for all air contaminants emitted by new and modified stationary sources.

Regulation III, Article 2 establishes additional requirements for new and modified sources of toxic air contaminants and applies to all sources required to submit a "notice of construction and application for approval" under Regulation I, Article 6 except for certain source categories for which PSAPCA has established T-BACT by rule. Section 2.01 "Applicability" states that Article 2 applies to all sources of toxic air contaminants except for the following source categories for which PSAPCA has established T-BACT by rule: asbestos removal operations, chromic acid plating and anodizing tanks, solvent metal cleaners, perchloroethylene dry cleaning systems, petroleum solvent dry cleaning systems, gasoline storage and dispensing operations, graphic arts systems, can and paper coating operations, motor vehicle and mobile equipment coating operations, polyester/vinylester/gelcoat/resin operations, coatings and ink manufacturing, and ethylene oxide sterilizers and aerators. Note that sources exempt from the additional requirements of this section are not exempted from the requirement of Regulation I, Article 6 "New Source Review." Section 2.02 "National Emission Standards for Hazardous Air Pollutants" requires all sources subject to Article 2 to comply with any applicable provision of 40 CFR part 61. Section 2.03 "New or Altered Toxic Air Contaminant Sources" requires that no "Notice of Construction and Application for Approval" shall be issued under Regulation I, Article 6 for a new or modified source subject to