

Title 173 WAC

ECOLOGY, DEPARTMENT OF

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Chapter 173-50 WAC

ACCREDITATION OF ENVIRONMENTAL LABORATORIES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-50-160	Reciprocity. [Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-160, filed 10/1/02, effective 11/1/02; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-160, filed 4/20/89 and 3/13/90, effective 4/13/90.] Repealed by 10-17-032 (Order 09-09), filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301.
173-50-180	Exemptions. [Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-180, filed 10/1/02, effective 11/1/02; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-180, filed 4/20/89 and 3/13/90, effective 4/13/90.] Repealed by 10-17-032 (Order 09-09), filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301.

WAC 173-50-020 Scope. (1) The Washington state environmental laboratory accreditation program (WA ELAP) applies to laboratories which conduct tests for or prepare analytical data for submittal to any entity requiring the use of an accredited laboratory. This includes laboratories that analyze drinking water.

(2) Accreditation in itself does not authorize use of a specific method for any specific program or project. If such authorization is not granted in documentation governing a program or project within which samples are being analyzed,

authorization should be obtained from the laboratory's data user.

(3) Accreditation does not guarantee validity of analytical data submitted by the accredited laboratory but rather assures that the laboratory has demonstrated its capability to reliably generate and report the analytical data (WAC 173-50-040, definition of "accreditation").

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301, 10-17-032 (Order 09-09), § 173-50-020, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-020, filed 10/1/02, effective 11/1/02; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-020, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-030 Objectives. Objectives of the WA ELAP are to:

- Assure accredited laboratories have a demonstrated capability to accurately and defensibly analyze environmental samples;
- Assist environmental laboratories in improving their quality assurance/quality control procedures; and
- Foster cooperation between the state departments of ecology and health, local agencies, other users of environmental data, and operators of environmental laboratories.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301, 10-17-032 (Order 09-09), § 173-50-030, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-030, filed 10/1/02, effective 11/1/02; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-030, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-040 Definitions. Definitions in this section apply throughout this chapter, unless context clearly indicates otherwise.

"Accreditation" - the formal recognition by the department that an environmental laboratory is capable of producing accurate and defensible analytical data. This recognition is signified by issuance of a written certificate accompanied by a scope of accreditation indicating the parameters for which the laboratory is accredited.

• The term "accredit" as used in this chapter is intended to have the same meaning as the term "certify" as used in RCW 43.21A.230.

• Any laboratory accredited under this chapter shall be deemed to have been certified under RCW 43.21A.230.

• The department does not, by accrediting any laboratory pursuant to these rules, vouch for or warrant the accuracy of any particular work done or report issued by that laboratory.

"Accreditation year" - the one-year period as stated on the certificate of accreditation.

"Accuracy" - the degree to which an analytical result corresponds to the true or accepted value for the sample being tested. Accuracy is affected by bias and precision.

"Analyte" - the constituent or property of a sample measured using an analytical method.

"Analytical data" - the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, radiochemical, or other scientific determination.

"Analytical method" - a written procedure for acquiring analytical data.

"Department" - the state of Washington department of ecology when the term is not followed by another state designation.

"Drinking water certification manual" - the Environmental Protection Agency *Manual for the Certification of Laboratories Analyzing Drinking Water*, 5th Edition, January 2005.

"Ecology accrediting authority" - the supervisor of the lab accreditation unit of the environmental assessment program of the department of ecology.

"Environmental laboratory" or **"laboratory"** - a facility:

- Under the ownership and technical management of a single entity in a single geographical location;
- Where scientific determinations are performed on samples taken from the environment, including drinking water samples; and
- Where data is submitted to the department of ecology, department of health, or other entity requiring the use of an accredited laboratory under provisions of a regulation, permit, or contractual agreement.

"Lab accreditation unit" - the lab accreditation unit of the department of ecology.

"Matrix" - the material to be analyzed, including, but not limited to, ground or surface water, wastewater, drinking water, air, solid waste, soil, tissue, nuclear waste, and hazardous waste. For the purposes of establishing a fee structure (WAC 173-50-190(4)), matrices are grouped as follows:

- Nonpotable water;
- Drinking water;
- Solid and chemical materials; and
- Air and emissions.

"On-site audit" - an on-site inspection and evaluation of laboratory facilities, equipment, records and staff.

"Out-of-state laboratory" - a laboratory that is not located in the state of Washington.

"Parameter" - the combination of one or more analytes determined by a specific analytical method. Examples of parameters include:

- The analyte alkalinity by method SM 2320 B;
- The analyte zinc by method EPA 200.7;
- The set of analytes called volatile organic compounds (VOCs) by method EPA 8260; and
- The analyte Total Coli/Ecoli-count by method SM 9222 B/9221 F.

"Principal laboratory" - a laboratory designated by the Washington department of health to support the drinking water certification program.

"Procedural manual" - the *Department of Ecology's Procedural Manual for the Environmental Laboratory Accreditation Program* dated September 2010.

"Proficiency testing (PT)" - evaluation of the results from the analysis of samples, the true values of which are known to the supplier of the samples but unknown to the laboratory conducting the analyses. PT samples are provided by a source external to the environmental laboratory.

"Quality assurance (QA)" - activities intended to assure that a quality control program is effective. A QA program is a totally integrated program for assuring reliability of measurement data.

"Quality assurance (QA) manual" - a written record intended to assure the reliability of measurement data. A QA manual documents policies, organization, objectives, and

specific QC and QA activities. Volume and scope of QA manuals vary with complexity of the laboratory mission.

"Quality control (QC)" - the routine application of statistically based procedures to evaluate and control the accuracy of analytical results.

"Regulatory program" - a program administered by a federal, state, or other regulatory agency.

"Third-party accreditation" - recognition by the ecology accrediting authority of accreditation granted by another accrediting authority.

"WA ELAP" - Washington state environmental laboratory accreditation program.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-040, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. 02-20-090 (Order 01-12), § 173-50-040, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-040, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-040, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-040, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-050 Responsibilities of the department.

(1) The department maintains a procedural manual describing specifics of the accreditation process. As a minimum, the procedural manual describes the procedures for:

- Submitting an application and fee;
- Preparing a quality assurance manual;
- Performing proficiency testing;
- Conducting on-site audits;
- Accrediting out-of-state laboratories;
- Granting, denying, suspending, and revoking accreditation; and
- Notifying laboratories and authorized government officials of accreditation actions.

The department will make the procedural manual available to all interested persons.

(2) Department personnel assigned to assess the capability of drinking water laboratories participating in the WA ELAP must meet the experience, education, and training requirements established in the drinking water certification manual.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-050, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. 02-20-090 (Order 01-12), § 173-50-050, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-050, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-050, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-050, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-060 Responsibilities of environmental laboratories. When applying for initial accreditation (see WAC 173-50-130 for maintaining an existing accreditation), managers of environmental laboratories must:

- Submit an application (WAC 173-50-063) and required fees (WAC 173-50-190) to the department fiscal officer;
- Submit a copy of the laboratory's quality assurance manual (WAC 173-50-067);
- Submit an initial set of satisfactory PT sample results (WAC 173-50-070); and
- Undergo an on-site audit (WAC 173-50-080).

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-060, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. 02-20-090 (Order 01-12), § 173-50-060, filed 10/1/02, effective 11/1/02; 90-21-090 (Order 90-21), § 173-50-

060, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-060, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-063 Application. (1) Through the application, laboratory managers:

- Request accreditation for specific parameters;
- Calculate fees due to the department; and
- Provide evidence that sufficient personnel and equipment are available to successfully perform analytical methods as specified in the application.

(2) Through review of the application submitted by the applicant laboratory, the lab accreditation unit determines if:

- Requested parameters are eligible for accreditation;
- The fee calculated by the applicant laboratory is correct; and
- Personnel and equipment are adequate to support successful performance of requested parameters.

(3) Following the review, the lab accreditation unit advises the applicant laboratory of any required changes.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-063, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-063, filed 10/1/02, effective 11/1/02.]

WAC 173-50-067 Quality assurance manual. (1) The lab accreditation unit reviews and approves the laboratory's QA manual prior to the initial on-site audit. The QA manual submitted concurrently with the application must be in detail and scope commensurate with the size and mission of the laboratory. Guidelines for contents of the QA manual are in the procedural manual.

(2) The QA manual must address QA and QC requirements of applicable regulatory programs. For drinking water laboratories, such requirements are found in the drinking water certification manual.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-067, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-067, filed 10/1/02, effective 11/1/02.]

WAC 173-50-070 Proficiency testing (PT). (1) The lab accreditation unit advises applying laboratories of specific requirements for participation in proficiency testing (PT) studies for applicable parameters. Proficiency tests conducted under the provisions of other recognized programs may be used to satisfy these requirements. The lab accreditation unit determines the sufficiency of such proficiency tests.

(2) Accredited laboratories must analyze a minimum of one PT sample per applicable microbiology parameter per year and two PT samples for applicable chemistry parameters per year. For chemistry parameters, after an accredited laboratory submits two satisfactory PT sample results and no unsatisfactory results in an accreditation year, the laboratory is required to submit only one satisfactory PT sample result in subsequent accreditation years. This applies as long as there are no intervening unsatisfactory PT sample results.

(3) The lab accreditation unit may require the laboratory to submit raw data along with the report of analysis of PT samples.

(4) The lab accreditation unit may waive proficiency tests for certain parameters if PT samples are not readily available or for other valid reasons.

(5) Applying laboratories are responsible for obtaining PT samples from vendors approved by the lab accreditation unit. No fee shall be charged to the department for the purchase or analysis of PT samples.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-070, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-070, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-070, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-070, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-070, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-080 On-site audit. The laboratory must undergo an on-site audit by the department to assess critical elements and areas of recommended practices. The laboratory must assist/accommodate department of ecology personnel during on-site audits as required.

(1) **Critical elements for accreditation.** Elements of an environmental laboratory's operations which are critical to the consistent generation of accurate and defensible data are critical elements for accreditation. Critical elements are subject to intense scrutiny throughout the accreditation process. The ecology accrediting authority may deny, revoke, or suspend accreditation for deficiencies in critical elements. Functional areas including critical elements are:

(a) **Analytical methods.** The on-site audit seeks to determine if documentation of analytical methods:

- Are present at the laboratory;
- Readily available to analysts; and
- Being implemented. If the laboratory is using a locally developed method, the on-site audit may include an evaluation of the adequacy of that method.

(b) **Equipment and supplies.** The on-site audit seeks to determine if sufficient equipment and supplies as required by analytical methods are:

- Available;
- Being adequately maintained; and
- In a condition to allow successful performance of applicable analytical procedures.

To gain and maintain accreditation, laboratories must demonstrate that equipment and supply requirements of applicable regulatory programs are being met.

(c) **QA and QC records.** The on-site audit includes a review of QA and QC records for programs/projects within which the laboratory is generating analytical data for submission to the data user.

(d) **Sample management.** The on-site audit includes a review of applicable procedures for receipt, preservation, transportation, and storage of samples. The laboratory is responsible only for those elements of sample management over which it has direct control. To gain and maintain accreditation, laboratories must demonstrate that sample management requirements of applicable regulatory programs are being met.

(e) **Data management.** The on-site audit includes a review of activities necessary to assure accurate management of laboratory data including:

- Raw data;
- Calculations; and
- Transcription, computer data entry, reports of analytical results.

To gain and maintain accreditation, laboratories must demonstrate that data management requirements of applicable regulatory programs are being met.

(2) **Recommended practices.** Recommended practices are those elements of laboratory operations which might affect efficiency, safety, and other administrative functions, but do not normally affect quality of analytical data. Normally these practices would not be the basis for denial or revocation of accreditation status. Functional areas within which recommended practices may be noted are:

(a) **Personnel.** The department seeks to determine if managerial, supervisory, and technical personnel have adequate training and experience to allow satisfactory completion of analytical procedures and compilation of reliable, accurate data. Minimum recommended education and experience criteria for laboratory personnel are specified in the procedural manual.

(b) **Facilities.** The department seeks to determine if laboratory facilities allow efficient generation of reliable, accurate data in a safe environment.

(c) **Safety.** The department may refer serious safety deficiencies to appropriate state or federal agencies.

(3) **Drinking water laboratory requirements.** For laboratories applying for accreditation of drinking water parameters, on-site audit requirements are those designated in the drinking water certification manual. If such a standard is more stringent than the corresponding standard in this chapter, the drinking water certification manual applies.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-080, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-080, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-080, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-080, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-080, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-090 Evaluation and issuance of certificate. (1) After preliminary requirements (WAC 173-50-060 through 173-50-080) have been met, the lab accreditation unit submits a report to the affected laboratory concerning the results of the overall accreditation process. The report may:

- List findings;
- Assess the importance of each finding; and
- Make recommendations concerning actions necessary to assure resolution of problems.

(2) After completing the accreditation review, the ecology accrediting authority decides whether accreditation should be granted.

(a) If accreditation is warranted, the department issues a certificate and accompanying scope of accreditation. The certificate remains the property of the department and must be surrendered to the department upon revocation or voluntary termination of accreditation status.

(b) If accreditation is not warranted, the department issues a report specifying areas of deficiency and steps necessary to upgrade the laboratory to accredited status. In such cases, the laboratory must provide documentation that the specified deficiencies have been corrected. Based on such documentation the ecology accrediting authority decides whether to grant or deny accreditation.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-090, filed 8/9/10, effective 9/9/10. Stat-

utory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-090, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-090, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-090, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-090, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-100 Interim accreditation. If the department is unable to complete the accreditation process through no fault of the laboratory, the ecology accrediting authority may grant interim accreditation. To be considered for interim accreditation, the laboratory must:

- Submit an application and applicable fees;
- Successfully complete applicable proficiency tests; and
- Submit a QA manual that meets the requirements of WAC 173-050-067.

The lab accreditation unit may also require the laboratory to submit an analytical data package as evidence of analytical capability.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-100, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-100, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-100, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-100, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-100, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-110 Provisional accreditation. (1) The ecology accrediting authority may grant provisional accreditation to laboratories which can consistently produce valid analytical data but have deficiencies requiring corrective action. When the laboratory has corrected such deficiencies, it must provide evidence of correction to the lab accreditation unit, or request a follow-up on-site audit, as appropriate. If the lab accreditation unit determines the deficiencies have been corrected, the ecology accrediting authority awards full accreditation as in WAC 173-50-090.

(2) The ecology accrediting authority may renew a provisional accreditation for a subsequent accreditation period if laboratory management has demonstrated that all reasonable measures to correct deficiencies have been exhausted.

(3) For drinking water laboratories, specific conditions warranting provisional accreditation and specific actions required of the laboratory when provisional accreditation is granted are found in the drinking water certification manual.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-110, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-110, filed 10/1/02, effective 11/1/02; 90-21-090 (Order 90-21), § 173-50-110, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-110, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-120 Accreditation categories. (1) Environmental laboratories are accredited within one or more of the matrix groups defined in WAC 173-50-040. Within each matrix group, accreditation is granted within the following broad categories:

- General chemistry;
- Trace metals;
- Organics I;
- Organics II (Category II methods use mass spectrometer detectors);
- Microbiology;
- Radiochemistry;

- Bioassay;
- Immunoassay; and
- Physical.

Within these categories, laboratories are specifically accredited for well-defined parameters, such as, but not limited to, those suggested in the procedural manual, using specific analytical methods or sampling techniques chosen by the applying laboratory.

(2) The scope of accreditation accompanying the accreditation certificate indicates the parameters for which the laboratory is accredited, and any applicable qualifications, such as interim or provisional accreditation.

(3) The scope of accreditation also indicates the matrix groups within which each parameter applies. Those matrix groups may include, but are not limited to:

- Nonpotable water;
- Drinking water;
- Solid and chemical materials; and
- Air and emissions.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-120, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-120, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-120, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-120, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-120, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-130 Requirements for maintaining accreditation status. (1) Accreditation is granted for a one-year period (the accreditation year) and expires one year after the effective date of accreditation.

(2) Renewal requires the laboratory to submit:

- An application and appropriate fees;
- An update of the laboratory's QA manual if applicable;
- Evidence of accreditation by a third party when appropriate; and
- Successful completion of proficiency testing requirements.

(3) For laboratories accredited for drinking water parameters, on-site audits are required at periods not to exceed three years from the previous on-site audit.

(4) For laboratories not accredited for drinking water parameters, the schedule of on-site audits will be determined by the ecology accrediting authority.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-130, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-130, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-130, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-130, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-130, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-140 Denying accreditation. (1) The ecology accrediting authority may deny accreditation if the applicant laboratory:

- Fails to comply with standards for critical elements of the on-site audit;
- Misrepresents itself to the department;
- Fails to disclose pertinent information in the application;
- Falsifies reports of analysis including proficiency testing results;

- Engages in unethical or fraudulent practices concerning generation of analytical data;
- Is deficient in its ability to provide accurate and defensible analytical data; or
- Fails to render applicable fees.

(2) A laboratory may be denied accreditation for a specific parameter for unsatisfactory proficiency testing results.

(3) Laboratories denied accreditation may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, laboratories denied accreditation may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-140, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-140, filed 10/1/02, effective 11/1/02; 90-21-090 (Order 90-21), § 173-50-140, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-140, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-150 Revoking or suspending accreditation. (1) Revocation of accreditation is the withdrawal of a previously granted accreditation. Revocation may involve the entire laboratory or one or more individual parameters.

(2) Suspension of accreditation is for a specified period during which the affected laboratory corrects deficiencies that led to the suspension. Suspension may involve the entire laboratory, or one or more individual parameters.

(3) The ecology accrediting authority may suspend or revoke accreditation if the accredited laboratory:

- Fails to comply with standards for critical elements of an on-site audit;
- Violates a state rule relative to the analytical procedures for which it is accredited;
- Misrepresents itself to the department;
- Falsifies reports of analysis including proficiency testing results;
- Engages in unethical or fraudulent practices concerning generation of analytical data;
- Is deficient in its ability to provide accurate and defensible analytical data;
- Refuses to permit entry for enforcement purposes (WAC 173-50-210);
- Fails to render applicable fees;
- Fails to maintain third-party accreditation; or
- Reports two consecutive unsatisfactory PT sample results.

(4) A laboratory having had its accreditation suspended or revoked may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, a laboratory having had its accreditation revoked may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-150, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-150, filed 10/1/02, effective 11/1/02; 90-21-090 (Order 90-21), § 173-50-150, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-150, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-170 Third-party accreditation. (1) The department may recognize accreditation (or certification, registration, licensure, approval) of a laboratory by a third party when the accreditation process is determined to be equivalent to that described in this chapter.

(2) Laboratories applying for recognition of a third party's accreditation submit:

- An application and associated fee (WAC 173-50-190(7));
- A copy of the third party's certificate;
- A copy of the third party's scope of accreditation;
- A copy of the third party's most recent on-site audit report;
- A copy of the laboratory's corrective action report relative to the on-site audit, if applicable; and
- Recent, satisfactory proficiency test results for the applicable parameters.

(3) In consideration of a request to recognize a third party's accreditation as the basis for accreditation by the ecology accrediting authority, the lab accreditation unit reviews the application and supporting documentation to assure compliance with minimum accreditation requirements as stated in this chapter. If the review is favorable, a certificate and scope of accreditation are granted as in WAC 173-50-090.

(4) Laboratories granted third-party accreditation must notify the laboratory accreditation unit immediately of changes in the status of their third-party accreditation.

(5) Washington laboratories accredited or applying for accreditation in recognition of a third party's accreditation must notify the lab accreditation unit of on-site audits scheduled by the third party and allow a department observer to attend such on-site audits.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-170, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. 02-20-090 (Order 01-12), § 173-50-170, filed 10/1/02, effective 11/1/02; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-170, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-190 Fee structure. (1) Fees in this chapter are in U.S. dollars and are established to cover costs of administering the WA ELAP. Fees shall be assessed for each parameter or method within each matrix, except as noted in subsection (3) of this section. The fee per parameter or method for each category, and the maximum fee per category where applicable, are identified in Table 1.

(2) Examples of parameters or methods for each category are published in the procedural manual. Accreditation may be requested for parameters in addition to those listed in the procedural manual.

(3) When a fee is assessed for a specific drinking water parameter or method, the laboratory may be accredited for the same parameter or method in nonpotable water without paying an additional fee.

TABLE 1 - FEE SCHEDULE

CATEGORY	FEE PER PARAMETER	FEE PER METHOD	MAX FEE PER CATEGORY
General Chemistry	\$80	—	\$1,600
Trace Metals	—	\$400	—
Organics I	—	\$200	—
Organics II	—	\$500	—
Microbiology	\$200	—	—
Radiochemistry	\$250	—	—
Bioassay	\$300	—	\$3,000

TABLE 1 - FEE SCHEDULE

CATEGORY	FEE PER PARAMETER	FEE PER METHOD	MAX FEE PER CATEGORY
Immunoassay	\$80	—	—
Physical	\$80	—	—

(4) The minimum fee for accreditation, either direct or through recognition of a third-party accreditation, is three hundred dollars.

(5) In addition to paying the fee indicated in Table 1, out-of-state laboratories must pay for the actual cost of travel associated with on-site audits. The department invoices the laboratory for such costs after completion of the on-site audit.

(6) The laboratory must pay applicable fees before:

- Its quality assurance manual is reviewed by the department;
- The on-site audit is conducted if applicable; and
- Interim, provisional, or full accreditation is granted.

(7) The fee for recognition of a third party accreditation (WAC 173-50-170) is three-fourths (75%) of the fee indicated in Table 1.

(8) If a laboratory withdraws from the accreditation process after the application has been processed, but before accreditation is granted, the fee is refundable, less an amount up to three hundred dollars as reimbursement for costs of processing the application. If a laboratory withdraws from the accreditation process after the on-site audit has been completed, the department may retain the entire fee including reimbursement of travel costs if applicable.

(9) Dollar amounts listed in Table 1 and subsections (4) and (8) of this section may be decreased at any time the department determines they are higher than needed to meet accreditation program requirements. The department notifies affected parties of any fee adjustment at least thirty days prior to the effective date of the adjusted fee.

(10) Accreditation fees are waived for laboratories operated by the Washington state departments of ecology and health. Accreditation fees are also waived for drinking water parameters certified by EPA Region 10 at designated principal laboratories.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-190, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. 02-20-090 (Order 01-12), § 173-50-190, filed 10/1/02, effective 11/1/02; 93-20-011 (Order 92-53), § 173-50-190, filed 9/22/93, effective 10/23/93; 90-21-090 (Order 90-21), § 173-50-190, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-190, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-210 Enforcement. (1) For the purpose of conducting on-site audits or inspections to ensure compliance with this chapter, the department may, during regular business hours, enter business premises in which analytical data pertaining to accreditation under the provisions of this chapter are generated or stored.

(2) Refusal to permit entry for such purposes may result in denial or revocation of accreditation.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-210, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. 02-20-090 (Order 01-12), § 173-50-210, filed 10/1/02, effective 11/1/02; 90-21-090 (Order 90-21), § 173-50-210, filed 10/19/90, effective 11/19/90; 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-210, filed 4/20/89 and 3/13/90, effective 4/13/90.]

WAC 173-50-220 Assistance to laboratories. Laboratories scheduled to undergo an on-site audit may request a training session be conducted by department staff in conjunction with that audit. Accredited laboratories may also request on-site assistance at times other than the on-site audit. Whether requested as part of the on-site audit or otherwise, the department will provide such assistance to the extent allowed by staff resources available at the time.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. 10-17-032 (Order 09-09), § 173-50-220, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230, 02-20-090 (Order 01-12), § 173-50-220, filed 10/1/02, effective 11/1/02; 90-21-090 (Order 90-21), § 173-50-220, filed 10/19/90, effective 11/19/90.]

Chapter 173-152 WAC WATER RIGHTS

WAC

173-152-010	Purpose.
173-152-020	Definitions.
173-152-030	Organization and management of workload except under chapter 90.90 RCW.
173-152-035	Organization and management of workload under chapter 90.90 RCW.
173-152-040	Basin assessments.
173-152-050	Criteria for priority processing of competing applications.
173-152-060	Exceptions.

WAC 173-152-010 Purpose. This rule establishes the framework under which the department can:

- (1) Provide for the organization of its work;
- (2) Prioritize basins to be assessed;
- (3) Conduct basin assessments;
- (4) Prioritize investigations of water right applications by geographic areas; and
- (5) Establish criteria for priority processing of applications for:
 - (a) New water rights; and
 - (b) Change or transfer of existing water rights.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-010, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-010, filed 2/27/98, effective 3/30/98.]

WAC 173-152-020 Definitions. For the purposes of this chapter the following definitions apply:

- (1) "Acquisition" means, for the purposes of WAC 173-152-035, buying or leasing water rights using the Columbia River account.
- (2) "Application" means an application for a new water right, a change or transfer to an existing water right, or both made under chapters 90.03 and 90.44 RCW.
- (3) "Applications to change or transfer" means applications made under RCW 90.03.380 or 90.44.100.
- (4) "Columbia River account" means, for the purposes of the WAC 173-152-035, a fund that is created, funded, and spent as provided in chapter 90.90 RCW.
- (5) "Columbia River basin" means, for the purposes of WAC 173-152-035, water resource inventory area (WRIA) 29, located in southwest Washington, and WRIs 30 through 62 located in central or eastern Washington where water sources flow into the Columbia River upstream of Bonneville

Dam. A map of the Columbia River basin by WRIA is shown on map A.

(6) "Columbia River mainstem" means, for the purposes of WAC 173-152-035, all water in the Columbia River within the ordinary high water mark of the main channel of the Columbia River between the border of the United States and Canada and the Bonneville Dam, and all groundwater within one mile of the high water mark. Water is within the mainstem if it is within a straight line drawn across the mouth of each tributary to delineate the mainstem channel. The mainstem channel does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within one mile of the Columbia River.

(7) "Competing applications" means all existing applications for a water right from the same water source, whether for a new water right or for a change or transfer of an existing water right.

(8) "Department" means the department of ecology.

(9) "Lower Snake River mainstem" means, for the purposes of WAC 173-152-035, all water in the Lower Snake River within the ordinary high water mark of the main channel of the Lower Snake River from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark. Water is within the mainstem if it is within a straight line drawn across the mouth of each tributary to delineate the mainstem channel. The mainstem channel does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within one mile of the Lower Snake River.

(10) "Mitigation" means measures that in perpetuity offset impacts on a water source to eliminate detriment to the public interest or impairment.

(11) "New application" means any application for a permit made under chapters 90.03 and 90.44 RCW.

(12) "Nonconsumptive" means water use where there is no diminishment of the amount or quality of the water source.

(13) "Pool" means, for the purposes of WAC 173-152-035, a reach of the Columbia or Lower Snake River mainstems inundated and under the downstream hydraulic control of dams operated by:

(a) U.S. Army Corps of Engineers.

(b) U.S. Bureau of Reclamation.

(c) Any mid-Columbia public utility district.

(14) "Public water system" means a water supply system as defined in RCW 70.119A.020.

(15) "Sources of supply developed under chapter 90.90 RCW" means, for the purposes of WAC 173-152-035, new storage, modification of existing storage, conservation, pump exchanges, acquisition or any other projects designed to provide access to new water supplies.

(16) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under chapters 90.03, 90.38, 90.42, and 90.44 RCW.

(17) "Voluntary regional agreement" or "VRA" means, for the purposes of WAC 173-152-035, an agreement entered into by the department with another entity for the purposes of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

(18) "Water budget neutral project" means a project where diversions or withdrawals of waters of the state are

proposed in exchange for at least an equivalent amount of water from other water rights, the trust water program, a water bank, relinquishment of other water rights, or other mitigation projects that result in no diminishment of the source.

(19) "Water source" means an aquifer, aquifer system, or surface water body, including a stream, stream system, lake, or reservoir and any spring water or underground water that is part of or tributary to the surface water body or aquifer that the department determines to be an independent water body for the purposes of water right administration.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-020, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-020, filed 2/27/98, effective 3/30/98.]

WAC 173-152-030 Organization and management of workload except under chapter 90.90 RCW. The department will organize and manage its daily water rights workload as established in subsections (1) through (5) of this section, except for applications processed under WAC 173-152-035.

(1) The department may establish regions and maintain regional offices or field offices for the purposes of maximizing the efficiency of its work. Regional offices and their geographic jurisdictions as of the effective date of this rule are as follows:

(a) Northwest regional office serving Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties.

(b) Southwest regional office serving Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties.

(c) Central regional office serving Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties.

(d) Eastern regional office serving Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties.

(2) The department will make decisions on applications within a region or within a regional or field office's geographic area in the order the applications were received except as allowed under RCW 90.03.380 (5)(c), and except as provided for in subsection (3) of this section and WAC 173-152-050.

(3) The department may, based on the criteria identified in subsection (5) of this section, conduct investigations and make decisions on one or more applications for the use of water from the same water source. A regional office may investigate more than one water source at a time.

(4) When the department investigates multiple applications for water from the same water source, it will make decisions in the order in which the applications were received, except as allowed under RCW 90.03.380 (5)(c) or provided for under WAC 173-152-050. The department will consider each application individually under the requirements of chapters 90.03, 90.38, 90.42, and 90.44 RCW, as applicable.

(5) Criteria for selecting a water source include, but are not limited to:

(a) The number and age of pending applications, and the quantities of water requested.

(b) The ability to efficiently investigate applications because of the availability of data related to water supply and future needs, stream flow needs for instream values, and hydrogeology of the basin.

(c) The ability of the department to support implementation of local land use plans or implementation of water resource plans.

(d) The projected population and economic growth in the area.

(e) The completion of an initial basin assessment as provided for in WAC 173-152-040(5).

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-030, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-030, filed 2/27/98, effective 3/30/98.]

WAC 173-152-035 Organization and management of workload under chapter 90.90 RCW. The department will organize and manage the daily workload as established in subsections (1) through (6) of this section for applications processed under chapter 90.90 RCW.

(1) The department implements chapter 90.90 RCW in counties or portions of counties in the central, eastern, and southwest regional offices, as shown in the map by counties on map B.

(2) The department processes the following types of applications under chapter 90.90 RCW:

(a) New applications proposing to divert surface water from the Columbia River between the border of the United States and Canada and the Bonneville Dam.

(b) New applications proposing to divert surface water from the Lower Snake River downstream of Lower Monumental Dam.

(c) New applications associated with a voluntary regional agreement proposing to divert or withdraw water from the Columbia River mainstem or Lower Snake River mainstem.

(d) New applications proposing to divert surface water within the Columbia River basin for storage or net water savings funded in whole or in part by the Columbia River account.

(e) New applications proposing to withdraw groundwater within the Columbia River basin for storage or net water savings funded in whole or in part by the Columbia River account where the proposed well(s) and use(s) can be mitigated using the same source as that of the withdrawal.

(f) Applications for water rights and trust water within the Columbia River basin associated with a project funded by the Columbia River account.

(3) Criteria for selecting a water source for processing new applications from water supplies developed in whole or in part by the department include, but are not limited to:

(a) The priorities outlined in RCW 90.90.020(3).

(b) The funding agreements and environmental reviews used to develop a project.

(c) The number and age of pending applications, and the quantities of water requested.

(d) Existence of distressed or endangered fish stocks.

(e) The location of the source to be developed.

(f) Whether the place of use must stay within the WRIA as limited under RCW 90.90.010 (2)(a).

(4) The department may, based on the criteria identified in subsection (3) of this section, conduct investigations and make decisions on one or more applications for the use of water from the same water source. The department may investigate more than one water source at the same time.

(5) When numerous applications for water from the same water source are investigated, the department may make decisions on one or more water right applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in subsection (4) of this section and WAC 173-152-050.

(6) For purposes of chapter 90.90 RCW, if the water source developed is:

(a) On the Columbia River between Bonneville Dam and Canada, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iii) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(b) On the Snake River downstream of Lower Monumental Dam, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications where the proposed well(s) can be mitigated by the developed source of supply.

(iii) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(c) On the Columbia River mainstem or Lower Snake River mainstem under a voluntary regional agreement, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications within one mile of the high water mark where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iii) Applications for change or transfer to trust water applications associated with development of the source if funded by the Columbia River account.

(d) On a tributary in the Columbia River basin for a source of supply developed using Columbia River account funds, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications.

(ii) All new surface water applications on the Columbia River within the same pool and downstream of the developed source of supply.

(iii) All new groundwater applications within the Columbia River basin where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iv) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(e) Upstream of Lower Monumental Dam or on a tributary to the Lower Snake River for a source of supply developed using Columbia River account funds, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications.

(ii) All new surface water applications on the Lower Snake and Columbia rivers within the same pool and downstream of the developed source of supply.

(iii) All new groundwater applications within the Lower Snake and Columbia river basins where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iv) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(f) In the Columbia River basin using funds from the Columbia River account through acquisition or transfer of water rights in accordance with RCW 90.90.010 (2)(a), the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications within the same WRIA.

(ii) All new surface water applications on the Lower Snake or Columbia rivers within the same WRIA.

(iii) All new groundwater applications where the proposed well(s) can be mitigated using the same source as that of the withdrawal within the same WRIA.

(7) The department will consider each application individually under the requirements of chapters 90.03, 90.38, 90.42, and 90.44 RCW.

(8) Before expediting an application for new storage pursuant to WAC 173-152-050(3), the department shall provide written notification to:

(a) County legislative authorities.

(b) Watershed planning groups with jurisdiction in the location of the reservoir.

(c) The department of fish and wildlife.

(d) Affected tribal governments and federal agencies.

(9) Any notified entity identified in subsection (7) of this section may raise concerns, either verbally or in writing, to the department about the department's decision how to prioritize an application. The concern must be raised within thirty calendar days of receiving the department's notification. The

department will consider the concerns as it processes the application.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-035, filed 12/20/10, effective 1/20/11.]

WAC 173-152-040 Basin assessments. (1) The department may conduct assessments to assemble and compare information related to:

- (a) Water use;
- (b) Water availability;
- (c) The quantity of water allocated to existing rights;
- (d) Known or potential water rights not recorded within the state water right record, and claims to water rights including those recorded within the water rights claims registry;
- (e) Instream flow; and
- (f) The hydrology of a basin.

(2) The department may also enter into agreements or contracts with public or private parties to conduct assessments.

(3) In cooperation with federal, state, tribal, and local jurisdictions and other interested parties, each regional office and the department in processing applications under chapter 90.90 RCW will consider assessing a geographic area or water source within its service area using criteria such as:

- (a) The number and age of pending applications, and the quantities of water requested.
- (b) The projected population, growth and off-stream needs for water in the area.
- (c) Known water quality problems.
- (d) Existence of distressed or endangered fish stocks.
- (e) Risk of impairment to senior rights (including instream flow rights).
- (f) Availability of data related to water supply and future need, stream flow needs for instream values, and hydrogeology of the basin.
- (g) The number of claims to water rights submitted pursuant to chapter 90.14 RCW.
- (h) The ability of the department to support local land use activities.

(4) Each regional office and the department in processing applications under chapter 90.90 RCW may conduct multiple basin assessments at the same time. When the department determines conducting a basin assessment is in the public interest, it will:

- (a) Publish notice of the intent to conduct a basin assessment once a week, for two consecutive weeks in a newspaper of general circulation within the geographic area.
- (b) Notify any Indian tribe with potential interest in the basin of the intent.
- (c) Temporarily cease making decisions on all competing water right applications in the basin proposed for assessment until the initial basin assessment is complete and published except for applications prioritized pursuant to WAC 173-152-050.

(d) Make decisions on competing applications after the initial basin assessment is complete and published to the extent sufficient information is available.

(5) Initial basin or water source assessments will be conducted to assemble the following existing information:

- (a) Physical characterization of the watershed related to:

- (i) Climatic impacts to water resources.
- (ii) Geology.
- (iii) Stream flow trends.
- (iv) Groundwater elevation trends and the contribution of groundwater to stream flows.
- (v) Surface and groundwater quality in the basin or water source.
- (b) Out-of-stream water use characterization related to:
 - (i) Water rights, federal rights, and claims to water rights.
 - (ii) Estimated use of water pursuant to water rights and claims to water rights.
 - (iii) Water use pursuant to RCW 90.44.050.
 - (iv) Extent of unauthorized water use.
 - (v) Potential future demands for out-of-stream water use in the basin.
- (c) Instream water use characterization related to:
 - (i) National Pollution Discharge Elimination System permits and the need for instream flow for pollution assimilation;
 - (ii) Fish stocks and habitat requirements, including existing, defined or engineered, or approved restoration projects;
 - (iii) Wildlife habitat requirements;
 - (iv) Recreational requirements; and
 - (v) Water rights and claims to water rights.
- (6) Upon completion and publication of the initial basin assessment, the department will consult with the public and federal, state, tribal, local jurisdictions and interested parties to evaluate the basin assessment. The evaluation will assess the data, analysis, and presentation of information in the basin assessment in terms of quality, adequacy, and utility to make decisions on future water resource allocation and use.
- (7) The department will make decisions on competing applications for water from a water source within the basin where sufficient information for water resource allocation exists. If the department determines that the information assembled and compared is not sufficient, the department may withdraw the water source from appropriation pursuant to RCW 90.54.050(2). The department in consultation with the public, federal, state, tribal, local jurisdictions and interested parties will design and conduct additional investigations, to the extent resources allow, to obtain the information necessary to make future decisions on water allocation and use.
- (8) The department shall make available on-line information obtained and compiled during an initial basin assessment of the water resources in a basin or water source.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-040, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-040, filed 2/27/98, effective 3/30/98.]

WAC 173-152-050 Criteria for priority processing of competing applications. At ecology's discretion, the department may approve an application for priority processing that addresses one of the criteria below:

- (1) Within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize an application ahead of competing applications if

the application resolves or alleviates a situation under either (a) or (b) of this subsection.

(a) A public health or safety emergency exists for a public water system currently providing potable water to existing users.

Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency. The application must specifically propose to correct the actual or anticipated cause(s) of the emergency. An emergency must meet one or more of the following conditions:

(i) A public water system has failed to meet state board of health standards for the delivery of potable water to existing water system users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs.

(ii) The current water source has failed or will fail within one year so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable water use efficiency and conservation efforts have been implemented.

(iii) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is or will become unacceptable for human use.

(b) Any emergency exists, other than for a public water system, for which immediate action is necessary for preservation of public health or safety.

(2) Within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize an application ahead of all competing applications, but only after those applications prioritized in subsection (1) of this section, if the department determines the application:

(a) Is for a public water system or source in danger of failing within five years, and priority processing by the department may correct the anticipated cause(s) of the emergency prior to actual system failure.

(b) Was filed by claimants participating in an adjudication, and the court requires a prompt decision.

(c) Is for a proposed water use that is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment, such as:

(i) Donations to the trust program intended to enhance instream flows or groundwater preservation.

(ii) A change or transfer of water into the state trust water right program in accordance with chapter 90.38 or 90.42 RCW, if that transfer provides a substantial environmental benefit.

(d) Is for a change or transfer and, if approved, would result in providing for public water supplies including, but not limited to, consolidation of two or more public water systems, to meet general public needs for the regional areas.

(e) Is for a seasonal water right change effective for a term of one year or less.

(f) Proposes temporary water use for an identified period such as:

(i) A public project such as road building.

(ii) A private project directly related to renewable energy or environmental enhancement.

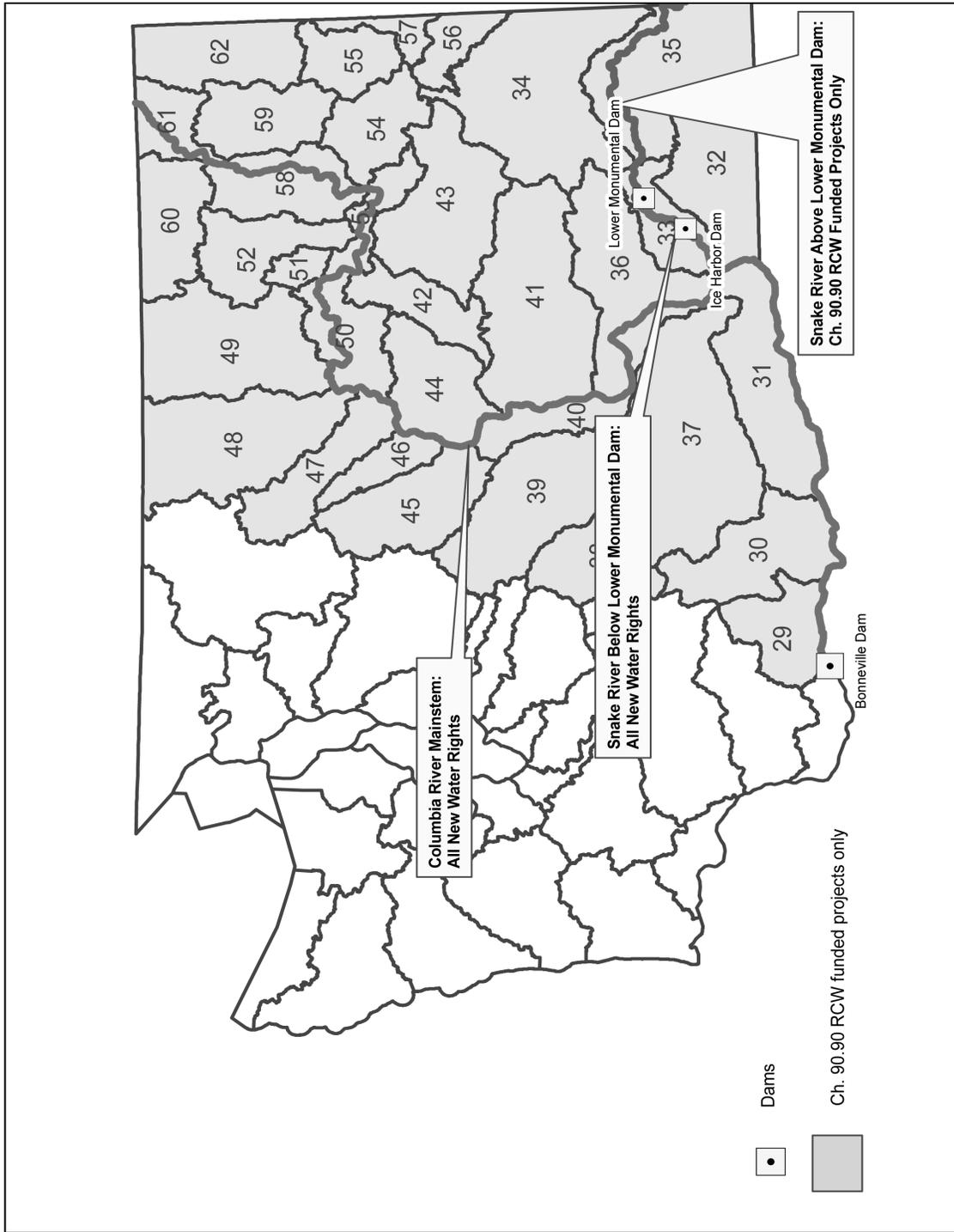
(g) Proposes a water budget neutral project as defined in WAC 173-152-020(18).

(3) The department may prioritize ahead of competing applications, except as prioritized in subsections (1) and (2) of this section, a new application for diversionary rights into reservoirs that, if approved, would not conflict with adopted state instream flow rules, federal flow targets, or federal biological opinions, and is funded or supported pursuant to chapter 90.90 RCW.

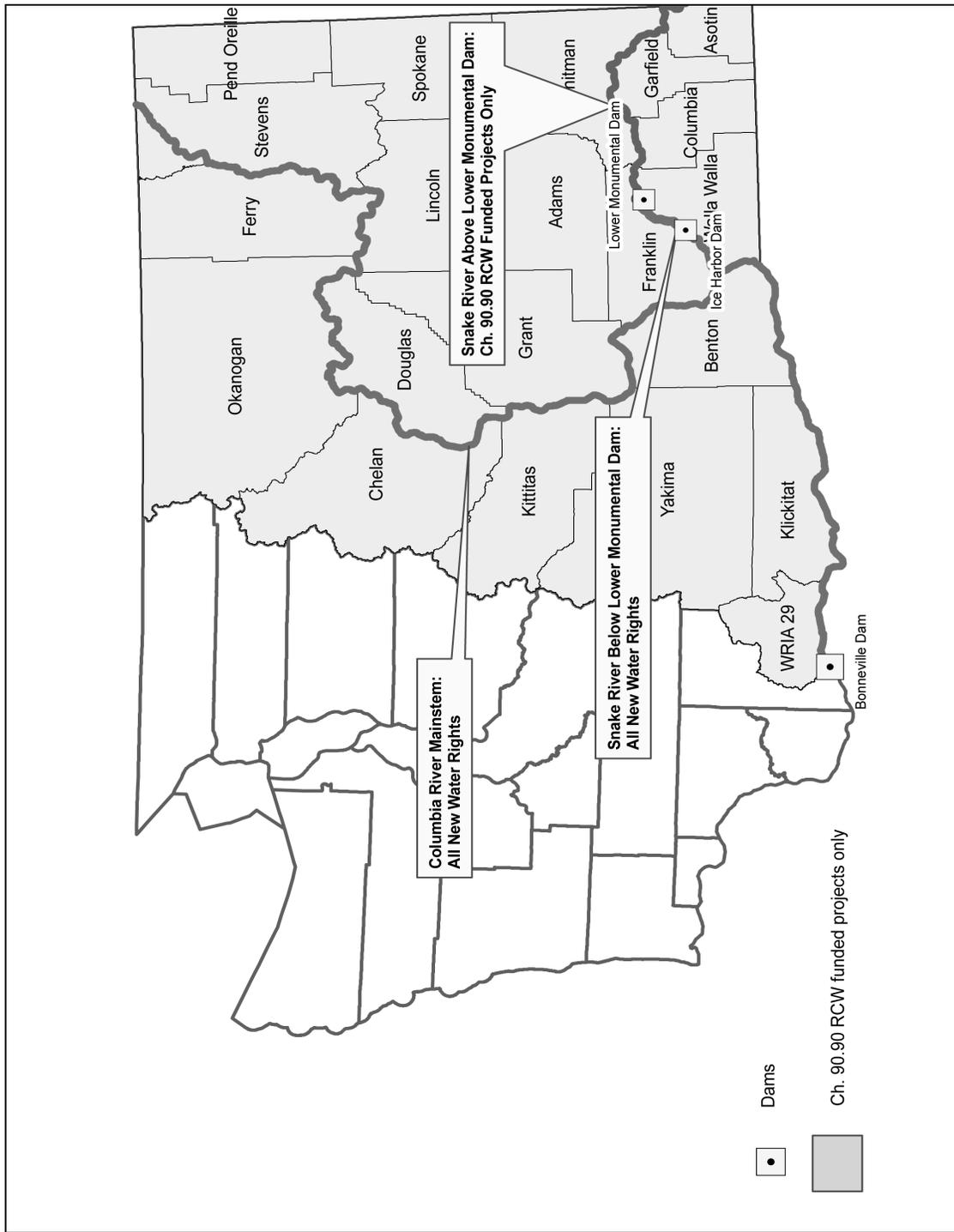
[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-050, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-050, filed 2/27/98, effective 3/30/98.]

WAC 173-152-060 Exceptions. Nothing in this chapter precludes the department from processing an application filed for a project where the law provides a specific process for evaluation of the application and issuance of a decision, or where the law provides or allows for expedited processing of an application.

Columbia River Basin



Ch. 90.90 RCW Implementation



[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. 11-01-126 (Order 09-05), § 173-152-060, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-060, filed 2/27/98, effective 3/30/98.]

Chapter 173-401 WAC
OPERATING PERMIT REGULATION

WAC

173-401-200 Definitions.

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Affected source" means a source that includes one or more affected units.

(2) "Affected states" are the states or federally-recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) "Affected unit" means a fossil-fuel fired combustion device or a source that opts-in under 40 CFR part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 CFR 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) "Chapter 401 permit" or "permit" means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) "Chapter 401 source" means any source subject to the permitting requirements of this chapter.

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.

(8) "Delegated authority" means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(9) "Designated representative" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(10) "Draft permit" means the version of a permit for which the permitting authority offers public participation or affected state review.

(11) "Emissions allowable under the permit" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(12) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(13) The "EPA" or the "administrator" means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(14) "Federal Clean Air Act" or "FCAA" means the Federal Clean Air Act, also known as Public Law 88-206, 77

Stat. 392. December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(15) "Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 CFR §§ 70.7 and 70.8.

(16) "General permit" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(17) "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(18) "Intermittent compliance" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of non-compliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

(19) "Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or

(xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

(c) A major stationary source as defined in part D of Title I of the FCAA, including:

(i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.

(20) "Permit modification" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(21) "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

(22) "Permit revision" means any permit modification or administrative permit amendment.

(23) "Permitting authority" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "Proposed permit" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 CFR 70.8.

(26) "Regulated air pollutant" means the following:

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or
- (e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:
 - (i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and
 - (ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and
- (f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(27) "Regulated pollutant (for fee calculation)," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

- (a) Carbon monoxide;
- (b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or
- (c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.
- (d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.
- (28) "Renewal" means the process by which a permit is reissued at the end of its term.
- (29) "Responsible official" means one of the following:
 - (a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or
 - (ii) The delegation of authority to such representative is approved in advance by the permitting authority;
 - (b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;
 - (c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or
 - (d) For affected sources:
 - (i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and
 - (ii) The designated representative for any other purposes under 40 CFR part 70.
- (30) "Section 502 (b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (31) "Small business stationary source" means a stationary source that:
 - (a) Is owned or operated by a person that employs one hundred or fewer individuals;
 - (b) Is a small business concern as defined in the Federal Small Business Act;
 - (c) Is not a major source;
 - (d) Does not emit fifty tons or more per year of any regulated pollutant; and
 - (e) Emits less than seventy-five tons per year of all regulated pollutants.

(32) "Solid waste incineration unit" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(33) "State" means any nonfederal permitting authority, including any local agency, interstate association, or state-wide program.

(34) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

(35) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 CFR chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

(b) The term "tpy (tons per year) CO₂ equivalent emissions" (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e.

(36) "Title I modification" or "modification under any provision of Title I of the FCAA" means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

[Statutory Authority: RCW 70.94.161 and 70.94.510. 10-24-114 (Order 10-13), § 173-401-200, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 70.94.161(2), 02-19-078 (Order 02-02), § 173-401-200, filed 9/16/02, effective 10/17/02. Statutory Authority: Chapter 70.94 RCW, 94-11-105 (Order 93-30), § 173-401-200, filed 5/17/94, effective 6/17/94; 93-20-075 (Order 91-68), § 173-401-200, filed 10/4/93, effective 11/4/93.]

Chapter 173-430 WAC AGRICULTURAL BURNING

WAC

173-430-010	Purpose of the regulation.
173-430-020	General applicability and conditions.
173-430-030	Definition of terms.
173-430-040	Agricultural burning requirements.
173-430-041	Agricultural burning fees.
173-430-042	Adjusting agricultural burning fees.
173-430-044	Additional requirements for burning field or turf grasses grown for seed.
173-430-045	Alternatives to burning field or turf grasses grown for seed.
173-430-050	Best management practices.
173-430-060	Research into alternatives to agricultural burning.
173-430-070	General agricultural burning permit conditions and criteria.
173-430-080	Responsibilities of a permitting authority.
173-430-090	Receiving delegation—Counties, conservation districts, and fire protection agencies.
173-430-100	Severability.

WAC 173-430-010 Purpose of the regulation. Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the Washington state department of ecology (ecology) and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes control strategies for agricultural burning in the state to minimize adverse health and the environmental effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and prop-

erty under all circumstances or is reasonably necessary to carry out the enterprise or both. These strategies include:

- (1) Establishing a permit program with minimum state-wide requirements and specific burn authorizations.
- (2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.
- (3) Encouraging and developing economically feasible alternative methods to agricultural burning.
- (4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.
- (5) Providing for local administration of the permitting program through delegation.
- (6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.
- (7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.
- (8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.
- (9) Providing for education and communication.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-010, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.-745. 06-16-052 (Order 04-10), § 173-430-010, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-010, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-010, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-010, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-010, filed 11/9/77. Formerly WAC 18-16-010.]

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities. It does not apply to silvicultural burning or outdoor burning. For these requirements refer to:

- Chapter 173-425 WAC for outdoor burning.
- Chapter 332-24 WAC for silvicultural burning.

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available.

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and rules, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial agricultural activities

(RCW 70.94.6524). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

- (a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training and improve the management of plant and disease, and pest infestations;
- (b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;
- (c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;
- (d) Organic debris blown by wind. The primary example is tumbleweeds.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-020, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.-745. 06-16-052 (Order 04-10), § 173-430-020, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-020, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-020, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-020, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-020, filed 11/9/77. Formerly WAC 18-16-020.]

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.6528(6) or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

(4) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (task force).

(5) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

(6) **Ecology:** Means the Washington state department of ecology.

(7) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons growing or producing products primarily for their own consumption.

(8) **Field burning:** Agricultural burning of vegetative residue on an area of land used in an agricultural operation. Field burning does not include pile burning.

(9) **Impaired air quality:** Means an impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW 70.94.473.

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

(11) **Permitting authority:** Means ecology or its delegate or a local air authority with jurisdiction or its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

(12) **Pile burning:** Agricultural burning of stacked vegetative residue from an agricultural operation. Burning of windrows does not qualify as pile burning.

(13) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.-030(13), 70.94.6534, 70.94.6540, and under chapter 76.04 RCW.

(14) **Spot burn:** Agricultural burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists. Examples of spot burns include small weed patches, spots of heavy residue, equipment plugs, and harrow dumps. Burning of windrows does not qualify as a spot burn.

(15) **Task force:** Means the agricultural burning practices and research task force.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-030, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.-745, 06-16-052 (Order 04-10), § 173-430-030, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.656, 98-12-016 (Order 97-45), § 173-430-030, filed 5/26/98, effective 6/26/98. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-030, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-030, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-030, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-030, filed 11/9/77. Formerly WAC 18-16-030.]

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, ecology or local air authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM_{2.5} concentrations are regularly monitored will follow the procedures in (c) of this subsection when making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM_{2.5} concentration was equal to or greater than 16 micrograms per cubic meter. This is based on the division between the "good" and "moderate" classifications of the 2009 U.S. Environmental Protection Agency's Air Quality Index (AQI) for (twenty-four hours average PM_{2.5}) particulate matter.

(ii) A two-hour rolling average PM_{2.5} concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM_{2.5} concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of the determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM_{2.5} concentration plus 25 micrograms per cubic meter in the specific area during the

twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations under the smoke management index.

(f) Under RCW 70.94.473 and 70.94.6512, no burning is authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by RCW 70.94.6532 or by 70.94.6528.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) Application information. A farmer must fill out the information requested on a permit application, pay the permitting fee, and submit it to the permitting authority for review and approval before burning.

(i) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

(ii) All applications must comply with other state or local rules.

(d) The permitting authority must evaluate the application, and approve the permit before burning.

(e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air authority with jurisdiction, or its delegate must approve or deny the permit in part or in whole based on information in the application.

(g) Ecology and its delegate or a local air authority with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW 70.94.6514.

(4) All agricultural burning permits require a fee.

The applicant must include the fee when submitting the application. The permitting authority will charge fees as described under WAC 173-430-041.

(5) All agricultural burning permits must include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include at least one of the following:

- The use of a daily burn decision.
- Permit specific decisions.
- Metering.

(c) The permitting authority must:

(i) Act on a complete application (as determined by the permitting authority) within seven days of receipt.

(ii) Evaluate the application and approve or deny all or part of it.

(iii) Evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(iv) If the permitting authority denies the application, they must state the reason for the denial.

(6) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, rules, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. 10-23-049 (Order 10-05), § 173-430-040, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-040, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.656. 98-12-016 (Order 97-45), § 173-430-040, filed 5/26/98, effective 6/26/98. Statutory Authority: RCW 70.94.656(4). 97-03-021 (Order 96-05), § 173-430-040, filed 1/7/97, effective 2/7/97. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-040, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-040, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-040, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-040, filed 11/9/77. Formerly WAC 18-16-040.]

WAC 173-430-041 Agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(a) **2011 fee schedule.** Fees starting in the calendar year 2011 are found in subsection (5) of this section.

(b) **Establishing new fee schedules.** Ecology and the task force will examine the fee schedule using the process in WAC 173-430-042.

(3) **Calculating the fee.** The fee consists of a minimum fee plus any applicable variable fee.

(a) **Minimum fee.** The minimum fee includes burning of the base number of acres or tons published in the fee schedule.

(b) **Variable fee.** Field burning and pile burning permits allowing the farmer to burn more acres or tons than the base included in the minimum fee require an additional per acre or per ton fee.

(c) The following table shows which types of burning have a variable fee.

Type of Burning	Variable Fee
Field Burning	Fee applied for each additional acre.
Spot Burning	None - Spot burn permits must not exceed the base amount of acres published in the fee schedule.
Pile Burning	Fee applied for each additional ton.

(4) **Fee components.** The permit fee helps off-set the cost of administering and enforcing the agricultural burning permit program. The fee consists of three components:

- Permitting program administration;
- Smoke management administration; and
- Research.

(a) **Permitting program administration.** The permitting authority may set the fee as an amount no more than the amount published in the fee schedule.

(i) The local air authority or delegated permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution.

(ii) In areas of the state where ecology has permitting authority and has not delegated that authority, ecology will charge the following for local permitting program administration:

(A) Starting in 2011, the amount listed in subsection (6) of this section.

(B) For subsequent fee changes, the amount published in the fee schedule. Ecology will publish the fee schedule using the process in WAC 173-430-042.

(b) **Smoke management administration.** This portion of the fee will:

(i) Help off-set the statewide or regionwide costs of the agricultural burning program.

(ii) Help fund the education and smoke management activities of ecology or the local air authority.

(c) **Research fund.** The task force will determine the research portion of the fee based on applied research needs, regional needs, and the research fund budget.

(5) **Permit fee schedule.** Table 1 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

**Table 1
Agricultural Burning Fee Schedule, Starting Calendar Year 2011**

Fee	Minimum Fee	Variable Fee
Field Burning	\$30 for the first 10 acres	\$3.00 for each additional acre
Spot Burning	\$30 for 10 acres or less	None
Pile Burning	\$80 for the first 100 tons	\$0.50 for each additional ton

(6) **Permit fee distribution.** Table 2 shows the permit fee distribution, starting in the calendar year 2011. This distribution will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

**Table 2
Agricultural Burning Fee Distribution**

Fee	Permitting Authority Administration	Research	Smoke Management
Field Burning Minimum Fee	\$15.00	\$0	\$15.00
Field Burning Variable Fee	\$1.25 per acre	\$0.50 per acre	\$1.25 per acre
Spot Burning Fee	\$15.00	\$0	\$15.00
Pile Burning Minimum Fee	\$16.00	\$16.00	\$48.00
Pile Burning Variable Fee	\$0.10 per ton	\$0.10 per ton	\$0.30 per ton

(7) **Refunds.** The farmer may receive a refund. The farmer may only receive a refund for the portion of the variable fee paid for the acres or tons not burned.

(a) The permitting authority may keep the minimum fee as reimbursement for the costs of processing the permit application.

(b) The permitting authority will not issue refunds of less than twenty-five dollars due to the cost of processing refunds.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket #

22989-1-III. 10-23-049 (Order 10-05), § 173-430-041, filed 11/10/10, effective 12/11/10.]

WAC 173-430-042 Adjusting agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(3) **Process for adjusting the fee schedule for agricultural burning.** The process for adjusting the fee schedule requires the following two steps:

- The task force must determine the fee schedule using the process established in subsection (4) of this section;
- If the task force decides to adjust the fee schedule, ecology will finalize the new fee schedule through the process established in subsection (6) of this section.

(4) **Task force process to determine agricultural burning fees.** The task force may examine the agricultural burning fee schedule once a year using the process outlined in this section. However, the task force must examine the agricultural burning fee schedule at least every two years. The task force process for examining the agricultural burning fee schedule must include the following:

(a) Ecology will submit, to the task force, a summary of the costs of the permit and smoke management programs before the first task force meeting of the year.

(b) The agenda for the first task force meeting of the year must include examining the current fee schedule.

(c) Ecology will notify stakeholders and permit holders of time, date, location, and agenda for the task force meeting.

(d) Based on the information provided by ecology, under (a) of this subsection, the task force will decide if they need to adjust the agricultural burning fee schedule.

(e) If the task force decides to adjust the agricultural burning fee schedule, they must determine the new fee schedule at a regularly scheduled meeting.

(5) **Examining the fee schedule more frequently.** The task force may examine the agricultural burning fee schedule more frequently than every two years, if all of the following occurs:

(a) The task force determines the fee schedule during one of their regularly scheduled meetings.

(b) Ecology finalizes the fee schedule using the process in subsection (6) of this section.

(6) **Ecology process to finalize fees set by the task force.** After the task force determines a new fee schedule, ecology will:

(a) Post the proposed fee schedule on the agency web site for public review and comment.

(b) Publish a notice of a public hearing.

(i) The notice will include all of the following:

- Time;
- Date;
- Location;
- Last day ecology will accept written comments.

(ii) At a minimum, ecology will publish the notice in the following locations:

(A) *Washington State Register*.

(B) Ecology web site.

(c) Hold a public hearing at least twenty days after completing the actions in (a) and (b) of this subsection.

(d) Accept written comments on the proposed fee schedule. Ecology must receive comments by the time and date specified in the hearing notice, or a later time and date established at the hearing.

(e) Consider comments received and provide a written response to comments to the task force and anyone who commented.

(f) Ecology will finalize the fee schedule by December 1st of the calendar year before it becomes effective.

(g) Ecology will publish the fee schedule by:

(i) Notifying stakeholders and permit holders of the new fees.

(ii) Posting a response to comments on the ecology web site.

(7) **Effective date of the new fee schedule.** The new fee schedule becomes effective January 1st of the calendar year after it is finalized.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-042, filed 11/10/10, effective 12/11/10.]

WAC 173-430-044 Additional requirements for burning field or turf grasses grown for seed. Ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.6532(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.6532(4).

(1) Beginning in 1997 and until approved alternatives become available, each farmer is limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(a) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(b) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

(2) Exemptions to the requirements for burning of field and turf grasses grown for seed (subsection (1) of this section). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of subsection (1) of this section is limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(a) The exemption request must be certified by an agronomic professional;

(b) The farmer must be able to show full compliance with the emissions reductions in subsection (1) of this section for the acreage not exempted; and

(c) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

(3) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.6532, until another method(s) is shown to be better and meets with the intent of RCW 70.94.6532(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and

meets the criteria, it may certify this method using an administrative order.

(4) Ecology or the local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed.

(a) Ecology or the local air authority may develop a system that allows the trading of permits by:

(i) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(ii) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(iii) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(iv) Assuring that the permits are used only once in a calendar year.

(b) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(c) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(d) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1st of the year during which the transaction takes place.

(e) Acreage that is exempted under subsection (5) of this section is not eligible for the trading system.

(f) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

(5) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of subsection (1) of this section provided:

(a) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or

exceed the emissions reduction required by subsection (1) of this section; and

(b) In no case will the emission reduction requirement for the field and turf grass grown for seed be less than that required in subsection (1) of this section.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-044, filed 11/10/10, effective 12/11/10.]

WAC 173-430-045 Alternatives to burning field or turf grasses grown for seed. (1) When is open burning of field and turf grasses grown for seed prohibited?

The Washington Clean Air Act prohibits open burning of field and turf grasses grown for seed whenever ecology has concluded, through a process spelled out in the act, that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to open burning, and that alternate is reasonably available.

(2) Has ecology certified practical alternatives to open burning of field or turf grasses grown for seed?

Yes. Ecology concludes that mechanical residue management constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed. Mechanical residue management means removing, including arranging for removal of, the residue using nonthermal, mechanical techniques including, but not limited to: Tilling, swathing, chopping, baling, flailing, mowing, raking, and other substantially similar nonthermal, mechanical techniques. Ecology further concludes that mechanical residue management is practical throughout all phases of seed production including:

(a) When the field is planted (establishment);

(b) When the field is producing seed (harvest years);

(c) When the field is prepared for replanting (tear-out).

(3) Are the alternatives to open burning that have been certified by ecology reasonably available?

Ecology concludes that mechanical residue management is reasonably available throughout the state wherever baling can be used. Baling is the process of gathering the residue and moving it off the field. Typically, a machine known as a "baler" is used to gather and bundle residue that is already cut.

Based on this conclusion, the open burning of field or turf grasses grown for seed is prohibited except as described in subsection (4) of this section. This rule does not require the use of any particular practice or technique. A farmer may use any alternate practice that does not involve field burning.

(4) Under what circumstances may open burning of field or turf grasses grown for seed be allowed?

(a) Where a farmer establishes that mechanical residue management is not reasonably available on specific portions of a field under specific production conditions due to slope. In a request for a waiver, a farmer must certify in writing to ecology or local air authority the following:

(i) Baling is not reasonably available due to slope. A farmer must explain why baling is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly

alternative to mechanical residue management. A farmer may use statements from three separate businesses providing baling services as part of their commercial operation to support the belief that baling is not reasonably available due to slope. In the statements, the businesses must certify that they are independent from the farmer and have no financial interest in the farmer's operation;

(ii) Current harvest practices have not diminished the ability to use mechanical residue management;

(iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The ground or portions of the field will remain, without replanting, in grass production at least through the next harvest season following burning;

(v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed before burning and reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle and could not have been made when planted to allow the use of mechanical residue management techniques.

(b) Where a farmer establishes that extreme conditions exist. Ecology or a local air authority, at their discretion, may grant a request for a waiver for extreme conditions. The farmer must certify in writing the following:

(i) Why mechanical residue management is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management;

(ii) He/she did not cause or create the condition to purposefully avoid using mechanical residue management techniques;

(iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The field will remain, without replanting, in grass production at least through the next harvest season following burning;

(v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed prior to burning and that reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle, and could not have been made when planted to allow the use of mechanical residue management techniques.

(c) Where a farmer demonstrates to ecology or local air authority that his/her small agricultural operation is eligible for mitigation.

For 1998 only, ecology or a local air authority may allow burning on a small agricultural operation. A small agricultural operation owner has a gross 1997 revenue from all agricultural operations of less than \$300,000. A farmer must show information of sufficient quantity and quality to ecology or a local air authority to establish gross revenue from

agricultural operations. A small farm owner may burn current acreage up to 25% of 1997 acreage burned under a valid permit. Fields taken out of production after the 1997 harvest season and in 1998 cannot be counted in the determination of 1997 acreage burned for the purpose of eligible burn acreage.

(d) Where a request for a waiver is approved under (a), (b), and (c) of this subsection, the following additional limitations also apply:

Total burn acreage must not exceed 1/3 of a farmer's acreage in production on May 1, 1996. Permits issued under (a), (b), or (c) of this subsection are not eligible for the permit trading program identified in WAC 173-430-040.

(5) What is the process for a farmer to request a waiver for circumstances described in subsection (4) of this section?

(a) A farmer submits a request for a waiver.

Sixty days before the planned burn date, a farmer must submit in writing a request to ecology or a local air authority. In the request, the farmer must identify the circumstances and meet the specific requirements of subsection (4)(a), (b), or (c) of this section. Ecology or the local air authority may require the request to be submitted on a form or in a format provided by ecology or the local air authority.

(b) Ecology or local air authority evaluates the request for a waiver.

Upon receiving a request for a waiver, ecology or the local air authority will determine if the necessary documents and information provided is complete enough to evaluate the request. If incomplete, ecology or local air authority will advise the farmer and suspend further evaluation until the request for a waiver is complete. The documents and information identified as necessary to complete the request must be delivered to ecology or the local air authority at least thirty days before burning. Once a request for a waiver is deemed complete, ecology or the local air authority will evaluate the request and decide whether the burning waiver is appropriate. As part of the evaluation, ecology or the local air may conduct an on-site inspection.

If ecology or local air authority denies a request for a waiver, the reasons will be provided to the farmer in writing. If approved, ecology or the local air authority will notify the farmer by convenient means. Ecology will also notify the appropriate delegated authority.

(c) The farmer applies for an agricultural burning permit.

If ecology or local air authority approves a request for a waiver, the farmer must complete a permit application and pay the fee as described in WAC 173-430-040. A delegated authority must receive written authorization from ecology that a waiver has been approved before processing a permit application.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-045, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.656. 98-12-016 (Order 97-45), § 173-430-045, filed 5/26/98, effective 6/26/98.]

WAC 173-430-050 Best management practices. (1)

The task force must identify best management practices for agricultural burning that are economically feasible and socially acceptable. Practical alternative production methods and controls which would reduce or eliminate agricultural burning must be used when reasonably available.

(2) The task force may establish an agricultural burning general best management practice and crop-specific best management practices as appropriate. The task force will work in conjunction with conservation districts and extension agents or other local entities in developing best management practices. The task force may review and approve crop-specific best management practices which have been developed or recommended by an individual or group.

(3) Approved best management practices information will be available from permitting authorities. The task force, as it deems necessary, will hold public workshops on best management practices that have changed or are new and will periodically review the best management practices starting three years after approval.

(4) The task force will clarify best management practices and make interpretative decisions as needed, considering all authoritative sources on the subject.

(a) An individual or group may request a best management practice clarification from the task force.

(b) The chair of the task force may direct the questioned practice to a subgroup of task force members, provided that agricultural, research, and regulatory interests are included and all task force members are notified, or may direct it to the whole task force.

(5) The task force will change best management practices as necessary to incorporate the latest research.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. 10-23-049 (Order 10-05), § 173-430-050, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-050, filed 1/17/95, effective 2/17/95. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-050, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-050, filed 11/9/77. Formerly WAC 18-16-050.]

WAC 173-430-060 Research into alternatives to agricultural burning. (1) Ecology will administer the research portion of the permit fee to carry out the recommendations of the task force. In carrying out the recommendations, ecology may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct the study, ecology may contract with public or private entities. Any approved study must provide for the identification of the alternatives as soon as possible.

(2) No less than every two years, the task force will review research needs and submitted proposals and make its recommendations to ecology.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. 10-23-049 (Order 10-05), § 173-430-060, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745, 06-16-052 (Order 04-10), § 173-430-060, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-060, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-060, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-060, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-060, filed 11/9/77. Formerly WAC 18-16-060.]

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the

proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) Do not burn at night unless it is specified as a best management practice;

(b) Comply with all fire safety rules of the local fire protection agency including any no-burn directives it may issue;

(c) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(f) Do not burn when adverse meteorological conditions exist;

(g) Burn only natural vegetation;

(h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

(i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. 10-23-049 (Order 10-05), § 173-430-070, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745, 06-16-052 (Order 04-10), § 173-430-070, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-070, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-070, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-070, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-070, filed 11/9/77. Formerly WAC 18-16-070.]

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(2) The permitting authority must act on a complete application (as determined by ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map must accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, and landmarks.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section must be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(e) If the application is denied, the reason must be stated.

(3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(6) The permitting authority must collect the fee, determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and smoke management administration portion of the fee to ecology.

(a) Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) Ecology must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to ecology.

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must use the web-based data base for issuing all agricultural burning permits.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-080, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-080, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-080, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-080, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331, 90-19-062 (Order 90-10), § 173-430-080, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-080, filed 11/9/77. Formerly WAC 18-16-080.]

WAC 173-430-090 Receiving delegation—Counties, conservation districts, and fire protection agencies. (1)

The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration, or enforcement authority of the program, or both. The delegated permitting authority must, at a minimum, meet all of the following criteria:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled;

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if ecology or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered or enforced. Before withdrawing delegation, the delegated agency must be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then ecology or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement before implementation.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-090, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 70.94.743, and 70.94.745. 06-16-052 (Order 04-10), § 173-430-090, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-090, filed 1/17/95, effective 2/17/95.]

WAC 173-430-100 Severability. The provisions of this regulation are severable. If any provision is held invalid, the

application of the provision to other circumstances and the remainder of the regulation will not be affected.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III, 10-23-049 (Order 10-05), § 173-430-100, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.650, 95-03-083 (Order 94-17), § 173-430-100, filed 1/17/95, effective 2/17/95.]

Chapter 173-441 WAC

REPORTING OF EMISSIONS OF GREENHOUSE GASES

WAC

173-441-010	Scope.
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173-441-150	Confidentiality.
173-441-160	Ecology to share information with local air authorities and with the energy facility site evaluation council.
173-441-170	Severability.

WAC 173-441-010 Scope. This rule establishes mandatory GHG reporting requirements for owners and operators of certain facilities that directly emit GHG as well as for certain suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel. For suppliers, the GHGs reported are the quantity that would be emitted from the complete combustion or oxidation of the products supplied.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-010, filed 12/1/10, effective 1/1/11.]

WAC 173-441-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) Definitions specific to this chapter:

(a) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(b) "Carbon dioxide equivalents" or "CO₂e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(c) "Department of licensing" or "DOL" means the Washington state department of licensing.

(d) "Director" means the director of the department of ecology.

(e) "Ecology" means the Washington state department of ecology.

(f) "Facility" unless otherwise specified in any subpart of 40 C.F.R. Part 98 as adopted or proposed by December 1, 2010, means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(g) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning on January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(h) "Person" includes:

(i) An owner or operator, as those terms are defined by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted or proposed by December 1, 2010; and

(ii) A supplier.

(i) "Supplier" means any person who is:

(i) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010;

(ii) A special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; or

(iii) A distributor of aircraft fuel, as the term is defined in RCW 82.42.010.

(2) **Definitions specific to suppliers.** Suppliers must use the definitions found in the following regulations unless the definition is in conflict with a definition found in subsection (1) of this section. These definitions do not apply to facilities.

(a) WAC 308-72-800;

(b) WAC 308-77-005; and

(c) WAC 308-78-010.

(3) **Definitions from 40 C.F.R. Part 98.** For those terms not listed in subsection (1) or (2) of this section, the definitions found in 40 C.F.R. § 98.6, as adopted or proposed by December 1, 2010, are adopted by reference as modified in WAC 173-441-120(2).

(4) **Definitions from chapter 173-400 WAC.** If no definition is provided in subsections (1) through (3) in this section, use the definition found in chapter 173-400 WAC.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-020, filed 12/1/10, effective 1/1/11.]

WAC 173-441-030 Applicability. The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this chapter apply to the owners and operators of any facility that meets the requirements of subsection (1) of this section; and any supplier that meets the requirements of subsection (2) of this section. In determining whether reporting is required, the requirements of subsection (1) must be applied independently of the requirements of subsection (2).

(1) **Facility reporting.** Reporting is mandatory for an owner or operator of any facility located in Washington state with total GHG emissions that exceeds the reporting threshold defined in (a) of this subsection. GHG emissions from all applicable source categories listed in WAC 173-441-120 at the facility must be included when determining whether emissions from the facility meet the reporting threshold.

(a) **Facility reporting threshold.** Any facility that emits ten thousand metric tons CO₂e or more per calendar year in total GHG emissions from all applicable source categories listed in WAC 173-441-120 exceeds the reporting threshold.

(b) **Calculating facility emissions for comparison to the threshold.** To calculate GHG emissions for comparison to the reporting threshold, the owner or operator must:

(i) Calculate the total annual emissions of each GHG in metric tons from all applicable source categories that are listed and defined in WAC 173-441-120. The GHG emissions must be calculated using the calculation methodologies specified in WAC 173-441-120 and available company records.

(ii) Include emissions of all GHGs that are listed in Table A-1 of WAC 173-441-040, including all GHG emissions from the combustion of biomass and all fugitive releases of GHG emissions from biomass, calculated as provided in the calculation methods referenced in Table 120-1.

(iii) Sum the emissions estimates for each GHG and calculate metric tons of CO₂e using Equation A-1 of this subsection.

$$CO_2e = \sum_{i=1}^n GHG_i \times GWP_i \quad (Eq. A-1)$$

Where:

- CO₂e = Carbon dioxide equivalent, metric tons/year.
 GHG_i = Mass emissions of each greenhouse gas listed in Table A-1 of WAC 173-441-040, metric tons/year.
 GWP_i = Global warming potential for each greenhouse gas from Table A-1 of WAC 173-441-040.
 n = The number of greenhouse gases emitted.

(iv) Include in the emissions calculation any CO₂ that is captured for transfer off-site.

(v) Research and development activities are not considered to be part of any source category defined in this chapter.

(2) **Suppliers.** Reporting is mandatory for any supplier required to file periodic tax reports to DOL and has total carbon dioxide emissions that exceed the reporting threshold defined in (a) of this subsection.

(a) **Supplier reporting threshold.** Any supplier that supplies applicable fuels that are reported to DOL as sold in Washington state of which the complete combustion or oxidation would result in total calendar year emissions of ten thousand metric tons or more of carbon dioxide exceeds the reporting threshold.

(b) **Calculating supplier emissions for comparison to the threshold.** To calculate CO₂ emissions for comparison to the reporting threshold, a supplier must:

(i) Base its emissions on the applicable fuel quantities as established in WAC 173-441-130(1) and reported to DOL. A supplier must apply the mass in metric tons per year of CO₂ that would result from the complete combustion or oxidation of these fuels towards the reporting threshold.

(ii) Calculate the total annual carbon dioxide emissions in metric tons from all applicable fuel quantities and fuel types as established in WAC 173-441-130(1) and reported to DOL. The CO₂ emissions must be calculated using the calculation methodologies specified in WAC 173-441-130 and data reported to DOL.

(iii) Only include emissions of carbon dioxide associated with the complete combustion or oxidation of the applicable fuels. Include all CO₂ emissions from the combustion of biomass fuels.

(iv) Research and development activities are not considered to be part of any source category defined in this chapter.

(3) **Applicability over time.** A person that does not meet the applicability requirements of either subsection (1) or (2) of this section is not subject to this rule. Such a person would become subject to the rule and the reporting requirements of this chapter if they exceed the applicability requirements of subsection (1) or (2) of this section at a later time. Thus, persons should reevaluate the applicability to this chapter (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of subsection (1) or (2) of this section. Such changes include, but are not limited to, process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, facility expansion, and changes to this chapter.

(4) **Voluntary reporting.** A person may choose to voluntarily report to ecology GHG emissions that are not required to be reported under subsection (1) or (2) of this section. Persons voluntarily reporting GHG emissions must use the methods established in WAC 173-441-120(3) and 173-441-130 to calculate any voluntarily reported GHG emissions.

(5) **Reporting requirements when emissions of greenhouse gases fall below reporting thresholds.** Except as provided in this subsection, once a facility or supplier is subject to the requirements of this chapter, the person must continue for each year thereafter to comply with all requirements of this chapter, including the requirement to submit annual GHG reports, even if the facility or supplier does not meet the applicability requirements in subsection (1) or (2) of this section in a future year.

(a) If reported emissions are less than ten thousand metric tons CO₂e per year for five consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31st of the year immediately following the fifth consecutive year of emissions less than ten thousand tons CO₂e per year. The person must main-

tain the corresponding records required under WAC 173-441-050(6) for each of the five consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(b) If reported emissions are less than five thousand metric tons CO₂e per year for three consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31st of the year immediately following the third consecutive year of emissions less than five thousand tons CO₂e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the three consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(c) If the operations of a facility or supplier are changed such that all applicable GHG-emitting processes and opera-

tions listed in WAC 173-441-120 and 173-441-130 cease to operate, then the person is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the person submits a notification to ecology that announces the cessation of reporting and certifies to the closure of all GHG-emitting processes and operations. This provision does not apply to seasonal or other temporary cessation of operations. This provision does not apply to facilities with municipal solid waste landfills. The person must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-030, filed 12/1/10, effective 1/1/11.]

WAC 173-441-040 Greenhouse gases. (1) **Greenhouse gases.** Table A-1 of this section lists the GHGs regulated under this chapter and their global warming potentials.

(2) **CO₂e conversion.** Use Equation A-1 of WAC 173-441-030 (1)(b)(iii) and the global warming potentials listed in Table A-1 of this section to convert emissions into CO₂e.

**Table A-1:
Global Warming Potentials (100-Year Time Horizon)**

Name	CAS No.	Chemical Formula	Global Warming Potential (100 yr.)
Carbon dioxide	124-38-9	CO ₂	1
Methane	74-82-8	CH ₄	21
Nitrous oxide	10024-97-2	N ₂ O	310
HFC-23	75-46-7	CHF ₃	11,700
HFC-32	75-10-5	CH ₂ F ₂	650
HFC-41	593-53-3	CH ₃ F	150
HFC-125	354-33-6	C ₂ HF ₅	2,800
HFC-134	359-35-3	C ₂ H ₂ F ₄	1,000
HFC-134a	811-97-2	CH ₂ FCF ₃	1,300
HFC-143	430-66-0	C ₂ H ₃ F ₃	300
HFC-143a	420-46-2	C ₂ H ₃ F ₃	3,800
HFC-152	624-72-6	CH ₂ FCH ₂ F	53
HFC-152a	75-37-6	CH ₃ CHF ₂	140
HFC-161	353-36-6	CH ₃ CH ₂ F	12
HFC-227ea	431-89-0	C ₃ HF ₇	2,900
HFC-236cb	677-56-5	CH ₂ FCF ₂ CF ₃	1,340
HFC-236ea	431-63-0	CHF ₂ CHFCF ₃	1,370
HFC-236fa	690-39-1	C ₃ H ₂ F ₆	6,300
HFC-245ca	679-86-7	C ₃ H ₃ F ₅	560
HFC-245fa	460-73-1	CHF ₂ CH ₂ CF ₃	1,030
HFC-365mfc	406-58-6	CH ₃ CF ₂ CH ₂ CF ₃	794
HFC-43-10mee	138495-42-8	CF ₃ CFHCFHCF ₂ CF ₃	1,300
All other HFCs	NA	NA	Contact ecology
Sulfur hexafluoride	2551-62-4	SF ₆	23,900
Trifluoromethyl sulphur pentafluoride	373-80-8	SF ₅ CF ₃	17,700
Nitrogen trifluoride	7783-54-2	NF ₃	17,200
PFC-14 (Perfluoromethane)	75-73-0	CF ₄	6,500
PFC-116 (Perfluoroethane)	76-16-4	C ₂ F ₆	9,200
PFC-218 (Perfluoropropane)	76-19-7	C ₃ F ₈	7,000

Name	CAS No.	Chemical Formula	Global Warming Potential (100 yr.)
Perfluorocyclopropane	931-91-9	C-C ₃ F ₆	17,340
PFC-3-1-10 (Perfluorobutane)	355-25-9	C ₄ F ₁₀	7,000
Perfluorocyclobutane	115-25-3	C-C ₄ F ₈	8,700
PFC-4-1-12 (Perfluoropentane)	678-26-2	C ₅ F ₁₂	7,500
PFC-5-1-14 (Perfluorohexane)	355-42-0	C ₆ F ₁₄	7,400
PFC-9-1-18	306-94-5	C ₁₀ F ₁₈	7,500
All other PFCs	NA	NA	Contact ecology
HCFE-235da2 (Isoflurane)	26675-46-7	CHF ₂ OCHClCF ₃	350
HFE-43-10pccc (H-Galden 1040x)	E1730133	CHF ₂ OCF ₂ OC ₂ F ₄ OCHF ₂	1,870
HFE-125	3822-68-2	CHF ₂ OCF ₃	14,900
HFE-134	1691-17-4	CHF ₂ OCHF ₂	6,320
HFE-143a	421-14-7	CH ₃ OCF ₃	756
HFE-227ea	2356-62-9	CF ₃ CHFOCF ₃	1,540
HFE-236ca12 (HG-10)	78522-47-1	CHF ₂ OCF ₂ OCHF ₂	2,800
HFE-236ea2 (Desflurane)	57041-67-5	CHF ₂ OCHFCF ₃	989
HFE-236fa	20193-67-3	CF ₃ CH ₂ OCF ₃	487
HFE-245cb2	22410-44-2	CH ₃ OCF ₂ CF ₃	708
HFE-245fa1	84011-15-4	CHF ₂ CH ₂ OCF ₃	286
HFE-245fa2	1885-48-9	CHF ₂ OCH ₂ CF ₃	659
HFE-254cb2	425-88-7	CH ₃ OCF ₂ CHF ₂	359
HFE-263fb2	460-43-5	CF ₃ CH ₂ OCH ₃	11
HFE-329mcc2	67490-36-2	CF ₃ CF ₂ OCF ₂ CHF ₂	919
HFE-338mcf2	156053-88-2	CF ₃ CF ₂ OCH ₂ CF ₃	552
HFE-338pcc13 (HG-01)	188690-78-0	CHF ₂ OCF ₂ CF ₂ OCHF ₂	1,500
HFE-347mcc3	28523-86-6	CH ₃ OCF ₂ CF ₂ CF ₃	575
HFE-347mcf2	E1730135	CF ₃ CF ₂ OCH ₂ CHF ₂	374
HFE-347pcf2	406-78-0	CHF ₂ CF ₂ OCH ₂ CF ₃	580
HFE-356mec3	382-34-3	CH ₃ OCF ₂ CHFCF ₃	101
HFE-356pcc3	160620-20-2	CH ₃ OCF ₂ CF ₂ CHF ₂	110
HFE-356pcf2	E1730137	CHF ₂ CH ₂ OCF ₂ CHF ₂	265
HFE-356pcf3	35042-99-0	CHF ₂ OCH ₂ CF ₂ CHF ₂	502
HFE-365mcf3	378-16-5	CF ₃ CF ₂ CH ₂ OCH ₃	11
HFE-374pc2	512-51-6	CH ₃ CH ₂ OCF ₂ CHF ₂	557
HFE-449sl (HFE-7100)	163702-07-6	C ₄ F ₉ OCH ₃	297
Chemical blend	163702-08-7	(CF ₃) ₂ CF ₂ OCH ₃	
HFE-569sf2 (HFE-7200)	163702-05-4	C ₄ F ₉ OC ₂ H ₅	59
Chemical blend	163702-06-5	(CF ₃) ₂ CF ₂ OC ₂ H ₅	
Sevoflurane	28523-86-6	CH ₂ FOCH(CF ₃) ₂	345
HFE-356mm1	13171-18-1	(CF ₃) ₂ CHOCH ₃	27
HFE-338mmz1	26103-08-2	CHF ₂ OCH(CF ₃) ₂	380
(Octafluorotetramethyl-ene) hydroxymethyl group	NA	X-(CF ₂) ₄ CH(OH)-X	73
HFE-347mmy1	22052-84-2	CH ₃ OCF(CF ₃) ₂	343
Bis(trifluoromethyl)-methanol	920-66-1	(CF ₃) ₂ CHOH	195
2,2,3,3,3-pentafluoropropanol	422-05-9	CF ₃ CF ₂ CH ₂ OH	42
PFPPIE	NA	CF ₃ OCF(CF ₃)CF ₂ OCF ₂ OCF ₃	10,300

NA = not available.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-040, filed 12/1/10, effective 1/1/11.]

WAC 173-441-050 General monitoring, reporting, recordkeeping and verification requirements. Persons subject to the requirements of this chapter must submit GHG reports to ecology, as specified in this section.

(1) **General.** Follow the procedures for emission calculation, monitoring, quality assurance, missing data, record-

keeping, and reporting that are specified in each relevant section of this chapter.

(2) **Schedule.** The annual GHG report must be submitted as follows:

(a) Report submission due date:

(i) A person required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than March 31st of each calendar year for GHG emissions in the previous calendar year.

(ii) A person not required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than October 31st of each calendar year for GHG emissions in the previous calendar year.

(b) Reporting requirements begin:

(i) For an existing facility or supplier that began operation before January 1, 2012, report emissions for calendar year 2012 and each subsequent calendar year.

(ii) For a new facility or supplier that begins operation on or after January 1, 2012, report emissions beginning with the first operating month and ending on December 31st of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(iii) For any facility or supplier that becomes subject to this rule because of a physical or operational change that is made after January 1, 2012, report emissions for the first calendar year in which the change occurs.

(A) Facilities begin reporting with the first month of the change and ending on December 31st of that year. For a facility that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility or supplier to exceed the applicable threshold.

(B) Suppliers begin reporting January 1st and ending on December 31st of the year of the change.

(C) For both facilities and suppliers, each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(3) **Content of the annual report.** Each annual GHG report shall contain the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code.

(b) Year and months covered by the report.

(c) Date of submittal.

(d) For facilities, report annual emissions of each GHG (as defined in WAC 173-441-020) as follows:

(i) Annual emissions (including biogenic CO₂) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO₂e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO₂ aggregated for all applicable source categories in WAC 173-441-120 in metric tons.

(iii) Annual emissions from each applicable source category in WAC 173-441-120, expressed in metric tons of each applicable GHG listed in subsections (3)(d)(iii)(A) through (E) of this section.

(A) Biogenic CO₂.

(B) CO₂ (including biogenic CO₂).

(C) CH₄.

(D) N₂O.

(E) Each fluorinated GHG.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-120.

(v) Indicate (yes or no) whether reported emissions include emissions from a cogeneration unit located at the facility.

(e) For suppliers, report the following information:

(i) Annual emissions of CO₂, expressed in metric tons of CO₂, as required in subsections (3)(e)(i)(A) and (B) of this section that would be emitted from the complete combustion or oxidation of the fuels reported to DOL as sold in Washington state during the calendar year.

(A) Aggregate biogenic CO₂.

(B) Aggregate CO₂ (including nonbiogenic and biogenic CO₂).

(ii) All contact information reported to DOL not included in (a) of this subsection.

(f) A written explanation, as required under subsection (4) of this section, if you change emission calculation methodologies during the reporting period.

(g) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart referenced in WAC 173-441-120 and the total number of hours in the year that a missing data procedure was used for each data element.

(h) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of WAC 173-441-060 (5)(a).

(i) NAICS code(s) that apply to the reporting entity.

(i) Primary NAICS code. Report the NAICS code that most accurately describes the reporting entity's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the reporting entity. A reporting entity that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) Additional NAICS code(s). Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the reporting entity that are not related to the principal source of revenue. If more than one additional NAICS code applies, list the additional NAICS codes in the order of the largest revenue to the smallest.

(j) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the reporting entity and the percentage of ownership interest for each listed parent company as of December 31st of the year for which data are being reported according to the following instructions:

(i) If the reporting entity is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report one hundred percent ownership.

(ii) If the reporting entity is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the

highest-level company in the ownership hierarchy as the United States parent company and report one hundred percent ownership.

(iii) If the reporting entity is owned by more than one United States company (e.g., company A owns forty percent, company B owns thirty-five percent, and company C owns twenty-five percent), provide the legal names and physical addresses of all the companies with an ownership interest as the United States parent companies and report the percent ownership of each company.

(iv) If the reporting entity is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report one hundred percent ownership by the joint venture or cooperative.

(v) If the reporting entity is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report one hundred percent ownership.

(vi) If the reporting entity is partially owned by a foreign company and partially owned by one or more United States companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other United States parent companies, and report the percent ownership of each of these companies.

(vii) If the reporting entity is a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(4) **Emission calculations.** In preparing the GHG report, you must use the calculation methodologies specified in the relevant sections of this chapter. For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.

(5) **Verification.** To verify the completeness and accuracy of reported GHG emissions, ecology may review the certification statements described in subsection (3)(h) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports.

(6) **Recordkeeping.** A person that reports GHGs under this chapter must keep records as specified in this subsection. Retain all required records for at least three years. The records shall be kept in an electronic or hard copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review. Upon request by ecology, the records required under this section must be made available to ecology. Records may be retained off-site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by ecology, electronic records shall be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable section of this chapter:

(a) A list of all units, operations, processes, and activities for which GHG emissions were calculated.

(b) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to, the following information:

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(c) The annual GHG reports.

(d) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(e) Owners or operators required to report under WAC 173-441-030(1) must keep a written GHG monitoring plan.

(i) At a minimum, the GHG monitoring plan shall include the following elements:

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(ii) The GHG monitoring plan may rely on references to existing corporate documents (e.g., standard operating procedures, quality assurance programs under appendix F to 40 C.F.R. Part 60 or appendix B to 40 C.F.R. Part 75, and other documents) provided that the elements required by (e)(i) of this subsection are easily recognizable.

(iii) The owner or operator shall revise the GHG monitoring plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by ecology, the owner or operator shall make all information that is collected in conformance with the GHG monitoring plan available for review during an audit. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(f) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(g) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(h) Suppliers must retain any other data specified in WAC 173-441-130(5).

(7) Annual GHG report revisions.

(a) A person shall submit a revised annual GHG report within forty-five days of discovering that an annual GHG report that the person previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(b) Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantive error. The person shall, within forty-five days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this chapter) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(c) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(d) Notwithstanding (a) and (b) of this subsection, upon request by a person, ecology may provide reasonable extensions of the forty-five day period for submission of the revised report or information under (a) and (b) of this subsection. If ecology receives a request for extension of the forty-five day period, by e-mail to an address prescribed by ecology, at least two business days prior to the expiration of the forty-five day period, and ecology does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for thirty more days. During the automatic thirty-day extension, ecology will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(e) The owner or operator shall retain documentation for three years to support any revision made to an annual GHG report.

(8) Calibration and accuracy requirements. The owner or operator of a facility that is subject to the requirements of this chapter must meet the applicable flow meter calibration and accuracy requirements of this subsection. The accuracy specifications in this subsection do not apply where either the use of company records (as defined in WAC 173-441-020(3)) or the use of "best available information" is specified in an applicable subsection of this chapter to quantify fuel usage and/or other parameters. Further, the provisions of this subsection do not apply to stationary fuel combustion units that use the methodologies in 40 C.F.R. Part 75 to calculate CO₂ mass emissions. Suppliers subject to the requirements of this chapter must meet the calibration accuracy requirements in chapters 308-72, 308-77, and 308-78 WAC.

(a) Except as otherwise provided in (d) through (f) of this subsection, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, or feedstock flow rates and provide data for the GHG emissions calculations, shall be calibrated prior to January 1, 2012, using the procedures specified in this subsection when such calibration is specified in a relevant section of this chapter. Each of these flow meters shall meet the applicable accuracy specification in (b) or (c) of this subsection. All other measurement devices (e.g.,

weighing devices) that are required by a relevant subsection of this chapter, and that are used to provide data for the GHG emissions calculations, shall also be calibrated prior to January 1, 2012; however, the accuracy specifications in (b) and (c) of this subsection do not apply to these devices. Rather, each of these measurement devices shall be calibrated to meet the accuracy requirement specified for the device in the applicable subsection of this chapter, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard including, but not limited to, industry standards and manufacturer's specifications. The procedures and methods used to quality-assure the data from each measurement device shall be documented in the written monitoring plan, pursuant to subsection (6)(e)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this subsection must be calibrated according to one of the following: You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant section of this chapter. The calibration method(s) used shall be documented in the monitoring plan required under subsection (6)(e) of this section.

(ii) For facilities and suppliers that become subject to this chapter after January 1, 2012, all flow meters and other measurement devices (if any) that are required by the relevant subsection(s) of this chapter to provide data for the GHG emissions calculations shall be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this subsection (if any) shall be performed no later than that date.

(iii) Except as otherwise provided in (d) through (f) of this subsection, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this subsection shall be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subsection of this chapter.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subsection.

(b) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in (c) of this subsection, calculate the calibration error at each measurement point using Equation A-2 of this subsection. The terms "R" and "A" in Equation A-2 must be expressed in consistent units of measure (e.g., gallons/minute, ft³/min). The calibration error at each measurement point shall not exceed 5.0 percent of the reference value.

$$CE = \frac{|R-A|}{R} \times 100 \quad (\text{Eq. A-2})$$

Where:

CE = Calibration error (%)
 R = Reference value
 A = Flow meter response to the reference value

(c) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in situ calibration of the differential pressure (ΔP), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A-3 of this subsection. The terms "R," "A," and "FS" in Equation A-3 of this subsection must be in consistent units of measure (e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point shall not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 6.0 percent.

$$CE = \frac{|R-A|}{FS} \times 100 \quad (\text{Eq. A-3})$$

Where:

CE	=	Calibration error	(%)
R	=	Reference value	
A	=	Transmitter response to the reference value	
FS	=	Full-scale value of the transmitter	

(ii) In cases where there are only two transmitters (i.e., differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (e.g., the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with (c)(i) of this subsection; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in (c)(ii)(A) of this subsection with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following: You may calibrate using an industry consensus standards or a manufacturer's specification.

(C) You must document the methods used for the demonstration described in (c)(ii)(A) of this subsection in the written monitoring plan under subsection (6)(e)(i)(C) of this

section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the monitoring plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in (c)(ii)(A) of this subsection to convert the remote temperature or the total pressure readings, or both, to the actual temperature or total pressure at the flow meter, or both, on a daily basis. You shall then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You shall periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(d) Fuel billing meters are exempted from the calibration requirements of this section and from the monitoring plan and recordkeeping provisions of subsections (6)(e)(i)(C) and (g) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are used for unit startup or ignition are also exempted from the calibration requirements of this section.

(e) For a flow meter that has been previously calibrated in accordance with (a) of this subsection, an additional calibration is not required by the date specified in (a) of this subsection if, as of that date, the previous calibration is still active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter shall be set according to one of the following: You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(f) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the deadline established in (a) of this subsection for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements shall be documented in the monitoring plan that is required under subsection (6)(e) of this section.

(g) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter shall be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You shall follow the missing data provisions provided in the relevant missing data sections during the period of data invalidation.

(9) **Measurement device installation.** 40 C.F.R. § 98.3(j) and 40 C.F.R. § 98.3(d) as adopted or proposed by December 1, 2010, are adopted by reference as modified in WAC 173-441-120(2).

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-050, filed 12/1/10, effective 1/1/11.]

WAC 173-441-060 Authorization and responsibilities of the designated representative. (1) **General.** Except as provided under subsection (6) of this section, each facility, and each supplier, that is subject to this chapter, shall have one and only one designated representative, who shall be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to ecology under this chapter. If the facility is required to submit an emission report to EPA under 40 C.F.R. Part 98, the designated representative responsible for certifying, signing, and submitting the GHG emissions reports and all such other emissions reports to EPA shall be the designated representative responsible for certifying, signing, and submitting GHG emissions reports to ecology under this chapter.

(2) **Authorization of a designated representative.** The designated representative of the facility or supplier shall be an individual selected by an agreement binding on the owners and operators of such facility or supplier and shall act in accordance with the certification statement in subsection (9)(d)(iv) of this section.

(3) **Responsibility of the designated representative.** Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this chapter, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the designated representative by ecology, pollution control hearings board, or a court.

(4) **Timing.** No GHG emissions report or other submissions under this chapter for a facility or supplier will be accepted until ecology has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation shall be submitted at least sixty days before the deadline for submission of the facility's or supplier's initial emission report under this chapter.

(5) **Certification of the GHG emissions report.** Each GHG emission report and any other submission under this chapter for a facility or supplier shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and 40 C.F.R. § 3.10 as adopted on October 13, 2005.

(a) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify

that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) Ecology will accept a GHG emission report or other submission for a facility or supplier under this chapter only if the submission is certified, signed, and submitted in accordance with this section.

(6) **Alternate designated representative.** A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(a) Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative:

(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative.

(b) Except in this section, whenever the term "designated representative" is used in this chapter, the term shall be construed to include the designated representative or any alternate designated representative.

(7) **Changing a designated representative or alternate designated representative.** The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by ecology may be changed at any time upon receipt by ecology of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when ecology receives such later signed certificate of representation shall be binding on the new designated representative and the owners and operators of the facility or supplier.

(8) **Changes in owners and operators.** In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within ninety days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated repre-

sentative or any alternate designated representative shall submit a certificate of representation that is complete under this section except that such list shall be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative shall submit, within ninety days of making such determination, a certificate of representation that is complete under this section except that such list shall be amended to include such owner or operator.

(9) **Certificate of representation.** A certificate of representation shall be complete if it includes the following elements in a format prescribed by ecology in accordance with this section:

(a) Identification of the facility or supplier for which the certificate of representation is submitted.

(b) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(c) A list of the owners and operators of the facility or supplier identified in (a) of this subsection, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners shall not make the certificate of representation incomplete.

(d) The following certification statements by the designated representative and any alternate designated representative:

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or binding on the supplier, as applicable."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under chapter 173-441 WAC on behalf of the owners and operators of the facility and on behalf of suppliers, as applicable, and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the supplier or owners and operators of the facility, as applicable, shall be bound by any order issued to me by ecology, the pollution control hearings board, or a court regarding the facility or supplier."

(iv) "If there are multiple owners and operators of the facility or multiple suppliers, as applicable, I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the facility and each supplier."

(e) The signature of the designated representative and any alternate designated representative and the dates signed.

(10) **Documents of agreement.** Unless otherwise required by ecology, documents of agreement referred to in the certificate of representation shall not be submitted to ecology. Ecology shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(11) **Binding nature of the certificate of representation.** Once a complete certificate of representation under this

section for a facility or supplier has been received, ecology will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by ecology.

(12) **Objections concerning a designated representative.**

(a) Except as provided in subsection (7) of this section, no objection or other communication submitted to ecology concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by ecology under this chapter.

(b) Ecology will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

(13) **Delegation by designated representative and alternate designated representative.**

(a) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology provided for or required under this chapter, except for a submission under this subsection.

(b) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology in accordance with (a) of this subsection, the designated representative or alternate designated representative must submit electronically to ecology a notice of delegation, in a format prescribed by ecology, that includes the following elements:

(i) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

(ii) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an "agent").

(iii) For each such individual, a list of the type or types of electronic submissions under (a) of this subsection for which authority is delegated to him or her.

(iv) For each type of electronic submission listed in accordance with subsection (13)(b)(iii) of this section, the facility or supplier for which the electronic submission may be made.

(v) The following certification statements by such designated representative or alternate designated representative:

(A) "I agree that any electronic submission to ecology that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under WAC 173-441-060 (13)(c) shall be deemed to be an electronic submission certified, signed, and submitted by me."

(B) "Until this notice of delegation is superseded by a later signed notice of delegation under WAC 173-441-060 (13)(c), I agree to maintain an e-mail account and to notify

ecology immediately of any change in my e-mail address unless all delegation of authority by me under WAC 173-441-060(13) is terminated."

(vi) The signature of such designated representative or alternate designated representative and the date signed.

(c) A notice of delegation submitted in accordance with (b) of this subsection shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by ecology and until receipt by ecology of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(d) Any electronic submission covered by the certification in (b)(v)(A) of this subsection and made in accordance with a notice of delegation effective under (c) of this subsection shall be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-060, filed 12/1/10, effective 1/1/11.]

WAC 173-441-070 Report submittal. Each GHG report and certificate of representation for a facility or supplier must be submitted electronically in accordance with the requirements of WAC 173-441-050 and 173-441-060 and in a format specified by ecology.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-070, filed 12/1/10, effective 1/1/11.]

WAC 173-441-080 Standardized methods and conversion factors incorporated by reference. (1) The materials incorporated by reference by EPA in 40 C.F.R. § 98.7, as adopted or proposed by December 1, 2010, are incorporated by reference in this chapter for use in the sections of this chapter that correspond to the sections of 40 C.F.R. Part 98 referenced here.

(2) Table A-2 of this section provides a conversion table for some of the common units of measure used in this chapter.

**Table A-2:
Units of Measure Conversions**

To convert from	To	Multiply by
Kilograms (kg)	Pounds (lbs)	2.20462
Pounds (lbs)	Kilograms (kg)	0.45359
Pounds (lbs)	Metric tons	4.53592 x 10 ⁻⁴
Short tons	Pounds (lbs)	2,000
Short tons	Metric tons	0.90718
Metric tons	Short tons	1.10231
Metric tons	Kilograms (kg)	1,000
Cubic meters (m ³)	Cubic feet (ft ³)	35.31467
Cubic feet (ft ³)	Cubic meters (m ³)	0.028317
Gallons (liquid, US)	Liters (l)	3.78541
Liters (l)	Gallons (liquid, US)	0.26417
Barrels of liquid fuel (bbl)	Cubic meters (m ³)	0.15891
Cubic meters (m ³)	Barrels of liquid fuel (bbl)	6.289
Barrels of liquid fuel (bbl)	Gallons (liquid, US)	42
Gallons (liquid, US)	Barrels of liquid fuel (bbl)	0.023810
Gallons (liquid, US)	Cubic meters (m ³)	0.0037854
Liters (l)	Cubic meters (m ³)	0.001
Feet (ft)	Meters (m)	0.3048
Meters (m)	Feet (ft)	3.28084
Miles (mi)	Kilometers (km)	1.60934
Kilometers (km)	Miles (mi)	0.62137
Square feet (ft ²)	Acres	2.29568 x 10 ⁻⁵
Square meters (m ²)	Acres	2.47105 x 10 ⁻⁴
Square miles (mi ²)	Square kilometers (km ²)	2.58999
Degrees Celsius (°C)	Degrees Fahrenheit (°F)	°C = (5/9) x (°F - 32)
Degrees Fahrenheit (°F)	Degrees Celsius (°C)	°F = (9/5) x (°C + 32)
Degrees Celsius (°C)	Kelvin (K)	K = °C + 273.15
Kelvin (K)	Degrees Rankine (°R)	1.8
Joules	Btu	9.47817 x 10 ⁻⁴
Btu	MMBtu	1 x 10 ⁻⁶
Pascals (Pa)	Inches of mercury (in Hg)	2.95334 x 10 ⁻⁴
Inches of mercury (in Hg)	Pounds per square inch (psi)	0.49110
Pounds per square inch (psi)	Inches of mercury (in Hg)	2.03625

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-080, filed 12/1/10, effective 1/1/11.]

WAC 173-441-090 Compliance and enforcement. (1) **Violations.** Any violation of any requirement of this chapter shall be a violation of chapter 70.94 RCW and subject to enforcement as provided in that chapter. A violation includes but is not limited to failure to report GHG emissions by the reporting deadline, failure to report accurately, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emissions, failure to calculate GHG emissions following the methodologies specified in this chapter, and failure to pay the required reporting fee. Each day of a violation constitutes a separate violation.

(2) **Enforcement responsibility.** Ecology shall enforce the requirements of this chapter unless ecology approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-090, filed 12/1/10, effective 1/1/11.]

WAC 173-441-100 Addresses. All requests, notifications, and communications to ecology pursuant to this chapter, other than submittal of the annual GHG report, shall be submitted to the following address: Greenhouse Gas Report, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-100, filed 12/1/10, effective 1/1/11.]

WAC 173-441-110 Fees. (1) **Fee determination.** All persons required to report or voluntarily reporting under WAC 173-441-030 must pay a reporting fee for each year they submit a report to ecology. Ecology must establish reporting fees based on workload using the process outlined below. The fees must be sufficient to cover ecology's costs to administer the GHG emissions reporting program.

(2) **Fee eligible activities.** All costs of activities associated with administering this reporting program, as described in RCW 70.94.151(2), are fee eligible.

(3) **Workload analysis and budget development.** Each biennium, ecology must conduct a workload analysis and develop a budget based on the process outlined below:

(a) Ecology must conduct a workload analysis projecting resource requirements for administering the reporting program, organized by categories of fee eligible activities, for the purpose of preparing the budget. Ecology must prepare the workload analysis for the two-year period corresponding to each biennium. The workload analysis must identify the fee eligible administrative activities related to the reporting program that it will perform during the biennium and must estimate the resources required to perform these activities.

(b) Ecology must prepare a budget for administering the reporting program for the two-year period corresponding to each biennium. Ecology must base the budget on the resource requirements identified in the workload analysis for the biennium and must take into account the reporting program account balance at the start of the biennium.

(4) **Allocation methodology.** Ecology must allocate the reporting program budget among the persons required to report or voluntarily reporting under WAC 173-441-030 according to the following components:

(a) The reporting fee for an owner or operator of a facility required to report or voluntarily reporting under WAC 173-441-030 is calculated by the equal division of seventy-five percent of the budget amount by the total number of facilities reporting GHG emissions under this chapter in a given calendar year. A person required to report or voluntarily reporting multiple facilities under WAC 173-441-030 must pay a fee for each facility reported.

(b) The reporting fee for a supplier required to report or voluntarily reporting under WAC 173-441-030 is calculated by the equal division of twenty-five percent of the budget amount by the total number of suppliers reporting GHG emissions under this chapter in a given calendar year.

(c) A person required to report or voluntarily reporting under WAC 173-441-030 both as an owner or operator of a facility or facilities and as a supplier must pay a fee for each facility reported and a fee for reporting as a supplier.

(5) **Fee schedule.** Ecology must issue annually a fee schedule reflecting the reporting fee to be paid per facility or supplier. Ecology must base the fee schedule on the budget and workload analysis described above and conducted each biennium. Ecology must publish the fee schedule for the following year on or before October 31st of each year.

(6) **Fee payments.** Fees specified in this section must be paid within sixty days of receipt of ecology's billing statement. All fees collected under this chapter must be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee received after ninety days past the due date for fee payment.

(7) **Dedicated account.** Ecology must deposit all reporting fees they collect in the air pollution control account.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-110, filed 12/1/10, effective 1/1/11.]

WAC 173-441-120 Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities. Owners and operators of facilities that are subject to this chapter must follow the requirements of this chapter and all subparts of 40 C.F.R. Part 98 listed in Table 120-1 of this section. If a conflict exists between a provision in WAC 173-441-050(3) through 173-441-080 and any applicable provision of this section, the requirements of this section shall take precedence.

(1) **Source categories and calculation methods for facilities.** An owner or operator of a facility subject to the requirements of this chapter must report GHG emissions, including GHG emissions from biomass, from all applicable source categories in Washington state listed in Table 120-1 of this section using the methods incorporated by reference in Table 120-1. Table 120-1 and subsection (2) of this section list modifications and exceptions to calculation methods adopted by reference in this section. CO₂ collected and transferred off-site must be included in the emissions calculation as required under WAC 173-441-030 (1)(b)(iv) using the methods established in 40 C.F.R. Part 98 Subpart PP as adopted or proposed by December 1, 2010. Owners or operators are not required to comply with requirements in Subpart PP that do not address CO₂ collected and transferred off-site.

**Table 120-1:
Source Categories and Calculation Methods
Incorporated by Reference from 40 C.F.R. Part 98 for Facilities**

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria⁺
General Stationary Fuel Combustion Sources	C	
Electricity Generation	D	
Adipic Acid Production	E	
Aluminum Production	F	
Ammonia Manufacturing	G	
Cement Production	H	
Electronics Manufacturing	I	In § 98.91, replace "To calculate total annual GHG emissions for comparison to the 25,000 metric ton CO ₂ e per year emission threshold in paragraph § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Ferroalloy Production	K	
Fluorinated Gas Production	L	In § 98.121, replace "To calculate GHG emissions for comparison to the 25,000 metric ton CO ₂ e per year emission threshold in § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Glass Production	N	
HCFC-22 Production and HFC-23 Destruction	O	
Hydrogen Production	P	
Iron and Steel Production	Q	
Lead Production	R	
Lime Manufacturing	S	
Magnesium Production	T	
Miscellaneous Uses of Carbonate	U	
Nitric Acid Production	V	
Petroleum and Natural Gas Systems	W	§ 98.231(a) should read: "You must report GHG emissions under this subpart if your facility contains petroleum and natural gas systems and the facility meets the requirements of WAC 173-441-030(1)."
Petrochemical Production	X	
Petroleum Refineries	Y	
Phosphoric Acid Production	Z	
Pulp and Paper Manufacturing	AA	
Silicon Carbide Production	BB	
Soda Ash Manufacturing	CC	
Use of Electrical Transmission and Distribution Equipment Use	DD	§ 98.301 should read: "You must report GHG emissions under this subpart if your facility contains any use of electrical transmission and distribution equipment use process and the facility meets the requirements of WAC 173-441-030(1)."
Titanium Dioxide Production	EE	
Underground Coal Mines	FF	
Zinc Production	GG	
Municipal Solid Waste Landfills	HH	CO ₂ from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Industrial Wastewater Treatment	II	CO ₂ from combustion of wastewater biogas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Manure Management	JJ	See subsection (2)(e) of this section.

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria ⁺
Suppliers of Carbon Dioxide	PP	Owners or operators are only required to calculate and report emissions specified in WAC 173-441-030 (1)(b)(iv).
Carbon Dioxide Injection and Geologic Sequestration	RR**	
Electrical Equipment Manufacture or Refurbishment	SS	§ 98.451 should read: "You must report GHG emissions under this subpart if your facility contains an electrical equipment manufacturing or refurbishing process and the facility meets the requirements of WAC 173-441-030(1)."
Industrial Waste Landfills	TT	CO ₂ from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

* Unless otherwise noted, all calculation methods are from 40 C.F.R. Part 98, as adopted or proposed by December 1, 2010.

** From 40 C.F.R. Part 98, as proposed on April 12, 2010.

+ Modifications and exceptions in subsection (2) of this section and WAC 173-441-173-010 through 173-441-050(2) also apply.

(2) **Modifications and exceptions to calculation methods adopted by reference.** Except as otherwise specifically provided:

(a) Wherever the term "administrator" is used in the rules incorporated by reference in this chapter, the term "director" shall be substituted.

(b) Wherever the term "EPA" is used in the rules incorporated by reference in this chapter, the term "ecology" shall be substituted.

(c) Wherever the term "United States" is used in the rules incorporated by reference in this chapter, the term "Washington state" shall be substituted.

(d) Wherever a calculation method adopted by reference in Table 120-1 of this section refers to another subpart or paragraph of 40 C.F.R. Part 98:

(i) If Table 120-2 of this section lists the reference, then replace the reference with the corresponding reference to this chapter as specified in Table 120-2.

(ii) If the reference is to a subpart or subsection of a reference listed in Table 120-2 of this section, then replace the reference with the appropriate subsection of the corresponding reference to this chapter as specified in Table 120-2.

(iii) If the reference is to a subpart or paragraph of 40 C.F.R. Part 98 Subparts C through TT incorporated by reference in Table 120-1, then use the existing reference except as modified by this chapter.

(e) For manure management, use the following subsections instead of the corresponding subsections in 40 C.F.R. § 98.360 as adopted or proposed by December 1, 2010.

(i) 40 C.F.R. § 98.360(a): This source category consists of livestock facilities with manure management systems.

(A) § 98.360 (a)(1) is not adopted by reference.

(B) § 98.360 (a)(2) is not adopted by reference.

(ii) 40 C.F.R. § 98.360(b): A manure management system (MMS) is a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: Uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including, but not limited to, ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), high-rise houses for poultry production (poultry without litter), poultry production with litter, deep bedding systems for cattle and swine, manure composting, and aerobic treatment.

(iii) 40 C.F.R. § 98.360(c): This source category does not include system components at a livestock facility that are unrelated to the stabilization and/or storage of manure such as daily spread or pasture/range/paddock systems or land application activities or any method of manure utilization that is not listed in § 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii).

(iv) 40 C.F.R. § 98.360(d): This source category does not include manure management activities located off-site from a livestock facility or off-site manure composting operations.

(v) 40 C.F.R. § 98.361: Livestock facilities must report GHG emissions under this subpart if the facility contains a manure management system as defined in 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii), and meets the requirements of WAC 173-441-030(1).

(vi) 40 C.F.R. § 98.362 (b) and (c) are not adopted by reference.

(vii) 40 C.F.R. § 98.362(a), 40 C.F.R. § 98.363 through 40 C.F.R. § 98.368, Equations JJ-2 through JJ-15, and Tables JJ-2 through JJ-7 as adopted or proposed by December 1, 2010, remain unchanged unless otherwise modified in this chapter.

(viii) CO₂ from combustion of gas from manure management must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

(f) Use the following method to obtain specific version or date references for any reference in 40 C.F.R. Part 98 that refers to any document not contained in 40 C.F.R. Part 98:

(i) If the reference in 40 C.F.R. Part 98 includes a specific version or date reference, then use the version or date as specified in 40 C.F.R. Part 98.

(ii) If the reference in 40 C.F.R. Part 98 does not include a specific version or date reference, then use the version of the referenced document as available on the date of adoption of this chapter.

**Table 120-2:
Corresponding References in 40 C.F.R. Part 98 and
Chapter 173-441 WAC**

Reference in 40 C.F.R. Part 98	Corresponding Reference in Chapter 173-441 WAC
40 C.F.R. Part 98 or "part"	Chapter 173-441 WAC
Subpart A	WAC 173-441-010 through 173-441-100
§ 98.1	WAC 173-441-010
§ 98.2	WAC 173-441-030
§ 98.2(a)	WAC 173-441-030(1)
§ 98.2 (a)(1)	WAC 173-441-030(1)
§ 98.2 (a)(2)	WAC 173-441-030(1)
§ 98.2 (a)(3)	WAC 173-441-030(1)
§ 98.2 (a)(4)	WAC 173-441-030(1)
§ 98.2(i)	WAC 173-441-030(5)
§ 98.3	WAC 173-441-050
§ 98.3(c)	WAC 173-441-050(3)
§ 98.3(g)	WAC 173-441-050(6)
§ 98.3 (g)(5)	WAC 173-441-050 (6)(e)
§ 98.3(i)	WAC 173-441-050(8)
§ 98.3 (i)(6)	WAC 173-441-050 (8)(f)
§ 98.4	WAC 173-441-060
§ 98.5	WAC 173-441-070
§ 98.6	WAC 173-441-020
§ 98.7	WAC 173-441-080
§ 98.8	WAC 173-441-090
§ 98.9	WAC 173-441-100
Table A-1 to Subpart A of Part 98—Global Warming Potentials	Table A-1 of WAC 173-441-040
Table A-2 to Subpart A of Part 98—Units of Measure Conversions	Table A-2 of WAC 173-441-080

(3) **Calculation methods for voluntary reporting.** GHG emissions reported voluntarily under WAC 173-441-030(4) must be calculated using the following methods:

(a) If the GHG emissions have calculation methods specified in Table 120-1 of this section, use the methods specified in Table 120-1.

(b) If the GHG emissions have calculation methods specified in WAC 173-441-130, use the methods specified in WAC 173-441-130.

(c) For all GHG emissions from facilities not covered in Table 120-1 of this section or persons supplying any product other than those listed in WAC 173-441-130, contact ecology for an appropriate calculation method no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2) or submit a petition for alternative calculation methods according to the requirements of WAC 173-441-140.

(4) **Alternative calculation methods approved by petition.** An owner or operator may petition ecology to use calculation methods other than those specified in Table 120-1 of this section to calculate its facility GHG emissions. Such alternative calculation methods must be approved by ecology prior to reporting and must meet the requirements of WAC 173-441-140.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-120, filed 12/1/10, effective 1/1/11.]

WAC 173-441-130 Calculation methods for suppliers. Suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel subject to the requirements of this chapter must

calculate the CO₂ emissions that would result from the complete combustion or oxidation of each fuel that is reported to DOL as sold in Washington state using the methods in this section.

(1) **Applicable fuels.** Suppliers are responsible for calculating CO₂ emissions from the following applicable fossil fuels and biomass derived fuels:

(a) All taxed liquid motor vehicle fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of motor vehicle fuel sales under chapter 308-72 WAC.

(b) All taxed special fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of special fuel sales under chapter 308-77 WAC.

(c) All taxed and untaxed aircraft fuel supplied to end users that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of aircraft fuel under chapter 308-78 WAC.

(2) Calculating CO₂ emissions separately for each fuel type. CO₂ emissions must be calculated separately for each applicable fuel type using Equation 130-1 of this section. Use Equation 130-2 of this section to separate each blended fuel into pure fuel types prior to calculating emissions using Equation 130-1.

$$\text{CO}_{2i} = \text{Fuel Type}_i \times \text{EF}_i \quad (\text{Eq. 130 - 1})$$

Where:

- CO_{2i} = Annual CO₂ emissions that would result from the complete combustion or oxidation of each fuel type "i" (metric tons)
- Fuel Type_i = Annual volume of fuel type "i" supplied by the supplier (gallons).
- EF_i = Fuel type-specific CO₂ emission factor (metric tons CO₂ per gallon) found in Table 130-1 of this section.

$$\text{Fuel Type}_i = \text{Fuel}_i \times \% \text{Vol}_i \quad (\text{Eq. 130 - 2})$$

Where:

- Fuel Type_i = Annual volume of fuel type "i" supplied by the supplier (gallons).
- Fuel_i = Annual volume of blended fuel "i" supplied by the supplier (gallons).
- %Vol_i = Percent volume of product "i" that is fuel type_i.

(3) **Calculating total CO₂ emissions.** A supplier must calculate total annual CO₂ emissions from all fuels using Equation 130-3 of this section.

$$CO_{2x} = \sum (CO_{2i}) \quad (\text{Eq. 130 - 3})$$

Where:

- CO_{2x} = Annual CO₂ emissions that would result from the complete combustion or oxidation of all fuels (metric tons).
- CO_{2i} = Annual CO₂ emissions that would result from the complete combustion or oxidation of each fuel type "i" (gallons).

(4) **Monitoring and QA/QC requirements.** Comply with all monitoring and QA/QC requirements under chapters 308-72, 308-77, and 308-78 WAC.

(5) **Data recordkeeping requirements.** In addition to the annual GHG report required by WAC 173-441-050 (6)(c), the following records must be retained by the supplier in accordance with the requirements established in WAC 173-441-050(6):

(a) For each fuel type listed in Table 130-1 of this section, the annual quantity of applicable fuel in gallons of pure fuel supplied in Washington state.

(b) The CO₂ emissions in metric tons that would result from the complete combustion or oxidation of each fuel type for which subsection (5)(a) of this section requires records to be retained, calculated according to subsection (2) of this section.

(c) The sum of biogenic CO₂ emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(d) The sum of nonbiogenic and biogenic CO₂ emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(e) All records required under chapters 308-72, 308-77, and 308-78 WAC in the format required by DOL.

**Table 130-1:
Emission Factors for Applicable Liquid Motor Vehicle Fuels, Special Fuels, and Aircraft Fuels**

Fuel Type (pure fuel)	Emission Factor (metric tons CO ₂ per gallon)
Gasoline	0.008960
Ethanol (E100)	0.005767
Diesel (B100)	0.010230
Biodiesel	0.009421
Propane	0.005593
Natural gas	0.000055*
Kerosene	0.010150
Jet fuel	0.009750
Aviation gasoline	0.008310

Contact ecology to obtain an emission factor for any applicable fuel type not listed in this table.

*In units of metric tons CO₂ per scf. When using Equation 130-1 of this section, enter fuel in units of scf.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-130, filed 12/1/10, effective 1/1/11.]

WAC 173-441-140 Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions. An owner or operator may petition ecology to use calculation methods other than those specified in WAC 173-441-120 to calculate GHG emissions. Alternative calculation methodologies are not available for GHG emissions covered by a source category adopted by reference in WAC 173-441-130. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition that meets the following conditions before ecology may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2). Such petition must include sufficient information, as described in (b) of this subsection, for ecology to determine whether the proposed alternative calculation method will provide emissions data sufficient to meet the reporting requirements of RCW 70.94.151. Ecology will notify the owner or operator within thirty days of receipt of a petition of any additional information ecology requires to approve the proposed calculation methods in the petition. If a petition is under review by ecology at the time an annual emissions report is due under WAC 173-441-050(2), the owner or operator must submit the emissions report using the calculation methods approved under this chapter at the time of submittal of the emissions report.

(b) The petition must include, at a minimum, the following information:

(i) Identifying information as specified in WAC 173-441-060 (9)(b) and 173-441-060 (13)(b)(ii) of the designated representative and any agent submitting a petition;

(ii) Identifying information as specified in WAC 173-441-050 (3)(a) of the facility or facilities where the owner or operator proposes to use the alternative calculation method;

(iii) A clear and complete reference to the subparts or sections in EPA's mandatory greenhouse gas reporting regulation that contain the alternative calculation method and the date that EPA adopted the subparts or sections;

(iv) The source categories that will use the alternative calculation method;

(v) The date that the owner or operator intends to start using the alternative calculation method;

(vi) Any other supporting data or information as requested by ecology as described in subsection (2) of this section; and

(vii) The designated representative must sign and date the petition.

(2) **Ecology review of the petition.** Ecology must approve the alternative calculation method before the owner or operator may use it to report GHG emissions. Ecology will issue a determination within sixty days of receiving a complete petition. The alternative calculation method must meet the following conditions:

(a) Except as noted in (b) of this subsection, alternative calculation methods for facilities required to report under WAC 173-441-030(1) must be methods adopted by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation. The alternative calculation method must be more recent than the method for the given source category adopted by reference in WAC 173-441-120.

(b) As of November 9, 2010, the United States Environmental Protection Agency had not adopted a final GHG reporting protocol for carbon dioxide injection and geologic sequestration. Facilities with emissions in this source category that are required to report under WAC 173-441-030(1) may use alternative calculation methods approved by ecology using the criteria established in (c)(ii)(A) and (B) of this subsection until the United States Environmental Protection Agency adopts a final protocol for that source category in 40 C.F.R. Part 98. Beginning January 1st of the first year reporting is required for the source category by the United States Environmental Protection Agency under a final protocol in 40 C.F.R. Part 98, emissions from the source category must be reported to ecology using either the protocol adopted in Table 120-1 of WAC 173-441-120 or a protocol approved by ecology under (a) of this subsection.

(c) For GHG emissions reported voluntarily under WAC 173-441-030(4), ecology must apply the following criteria when evaluating an alternative calculation method:

(i) If the GHG emissions are covered by a source category adopted by reference in WAC 173-441-120, then the requirements of (a) and (b) of this subsection apply.

(ii) If the GHG emissions are not covered by a source category adopted by reference in WAC 173-441-120 or 173-441-130, then ecology must consider whether the methods meet the following criteria:

(A) The alternative calculation method is established by a nationally or internationally recognized body in the field of GHG emissions reporting such as:

- (I) Ecology;
- (II) EPA;
- (III) The International Panel on Climate Change;
- (IV) The Western Climate Initiative;
- (V) The Climate Registry;

(B) If an alternative calculation method is not available from sources listed in (c)(ii)(A) of this subsection, then ecology may accept a method from an industry or trade association or devised by the owner or operator if ecology determines the alternative calculation method is consistent with the requirements established under RCW 70.94.151.

(d) For all source categories, including those covered in (a), (b), and (c) of this subsection, the alternative calculation method must be consistent in content and scope with the requirements established under RCW 70.94.151. In the event that a proposed alternative calculation method does not include all required GHG emissions, the owner or operator must use the calculation methods specified in subsection (3) of this section to calculate those emissions.

(3) **Calculating emissions not included in alternative calculation method.** An owner or operator must report all source categories of GHG emissions for which reporting is required under RCW 70.94.151 and for which calculation methods have been established in WAC 173-441-120 or 173-441-130. If an approved alternative calculation method does not include calculation methods for all required source categories of emissions, then the owner or operator must use a method described in WAC 173-441-120, 173-441-130, or approved for the owner or operator by ecology in a separate petition to calculate and report those emissions.

(4) **Appeal of determination.** An approval or denial issued by ecology in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-140, filed 12/1/10, effective 1/1/11.]

WAC 173-441-150 Confidentiality. (1) Emissions data submitted to ecology under this chapter are public information and must not be designated as confidential.

(2) Any proprietary or confidential information exempt from disclosure when reported to DOL that ecology obtains directly from DOL remains exempt from disclosure.

(3) Information considered confidential by EPA is not considered confidential by ecology unless it also meets the conditions established in subsection (2) or (4) of this section.

(4) Any person submitting information to ecology under this chapter may request that ecology keep information that is not emissions data confidential as proprietary information under RCW 70.94.205 or because it is otherwise exempt from public disclosure under the Washington Public Records Act (chapter 42.56 RCW). All such requests for confidentiality must meet the requirements of RCW 70.94.205.

(5) Ecology's determinations of the verification status of each report are public information. All confidential data used in the verification process will remain confidential.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-150, filed 12/1/10, effective 1/1/11.]

WAC 173-441-160 Ecology to share information with local air authorities and with the energy facility site evaluation council. (1) Ecology must share any reporting information reported to it with the local air authority in which the person reporting under these rules operates.

(2) Ecology must share with the energy facility site evaluation council any information reported to ecology under

these rules by facilities permitted by the council, including notice of a facility that has failed to report as required.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-160, filed 12/1/10, effective 1/1/11.]

WAC 173-441-170 Severability. If any provision of the regulation or its application to any person or circumstance is held invalid, the remainder of the regulation or application of the provision to other persons or circumstances is not affected.

[Statutory Authority: 2010 c 146, and chapters 70.235 and 70.94 RCW. 10-24-108 (Order 10-08), § 173-441-170, filed 12/1/10, effective 1/1/11.]

Chapter 173-539A WAC UPPER KITTITAS GROUNDWATER RULE

WAC

173-539A-010	Purpose.
173-539A-020	Authority.
173-539A-025	Applicability.
173-539A-027	Advisory.
173-539A-030	Definitions.
173-539A-040	Withdrawal of unappropriated water in upper Kittitas County.
173-539A-050	Water budget neutral projects.
173-539A-060	Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights.
173-539A-070	Measuring and reporting water use.
173-539A-080	Educational information, technical assistance and enforcement.
173-539A-090	Appeals.
173-539A-990	Appendix 1—Map of upper Kittitas County boundaries.

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated groundwater within upper Kittitas County pending completion of a groundwater study. New groundwater withdrawals will be limited to those that are water budget neutral, as defined in this rule.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-010, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any groundwater permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to permit-exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated groundwater in Kittitas County until enough is known about potential effects from new permit-exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of

agreement (MOA) with Kittitas County. Ecology proposed a rule in January 2009 and Kittitas County questioned ecology's authority for the proposed rule. Ecology later invoked the dispute resolution process under the MOA and the MOA was later terminated.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-020, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-025 Applicability. This rule applies to new uses of groundwater relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public groundwater within the upper Kittitas area boundaries issued on or after July 16, 2009.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-025, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-027 Advisory. All unmitigated withdrawals that began after May 10, 1905, may be subject to future curtailment due to conflicts with senior water rights. All unmitigated users are advised to obtain mitigation through senior trust water rights to avoid such curtailment.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-027, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-030 Definitions. The definitions provided below apply only to this chapter.

"Applicant" includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public groundwater.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construction); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.

"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.

"Ecology" means the department of ecology.

"Exemption" or **"groundwater exemption"** means the exemption from the permit requirement for a withdrawal of groundwater provided under RCW 90.44.050.

"Existing use of the groundwater exemption" means a use of groundwater under the authority of the exemption from permitting where water was:

(a) First regularly and beneficially used prior to July 16, 2009; and

(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within five years of the date water was first regularly and beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.

"Group use" means use of the groundwater exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.

"Land use application" means an application to Kittitas County requesting a:

- Subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"New use of the groundwater exemption" means a valid permit-exempt use of groundwater begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.

"Parcel" means any parcel, land, lot, tract or other unit of land.

"Proximate" means all parcels that have at least one of the following attributes:

- Share any common boundary; or
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet of each other at the nearest point.

"Proximate shortplat" means a shortplat that would be considered a group use with another subdivision or shortplat.

"Regular beneficial use" means a use of water under the groundwater permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established usages, rules, or discipline.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of public groundwater are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-030, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public groundwaters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of groundwater may occur, including those exempt from permitting, except:

(a) Uses of groundwater for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral under WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.

(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-040, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-050 Water budget neutral projects.

(1) Persons proposing a new use of groundwater shall apply to ecology for a permit to appropriate public groundwater or, if seeking to rely on the groundwater permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public groundwater or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:

(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of groundwater;

(b) A site map;

(c) The area to be irrigated (in acres);

(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;

(e) A property covenant that prohibits trees or shrubs over the septic drain field; and

(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use treated through a wastewater treatment plant which discharges to surface water is consumptively used.

(4) Applications for public groundwater or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(5) Applications to appropriate public groundwater or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.

(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-050, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights. (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new water right or a request for a determination of water budget neutrality under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw groundwater to ensure that groundwater is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-060, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-070 Measuring and reporting water use. (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of groundwater within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100.

(2) For all other uses within upper Kittitas County that begin after November 25, 2009, including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100.

(3) Water users must collect metering data for each recording period. The following table shows the five recording periods during each water year (October 1 through September 30):

Recording Period
October 1 - March 31
April 1 - June 30
July 1 - July 31
August 1 - August 31
September 1 - September 30

(4) Water users must report their measurement data as follows:

Recording and Reporting Requirements			
Average diversion rate in gallons per minute	< 10 gpm	10-49 gpm	> 50 gpm
Recording frequency	Monthly	Biweekly	Weekly
Volume or rate to report	Maximum rate of diversion	Maximum rate of diversion	Maximum rate of diversion

Recording and Reporting Requirements			
Average diversion rate in gallons per minute	< 10 gpm	10-49 gpm	> 50 gpm
	Annual total volume	Annual total volume	Annual total volume
Date data must be reported to department	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year
Monthly means calendar month			
Weekly means Monday 12:01 a.m. to Sunday 12:00 p.m.			
Biweekly means once every two weeks			
Daily means 12:01 a.m. to 12:00 p.m.			
1 gallon per minute is equivalent to .002 cubic feet per second			

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-070, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

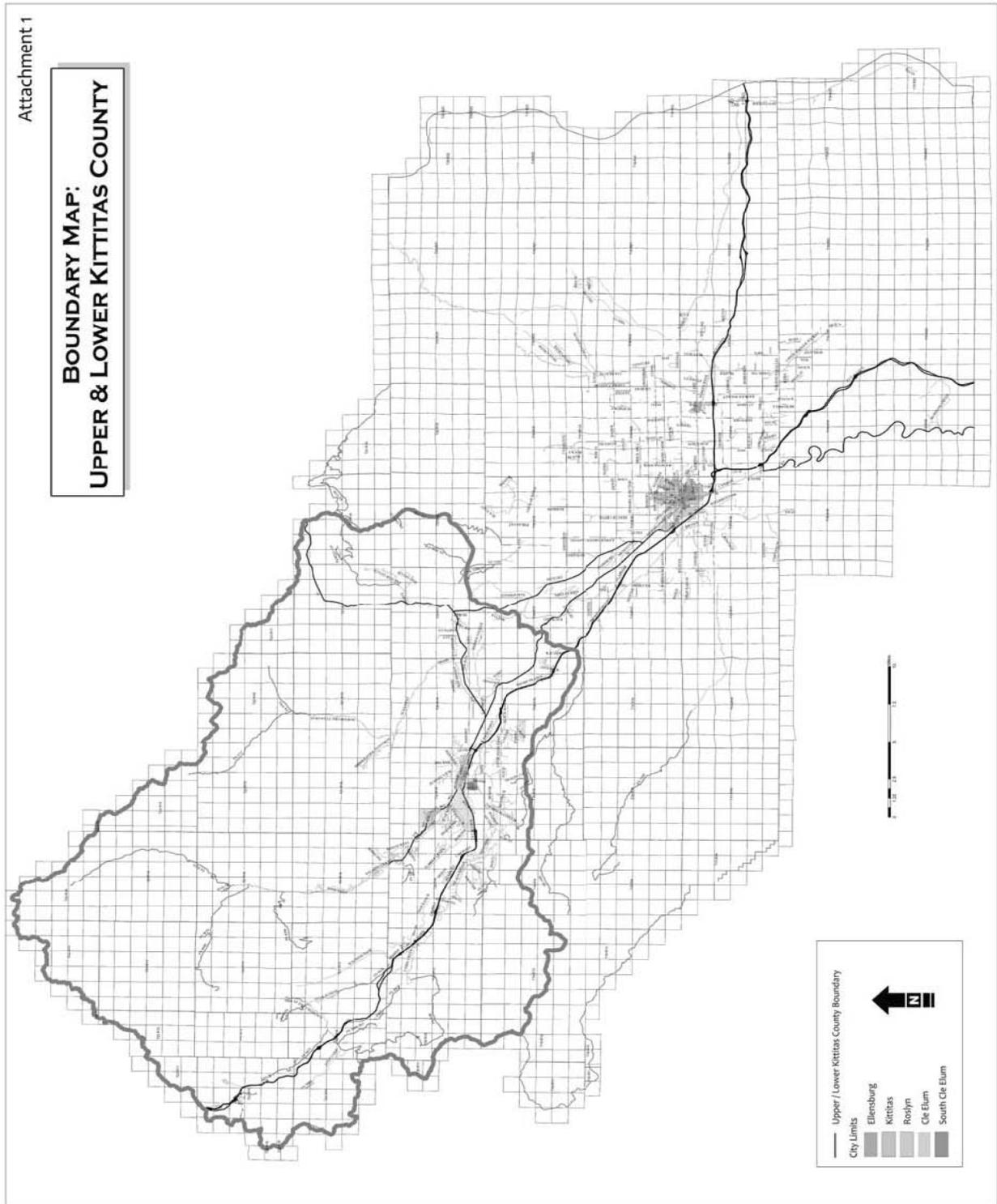
(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-080, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-090 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-090, filed 12/22/10, effective 1/22/11.]

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.



[Statutory Authority: RCW 90.54.050 and chapter 43.27A RCW. 11-01-163 (Order 08-12), § 173-539A-990, filed 12/22/10, effective 1/22/11.]