

March 20, 2018

Elena Guilfoil
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: SSM Rulemaking

Dear Ms. Guilfoil:

Please accept my comments on the proposed SSM rulemaking.

In reviewing the proposed language I am concerned with several changes that appear to be weakening regulations that are currently federally enforceable under the State Implementation Plan (SIP), as well as, removing requirements for notification in local newspapers.

First, I am concerned that rules adopted by reference might weaken Washington State's CAA. In light of the current federal administration's work to gut environmental regulations, adopting by reference should only be done when the rule is as stringent, or more stringent than existing Washington State regulations and statutes. The state has the prerogative to promulgate and retain more stringent air quality regulations, but lacks the authority to "backslide."

Second, exempting startup, shutdown and malfunction is prohibited under federal statute. Ecology plans to "Remove exemptions for emissions and replace (them) with opacity standards." This doesn't appear to be prohibiting the exemptions, just assigning them a measure of opacity. The law requires the SSM emissions be accounted for and controlled. Setting opacity standards is not a means of control.

Also, emission limits are federally enforceable because they are adopted into the SIP. Ecology proposes to "Create a process to establish facility specific permit limits for existing sources that exceed an emissions standard in the SIP." WAC 173-400-082 appears to be an attempt by Ecology to violate federal law by creating an "exemption" from the law for existing sources that are currently in violation of the SIP. Doesn't this mean that Ecology is in violation of the law for its failure to properly enforce the emission standards in the SIP, and additionally, for its planned circumvention of it? Isn't it Ecology's job to assure that permits are issued in compliance with the SIP?

Additionally, Ecology has an obligation to enforce Washington State's more stringent laws. Ecology proposes to "Align unavoidable excess emission provisions with federal limitations, EPA policy, and the state law." Ecology's plan to "align" with federal limitations and EPA policy may not be consistent with Washington's more stringent standards, and should be reviewed in light of statutory authority before any "alignment" occurs.

Ecology is a state agency in public service funded by the people they serve. Ecology proposes to “Require an agency to post notice of a public comment period and draft permits on its website instead of requiring publication in a newspaper and a physical location for permit materials.” This is unacceptable. People impacted by decisions of the agency, and the pollution being permitted, are entitled to notice in a newspaper of local circulation. There are still many families who do not have access, or cannot afford access, to the internet, and no one should have to be monitoring Ecology’s website on a daily basis to know what the taxpayer funded agency is up to. Please retain the requirement that notice be published in the official local paper.

I would like confirmation that Ecology’s definition of non-road engine does not include engines subject to New Source Performance Standards (NSPS). Please confirm that WAC 173-400-035 does not apply to internal combustion engines subject to the NSPS.

Amendments to WAC 173-400-081 are not acceptable. The emissions from SSM must be considered during the permitting process and selection of the control technology. The state does not have the authority to allow a source to exceed an emission limit. Section -081 should be removed because it continues to allow exemptions for SSM, and WAC 173-400-082 should be removed because it impermissibly allows polluting sources to exceed federally enforceable emission limits in the SIP. Both of these sections should be removed from regulation because they violate federal law.

Finally, the “transient mode of operation” and “alternative emission limitation” seems to be another name/means for a polluting industry to exceed a federal emission standard with Ecology’s blessing. This is not acceptable.

Emission limitations set under the NSPS are intended to be “technology forcing”, i.e., forcing industry to develop control technologies to meet standards that will become more and more stringent. When Ecology promulgates rules undermining these requirements -- or fails to implement and enforce them -- it delays the development of more effective and efficient controls necessary to protect our air.

Please review the rules as proposed and remove those sections that allow emissions in excess of the SIP, including those caused by SSM and during transient mode(s) of operation.

Thank you for considering my comments. Please do not hesitate to contact me if you have questions.

Sincerely,

Patricia Martin
Quincy, WA