

Title 463 WAC

ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: Thermal Power Plant Evaluation Council)

Chapters

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Chapter 463-10 WAC

DEFINITIONS

WAC

463-10-010 Definitions.

WAC 463-10-010 Definitions. Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

(1) "Council" means the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means the person or entity making application for a certification or permit covered by this title.

(3) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act.

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been signed by the governor, and who is bound by its terms.

(5) "Chair" means the person appointed by the governor pursuant to RCW 80.50.030.

(6) "Council manager" means the individual who handles day-to-day administration for the council, administers the decisions of the council, and directs the staff that supports the council.

(7) "Energy facility" includes electrical transmission facilities under RCW 80.50.020(8) and alternative energy resources under RCW 80.50.020(18).

(8) "Site certification agreement (SCA)" means the agreement between the state of Washington and the applicant that prescribes the conditions required for construction and operation of an energy facility.

(9) "Rule" as used herein, includes the terms "agency order," "directive" or "regulation" in accordance with RCW 34.05.010(16).

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-10-010, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-10-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 98-01-080, § 463-10-010, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040.

91-03-090, § 463-10-010, filed 1/18/91, effective 2/18/91; Order 104, § 463-10-010, filed 11/4/76.]

Chapter 463-43 WAC EXPEDITED PROCESSING

WAC

463-43-025	Environmental checklist required.
463-43-030	Eligible proposals.
463-43-040	Prior to making a determination of eligibility for expedited processing.
463-43-050	Expedited processing determination.
463-43-060	Effect of expedited processing.

WAC 463-43-025 Environmental checklist required.

An applicant seeking expedited processing shall submit a completed SEPA environmental checklist with an application for site certification unless the council finds the proposal is categorically exempt.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-43-025, filed 2/13/09, effective 3/16/09.]

WAC 463-43-030 Eligible proposals. An application may be expedited when the council finds:

(1) The environmental impact of the proposed energy facility will be mitigated to a nonsignificant level under the State Environmental Policy Act; and

(2) The project is found to be consistent and in compliance with city, county, or regional land use plans.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-43-030, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-030, filed 4/26/78.]

WAC 463-43-040 Prior to making a determination of eligibility for expedited processing. The council prior to making a determination of eligibility for expedited processing shall:

(1) Conduct a public informational meeting in the county of the proposed site within sixty days of receipt of an application to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views;

(2) Determine at a public hearing within sixty days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans and zoning ordinances;

(3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071 (1)(a) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council; and

(4) If applicable, initiate processing of:

(a) A NPDES application in accordance with chapter 463-76 WAC;

(b) An air emissions or PSD permit application in accordance with 463-78 WAC;

(c) Other such authorizations or permits as may be required by law or rule and necessary for construction and operation of the project.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-43-040, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (2). 04-21-013, § 463-43-040, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-040, filed 4/26/78.]

WAC 463-43-050 Expedited processing determination. Following the review of an application, environmental checklist, and land use hearing and within one hundred twenty days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county or regional land use plans, zoning ordinances; and

(2) The environmental impacts are not significant or may be mitigated to nonsignificant level under RCW 43.21C.031.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-43-050, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (2). 04-21-013, § 463-43-050, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-050, filed 4/26/78.]

WAC 463-43-060 Effect of expedited processing. For an application granted expedited processing under WAC 463-43-050 the council shall not:

(1) Conduct any further review of an application by an independent consultant; however, at the direction of the council an independent consultant may prepare air or water discharge permits or other ancillary permits or studies that may be needed as part of a recommendation to the governor;

(2) Hold an adjudicative proceeding under chapter 34.05 RCW; and

(3) Continue an adjudicative proceeding that has commenced.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-43-060, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (2). 04-21-013, § 463-43-060, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040. 91-03-090, § 463-43-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-060, filed 4/26/78.]

Chapter 463-58 WAC

CHARGES FOR INDEPENDENT CONSULTANT STUDY, REGULAR AND EXPEDITED APPLICATION PROCESSING, ELECTRICAL TRANSMISSION PREAPPLICATIONS, DETERMINING COMPLIANCE AND POTENTIAL SITE STUDY

WAC

463-58-010	Purpose.
463-58-020	Costs for the independent consultant studies.
463-58-030	Costs for regular application processing.
463-58-040	Costs for expedited application processing.
463-58-050	Costs for determining compliance.
463-58-060	Costs for potential site studies.
463-58-065	Costs for preapplication process for electrical transmission facilities.
463-58-070	Failure to provide necessary costs.
463-58-080	Payment, reporting and auditing procedures.

WAC 463-58-010 Purpose. This chapter sets rules relating to costs or charges for independent consultant studies, regular and expedited application processing, electrical

transmission facility preapplication, determining compliance and potential site studies. The department of community, trade, and economic development will provide all fiscal services for the council. For the purposes of this chapter "department" shall mean the department of community, trade, and economic development.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-010, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (2). 04-21-013, § 463-58-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-010, filed 4/26/78.]

WAC 463-58-020 Costs for the independent consultant studies. Pursuant to RCW 80.50.071, a deposit of twenty-five thousand dollars for each proposed site shall accompany the application for an energy facility site certification. This charge shall be applied toward the total cost of the independent consultant study authorized by RCW 80.50.071. The determination of the total costs required for the study shall generally be as follows:

(1) The council may determine that the initial charge of twenty-five thousand dollars is insufficient to adequately fund the study. If so, the council shall so advise the applicant and shall furnish an estimate of the supplemental costs needed to complete the study and shall direct the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the study be allowed to continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds;

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs;

(3) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has paid the required costs.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-020, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (2). 04-21-013, § 463-58-020, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-020, filed 4/26/78.]

WAC 463-58-030 Costs for regular application processing. Pursuant to RCW 80.50.071 each applicant for energy facility site certification shall at the time of application submission deposit twenty thousand dollars for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) A hearing examiner(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary;

(2) A court reporter(s) for the recording and preparation of transcripts of an adjudicative proceeding, council meetings or public sessions which the council shall consider necessary;

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period; and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing;

(5) The council may determine that the initial charge of twenty thousand dollars is insufficient to fund the council costs. If so, the council shall so advise the applicant and shall request the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the processing of the application continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-030, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-58-030, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040. 91-03-090, § 463-58-030, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-030, filed 4/26/78.]

WAC 463-58-040 Costs for expedited application processing. Applicants filing applications for expedited processing under RCW 80.50.075 shall provide funding in accordance with WAC 463-58-020 and 463-58-030.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-040, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-58-040, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-040, filed 4/26/78.]

WAC 463-58-050 Costs for determining compliance. Pursuant to RCW 80.50.071 (1)(c) each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms and conditions of the certificate. The amount of funds required to be placed on deposit by the certificate holder shall be determined by the council and deposited by the applicant within thirty days of the governor's signing the site certification agreement.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-050, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-58-050, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-050, filed 4/26/78.]

WAC 463-58-060 Costs for potential site studies. Ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental funds needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-060, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-58-060, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-060, filed 4/26/78.]

WAC 463-58-065 Costs for preapplication process for electrical transmission facilities. Pursuant to RCW 80.50.340, ten thousand dollars shall accompany any preap-

plication request. If the council determines that the initial ten thousand dollars is insufficient to adequately fund the preapplication process, the council shall so advise the potential applicant and shall provide an estimate of the supplemental cost needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost of the study. Any unexpended funds shall be returned to the preapplicant.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-065, filed 2/13/09, effective 3/16/09.]

WAC 463-58-070 Failure to provide necessary costs. Failure to comply with WAC 463-58-020 through 463-58-060 shall result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in the council's initiation of enforcement action pursuant to WAC 463-70-070. The council will require any delinquent applicant or certificate holder to show cause why the council should not suspend application processing. Following deposit of all required funds the council shall in the case of application processing, consider reinstatement of application processing, or in the case of a certificate holder, reconsider enforcement action.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-070, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-58-070, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-070, filed 4/26/78.]

WAC 463-58-080 Payment, reporting and auditing procedures. (1) The department provides all financial services for the council and will provide each applicant or certificate holder a statement of expenditures actually made during the preceding calendar quarter; the statement will be in sufficient detail to explain expenditures made against the deposited funds. Within thirty days of the receipt of the department's statement the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the level established pursuant to WAC 463-58-020 through 463-58-060.

(2) Any funds remaining unexpended shall be refunded to the certificate holder, or in the case of an applicant to the applicant or, at the applicant's option, credited against required deposits of a certificate holder.

(3) All payments shall be payable to the state treasurer. The method of payment shall be prearranged with the department prior to submission. The department will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The department will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-58-080, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-58-080, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-080, filed 4/26/78.]

Chapter 463-60 WAC

APPLICATIONS FOR SITE CERTIFICATION

WAC

463-60-010	Purpose.
463-60-035	General—Application review costs and funding.
463-60-117	General—Applications for expedited processing.
463-60-160	Proposal—Electrical transmission facilities.
463-60-230	Proposal—Carbon dioxide mitigation.
463-60-232	Proposal—Greenhouse gases emissions performance standards.
463-60-312	Natural environment—Air.

WAC 463-60-010 Purpose. This chapter sets forth guidelines for preparation of applications for energy facility site certification pursuant to chapter 80.50 RCW. Applications for siting energy facilities must contain information regarding the standards required by chapter 463-62 WAC. Applications for fossil-fueled thermal and/or baseload electric generation facilities shall contain information required by chapters 463-80 and 463-85 WAC.

The application shall provide the council with information regarding the applicant, the proposed project design and features, the natural environment, and the built environment. This information shall be in such detail as determined by the council to enable the council to go forward with its application review.

The council encourages applicants to consult with appropriate agencies for guidance in gathering sufficient detailed information, and development of comprehensive mitigation plans, for inclusion in their application.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-010, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, amended and recodified as § 463-60-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-010, filed 11/6/92, effective 12/7/92. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-010, filed 10/8/81; Order 113, § 463-42-010, filed 2/4/77. Formerly chapter 463-12 WAC.]

WAC 463-60-035 General—Application review costs and funding. The statutory initial charges shall accompany an application and shall be a condition precedent to any action by the council. The initial costs and any additional funds needed for the review of an application, including the method of payment, shall be in accordance with chapter 463-58 WAC.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-035, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-60-035, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1) and chapter 80.50 RCW. 81-21-006 (Order 81-5), § 463-42-035, filed 10/8/81. Formerly WAC 463-42-100.]

WAC 463-60-117 General—Applications for expedited processing. (1) Request for expedited processing. Requests for expedited processing shall be accompanied by a completed environmental checklist delineated in WAC 197-11-960. The request for expedited processing shall also address the reasons for which the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

- The environmental impact of the proposed energy facility;
- The area potentially affected;

(c) The cost and magnitude of the proposed energy facility; and

(d) The degree to which the proposed energy facility represents a change in use of the proposed site.

(2) Contents. Applications for expediting processing submitted to the council in accordance with the requirements of chapter 463-43 WAC must address all sections of chapters 463-60 and 463-62 WAC.

(3) Funds. The applicant shall submit those funds and costs for independent consultant review and application processing pursuant to RCW 80.50.071 (1)(a) and (b) and chapter 463-58 WAC with the understanding that any unexpended portions shall be returned to the applicant at the completion of application processing.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-117, filed 2/13/09, effective 3/16/09; 04-23-003, recodified as § 463-60-117, filed 11/4/04, effective 11/11/04. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-42-117, filed 10/11/04, effective 11/11/04.]

WAC 463-60-160 Proposal—Electrical transmission facilities. (1) Prior to submitting an application for site certification for an electric transmission facility under RCW 80.50.060(3) an applicant shall follow the procedure as set in chapter 463-61 WAC.

(2) An application for an electric transmission facility shall include the information required by this chapter unless the requirement may not be applicable to such a facility.

(3) An application for an electrical transmission facility shall include the results of any preapplication negotiations including any agreements between the applicant and cities, towns, or counties where the electrical transmission facility is proposed to be located.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-160, filed 2/13/09, effective 3/16/09.]

WAC 463-60-230 Proposal—Carbon dioxide mitigation. For thermal electric energy facilities, the application shall include a carbon dioxide mitigation plan and information required by chapter 463-80 WAC.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-230, filed 2/13/09, effective 3/16/09.]

WAC 463-60-232 Proposal—Greenhouse gases emissions performance standards. For baseload electric generating facilities, the application shall provide information required by, and describe how the requirements of chapter 463-85 WAC will be met.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-232, filed 2/13/09, effective 3/16/09.]

WAC 463-60-312 Natural environment—Air. The application shall provide detailed descriptions of the affected environment, project impacts, and mitigation measures for the following:

(1) Air quality. The application shall identify all pertinent air pollution control standards. The application shall contain adequate data showing air quality and meteorological conditions at the site. Meteorological data shall include, at least, adequate information about wind direction patterns, air stability, wind velocity patterns, precipitation, humidity, and

temperature. The applicant shall describe the means to be utilized to assure compliance with applicable local, state, and federal air quality and emission standards.

(2) Odor. The application shall describe for the area affected all odors caused by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

(3) Climate. The application shall describe the extent to which facility operations may cause visible plumes, fogging, misting, icing, or impairment of visibility, and changes in ambient levels caused by all emitted pollutants.

(4) Climate change. The application shall describe impacts caused by greenhouse gases emissions and the mitigation measures proposed.

(5) Dust. The application shall describe for any area affected all dust sources created by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-60-312, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, amended and recodified as § 463-60-312, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040. 92-23-012, § 463-42-312, filed 11/6/92, effective 12/7/92.]

Chapter 463-62 WAC

CONSTRUCTION AND OPERATION STANDARDS FOR ENERGY FACILITIES

WAC

463-62-010 Purpose.

WAC 463-62-010 Purpose. (1) The purpose of this chapter is to implement the policy and intent of RCW 80.50.010. This chapter sets forth performance standards and mitigation requirements specific to seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality, associated with site certification for construction and operation of energy facilities under the jurisdiction of the council. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

(2) The provisions of this chapter shall apply to the construction and operation of energy facilities, pursuant to chapter 80.50 RCW.

(3) Compliance with the standards within this chapter shall satisfy, in their respective subject areas, the requirements for issuance of a site certificate for construction and operation of energy facilities specified in subsection (2) of this section provided, however, that the council may require additional mitigation in the event that documents prepared pursuant to 43.21 RCW (State Environmental Policy Act), demonstrate that the project poses a probable significant adverse impact that is not mitigated by the provisions of this chapter.

[Statutory Authority: Chapter 80.50 RCW and RCW 80.50.040. 09-05-067, § 463-62-010, filed 2/13/09, effective 3/16/09. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-62-010, filed 10/11/04, effective 11/11/04.]