



# RULE-MAKING ORDER

## CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Energy Facility Site Evaluation Council

- Permanent Rule  
 Emergency Rule

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.  
 Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** Expedite and reduce the costs of siting of energy facilities.

**Citation of existing rules affected by this order:**

Repealed: WAC 463-28-030, 463-28-040, 463-28-050

Amended: WAC 463-28-010, 463-28-060, 463-28-070, 463-28-080, 463-47-060, 463-47-090, 463-47-110, 463-47-140  
WAC 463-66-040

Suspended:

**Statutory authority for adoption:** RCW 80.50.040(1)

**Other authority :**

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 07-09-059 on April 13, 2007 (date).

Describe any changes other than editing from proposed to adopted version:

Proposed changes to WAC 463-66-070 were not adopted and WAC 463-66-080 was not repealed.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.  
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:** October 9, 2007

**NAME (TYPE OR PRINT)**

Allen J. Fiksdal

**SIGNATURE**

**TITLE**

EFSEC Manager

**CODE REVISER USE ONLY**

9  
 4:25  
 07-21-035

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

New	<u>0</u>	Amended	<u>9</u>	Repealed	<u>3</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>9</u>	Repealed	<u>3</u>
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The number of sections adopted using:

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04 effective 11/11/04)

**WAC 463-28-010 Purpose.** This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt ~~((local))~~ land use plans ~~((or))~~, zoning ordinances, or other development regulations for a site or portions of a site for an energy facility, or alternative energy facility.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-28-060** ~~((Request for preemption--))~~ **Adjudicative proceeding.** (1) Should ((an applicant elect to continue processing the application and file a request with the council for state preemption,)) the council determine under WAC 463-26-110 a site or any portions of a site is inconsistent it will schedule an adjudicative proceeding ((hearing on the application as specified)) under chapter 463-30 WAC to consider preemption.

(2) The proceeding for preemption may be combined or scheduled concurrent with the adjudicative proceeding held under RCW 80.50.090(3).

(3) The council shall determine ((during the adjudicative proceeding)) whether to recommend to the governor that the state ((should)) preempt the ~~((local))~~ land use plans ~~((or))~~, zoning ordinances, or other development regulations for a site or portions of a site for the energy facility or alternative energy resource proposed by the applicant. ~~((The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100.))~~

AMENDATORY SECTION (Amending Order 78-3, filed 6/23/78)

**WAC 463-28-070 Certification--Conditions--State/local interests.** If the council approves the request for preemption it shall include conditions in the draft certification agreement which

~~((give due consideration to))~~ consider state or local governmental or community interests affected by the construction or operation of the energy facility or alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted ~~((or superseded))~~ pursuant to RCW 80.50.110(2).

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

WAC 463-28-080 Preemption--~~((Failure to justify))~~  
Recommendation. ~~((During the adjudicative proceeding, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant.))~~ The council's determination on a request for preemption shall be part of its recommendation to the governor pursuant to RCW 80.50.100.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-28-030	Determination of noncompliance-- Procedures.
WAC 463-28-040	Inability to resolve noncompliance.
WAC 463-28-050	Failure to request preemption.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-47-060 Additional timing considerations.** (1) The council will determine when it receives an application whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the council will request the applicant to complete an environmental checklist. A checklist is not needed if the council and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the council is unsure whether the proposal is exempt.

(2) The council may initiate an adjudicative proceeding (~~(hearing)~~) required by RCW 80.50.090 prior to completion of the draft EIS. (~~(The council shall initiate and conclude an adjudicative proceeding prior to issuance of the final EIS.)~~)

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-47-090 EIS preparation.** (1) Preparation of draft and final EISs (~~(and)~~), SEISs, or addenda is the responsibility of the council. (~~(Before the council issues an EIS,)~~) The responsible official shall be satisfied that ((it complies)) these documents comply with these rules and chapter 197-11 WAC prior to issuance.

(2) The council ((normally will)) has the following options for draft and final EISs, SEISs, or addenda preparation:

(a) The council prepares its own ((draft and final EISs. It may)) documents.

(b) The council's independent consultant prepares any or all of the documents under the supervision of the responsible official.

(c) The council requires the applicant to prepare the documents with oversight from the responsible official.

(3) If the council prepares its own draft and final EISs, SEISs, or addenda, or its independent consultant prepares them, the council can require an applicant to provide information that the council or independent consultant does not possess, including specific investigations.

~~((3) If the council would be unable to prepare a draft and/or final EIS due to its commitments or other constraints the council may allow an applicant the following option for preparation of the~~

~~draft and/or final EIS for the applicant's proposal:~~

~~((a)) (4) The applicant ((and the council agree upon a method of funding in which the applicant will)) shall bear the expense of the ((EIS)) draft and final EISs, SEISs, or addenda preparation, but the consultant will work directly for the council.~~

~~((b) The outside party will prepare the document under the supervision of the council or council subcommittee, and the responsible official.~~

~~((c)) (5) Normally, the council will have the documents printed and distributed.~~

~~((4)) (6) Whenever someone other than the council prepares a draft or final EISs, SEISs, or addenda, the ((council shall)) responsible official:~~

(a) May direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Shall initiate and coordinate scoping, ensuring that the individuals preparing the ((EIS)) documents receive((s)) all substantive information submitted by any agency or person.

(c) Shall assist in obtaining information on file with ((another agency)) other agencies that is needed by the persons preparing the ((EIS)) document.

(d) Shall allow the person preparing the ((EIS)) document access to council records relating to the ((EIS)) document (under chapter 42.17 RCW--Public disclosure and public records law).

AMENDATORY SECTION (Amending Order 84-2, filed 9/14/84)

**WAC 463-47-110 Policies and procedures for conditioning or denying permits or other approvals.** (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of

life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2) (a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits or (~~rejection of~~) rejecting applications.

AMENDATORY SECTION (Amending Order 84-2, filed 9/14/84)

**WAC 463-47-140 Responsibilities of the council's responsible official.** The (~~council~~) EFSEC manager shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council, council staff, groups, and citizens.

(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISS, DNSs, and scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including

scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules.



AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04,  
effective 11/11/04)

**WAC 463-66-040 Amendment review.** In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules; (~~and~~)
- (3) The public health, safety, and welfare; and
- (4) The provisions of chapter 463-72 WAC.