

TRANSMITTAL OF RULES ADOPTED

FROM: Energy Facility Site Evaluation Council  
(Name of Agency)

TO: CODE REVISER  
LEGISLATIVE BLDG. (Southwest Corner, Ground Floor)  
OLYMPIA 98504

The enclosed rules Permanent rules  , being Order No. 114  
Emergency rules

relating to (Name of rules or description of subject matter)

Regulations for Compliance with National Pollutant Discharge  
Elimination System Permit Program

(ALTERNATIVE A. Use only for adoption of permanent rules)

pursuant to Notice No. 7356 ① filed with the code reviser  
on 1-3-77 ② were regularly adopted as permanent rules of  
(date)  
this agency at Olympia, WA on 1-24-77 and are herewith  
(place) (date)  
filed in the office of the code reviser pursuant to chapter 34.04  
RCW. The effective date of such rules shall be \_\_\_\_\_ ③

(ALTERNATIVE B. Use only for adoption of emergency rules)

pursuant to its finding in the attached administrative order,  
that the immediate adoption of these rules is necessary for the  
preservation of the public health, safety, or general welfare and  
that observance of the requirements of notice and opportunity to  
present views on the proposed action would be contrary to the  
public interest, were regularly adopted as emergency rules of this  
agency at \_\_\_\_\_ on \_\_\_\_\_ and  
(place) (date)  
are herewith filed in the office of the code reviser pursuant to  
chapter 34.04 RCW.

The undersigned hereby certifies that the requirements of chapter  
34.04 RCW and of the Open Public Meetings Act of 1971, chapter  
42.30 RCW have been fulfilled.

Dated this 3rd day of February 1977.

STATE OF WASHINGTON  
FILED

FEB 4 1977

CODE REVISER'S OFFICE

DOCKET # 2972 FILE #

Energy Facility Site Evaluation Council  
(AGENCY)

By Roger Polzin  
Executive Secretary

Title

- ① Notice number as appears on the copy of notice returned to you by reviser's office (if proceedings were continued, use no. of last notice)
- ② Stamped date as appears on the copy of notice returned to you by reviser's office (if proceedings were continued, use date of last notice)
- ③ Unless a later date is specified in this order or is prescribed in another statute, rules are effective 30 days after filing:  
RCW 34.04.040. Leave this space blank except in such special cases.  
[Order 9, filed 9/25/74, eff. 10/25/74] [Form CR-2: Rev. 9/21/74]

Resolution No. 114

WHEREAS, the Energy Facility Site Evaluation Council has promulgated a notice of intent to adopt, amend or repeal rules concerning National Pollutant Discharge Elimination System Permits; and


WHEREAS, notice of such proposed adoption, amendment or repeal was contained in Notice No. 7356 filed January 3, 1977, with the Code Reviser's office;

NOW THEREFORE BE IT RESOLVED by the Energy Facility Site Evaluation Council that WAC 463-16-010, 463-16-020, 463-16-030, 463-16-031, 463-16-032, 463-16-033, 463-16-034, 463-16-040, 463-16-041, 463-16-042, 463-16-043, 463-16-050, 463-16-051, 463-16-052, 463-16-053, 463-16-054, 463-16-055, 463-16-060, 463-16-061, 463-16-062, 463-16-063, 463-16-064, 463-16-065, 463-16-080, and 463-16-090 are hereby repealed; and

BE IT FURTHER RESOLVED by the Energy Facility Site Evaluation Council that the rules listed on Exhibit "A" attached hereto, and by this reference made a part hereof, concerning National Pollutant Discharge Elimination System Permits are hereby approved and adopted as permanent rules of the Energy Facility Site Evaluation Council;


BE IT FURTHER RESOLVED by the Energy Facility Site Evaluation Council that this resolution and annexed regulations, after first being recorded in the Order Register of the Energy Facility Site Evaluation Council, shall be forwarded in proper form to the Code Reviser's for filing pursuant to RCW 34.04.

Dated this 24th day of January, 1977.

  
\_\_\_\_\_  
Lawrence B. Bradley  
Chairman

ATTEST:

  
\_\_\_\_\_  
Roger Polzin  
Executive Secretary

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Thomas F. Carr  
Assistant Attorney General

## Chapter 463-38

## REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM.

WAC

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WAC 463-38-010 DEFINITIONS. As used in this chapter, the following terms shall have the meanings indicated below:

(1) The term "Act" means the Federal Water Pollution Control Act as amended, Public Law 92-500 (33 U.S.C. 1314, et seq.).

(2) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(3) The term "applicable effluent standards and limitations" means all State of Washington and Federal effluent standards and limitations to which a discharge is subject under the Act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(4) The term "applicable water quality standards" means all water quality standards of the State of Washington to which a discharge is subject under the Act and which have been:

(a) approved or permitted to remain in effect by the Administrator pursuant to section 303(a) or section 303(c) of the Act, or,

(b) promulgated by the Administrator pursuant to section 303(b) or section 303(c) of the Act.

(5) The term "applicant" shall mean any person who has applied for an NPDES Permit pursuant to the Act and section 402(b) thereof.

(6) The term "Certification Agreement" means that binding agreement executed between an applicant under chapter 80.50 RCW and the state which embodies compliance with the siting guidelines adopted in RCW 80.50.050, and shall contain the conditions set forth in the NPDES Permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(7) The term "Chairman" means the Chairman of the Energy Facility Site Evaluation Council.

(8) The term "Council" means the Washington State Energy Facility Site Evaluation Council.

(9) The term "discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) any addition of any pollutant to navigable waters from any point source,

(b) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(10) The term "DOE" means the Washington State Department of Ecology.

(11) The term "effluent limitations" means any restriction established pursuant to the Act by the State of Washington or the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone or the ocean, including schedules of compliance.

(12) The term "EPA" means the United States Environmental Protection Agency.

(13) The term "Executive Secretary" means the individual holding the position of Executive Secretary of the Council.



(14) The term "Governor" shall mean the Governor of the State of Washington.

(15) The term "minor discharge" means any discharge which:

(a) has a total volume of less than 50,000 gallons on every day of the year,

(b) does not affect the waters of any state other than Washington, and,

(c) is not identified by the Council, the Regional Administrator or by the Administrator in regulations issued pursuant to section 307(a) of the Act as a discharge which is not a minor discharge.

If there is more than one discharge from a facility and the sum of the volumes of all discharges exceeds 50,000 gallons on any one day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

(16) The term "National Data Bank" means a facility or system established or to be established by the Administrator for the purpose of assembling, organizing and analyzing data pertaining to water quality and the discharge of pollutants.

(17) The term "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the Act and includes the Washington State Program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the Administrator in whole pursuant to section 402 of the Act.

(18) The term "new source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under section 306 of the Act, which will be applicable to such source if such standard is thereafter promulgated in accordance with section 306 of the Act.

(19) The term "NPDES Application" means the uniform national forms for application for a NPDES Permit (including subsequent additions, ~~are~~ revisions or modifications duly promulgated by the Administrator pursuant to the Act) as adopted by the Council for use in the Washington State NPDES program.

(20) The term "NPDES Form" means any issued NPDES Permit, Refuse Action Application, the NPDES Application and the NPDES Reporting Form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the Administrator.

(21) The term "NPDES Permit" means the permit incorporated in the Certification Agreement issued by the Council which regulates the discharge of pollutants pursuant to section 402 of the Act.

(22) The term "NPDES Program" means that program of the State of Washington pursuant to section 402 of the Act.

(23) The term "NPDES Reporting Form" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the Administrator pursuant to the Act) for reporting data and information pursuant to monitoring and other conditions of NPDES Permits.

(24) The term "permittee" means any person who has been issued a complete Refuse Act or an NPDES Permit.

(25) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

(26) The term "Refuse Act" means section 13 of the River and Harbor Act of March 3, 1899.

(27) The term "Refuse Act Application" means the application for a permit under the Refuse Act.

(28) The term "Refuse Act Permit" means any permit issued under the Refuse Act.

(29) The term "Regional Administrator" means the EPA's Region X Administrator.

(30) The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, prohibition or standard.

(31) The term "sewage" means human body waste and the wastes from toilets and other receptacles intended to receive or retain body wastes.

(32) The term "sewage sludge" means the solids and precipitates separated from waste water by unit processes.

(33) The term "energy facility" means any energy facility, as defined in RCW 80.50.020(11).

(34) "Trade Secrets" as used in these regulations means information having an alleged commercial importance which, under relevant State law, is protected by reason of a confidential relationship, exclusive, however, of any data or information required by Federal law or regulation to be made publicly available.

(35) The definitions of the following terms contained in section 502 of the Act shall be applicable to such terms as used in these regulations unless the context otherwise requires:

(a) The term "interstate agency" means an agency of two or more states established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(b) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian Tribal organization, or a designated and approved management agency under section 208 of this Act.

(d) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(e) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(i) sewage from vessels within the meaning of section 312 of this Act; or,

(ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(f) The term "navigable waters" means the waters of the United States, including the territorial seas.

(g) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(h) The term "contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(i) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(j) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after the discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(k) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(l) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants

(i) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and

(ii) at appropriate frequencies and locations.



(m) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

WAC 463-38-020 SCOPE AND PURPOSE. (1) This chapter established regulations specifying procedures and other rules which will be utilized by the Council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 86 Stat. 816, 33 U.S.C. 1314 et seq.

(2) The purpose of these regulations is to establish an orderly procedure which not only complies with the requirements of EPA and the Administrator for portions of the Washington State NPDES Program, but also is to integrate the NPDES Permit Program into the existing Council procedures for processing applications pursuant to chapter 80.50 RCW and the rules and regulations made pursuant thereto.

(3) These regulations apply to:

(a) Any energy facility for which a Certification Agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application may be made to or is pending before the Council for Certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 155, Laws of 1973, and the act.

WAC 463-38-030 NPDES APPLICATION AND TENTATIVE DETERMINATION.

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WAC 463-~~43~~-031 APPLICATION FILING WITH THE COUNCIL. (1) For each energy facility described in WAC 463-38-020(3), there shall be filed with the Council:

(a) A complete Refuse Act Application as previously submitted to the U.S. Corps of Engineers unless such application has been transmitted to the Council by the Regional Administrator; or,

(b) A complete NPDES Application no later than 60 days following receipt by the person identified in WAC 463-38-032 for such energy facility of notice from the Council that the previously filed Refuse Act Application is so deficient as not to have satisfied the filing requirements; or

(c) A complete NPDES Application at the time of submitting an application to the Council pursuant to RCW 80.50.070. Any subsequent determination of such an NPDES Application's adequacy shall not affect the Council's finding that a complete application pursuant to RCW 80.50.070 has been received.

(d) A complete NPDES Application for any energy facility described in WAC 463-38-020(3) and not covered in paragraph 1(a), (b) or (c) above. Such NPDES Application shall be filed either:

(i) no less than 180 days in advance of the day on which it desires to commence the discharge of pollutants, or,



(ii) in sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the Act, or with any applicable zoning or siting requirements established pursuant to section 208(b)2(c) of the Act and other applicable water quality standards and applicable effluent standards and limitations.

(2) Each person requesting an NPDES Permit from the Council shall be required to submit additional information as determined necessary by the Council after a Refuse Act or an NPDES Application has been filed.

(3) If a Refuse Act or an NPDES Application is determined to be incomplete or otherwise deficient, the NPDES portion of any application filed pursuant to RCW 80.50.070 shall not be processed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

(4) The Council shall not consider any NPDES Application for a energy facility included within WAC 463-38-020(3)(b) until and unless an application for certification is filed with the Council pursuant to RCW 80.50.070.

(5) Each NPDES Application will be submitted on such form as specified by the Council.

WAC 463-38-032 SIGNATURE FORM. Any NPDES form submitted to the Council shall be signed as follows:

(1) In the case of private corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the NPDES Form originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal corporation, state or other public organization, by either a principal executive officer, the ranking elected official or a duly authorized employee.

WAC 463-38-033 TENTATIVE DETERMINATION ON NPDES PERMITS.

(1) The Council shall formulate and prepare tentative determinations with respect to an NPDES Application in advance of public notice as to the proposed issuance or denial of the NPDES Permit. Such tentative determination shall be made no later than six (6) months after receipt of a complete NPDES Application, or such later time as determined by the Council. Such tentative determination shall include at least the following:

(a) A proposed determination to issue or deny an NPDES Permit for the discharge described in the Refuse Act or NPDES Application; and

(b) If the proposed determination in paragraph 1 of this section is to issue the NPDES Permit, the following additional tentative determinations shall be made by the Council:

(i) Proposed effluent limitations, identified pursuant to WAC 463-38-053(1, 2);

(ii) A proposed schedule of compliance including interim dates and requirements for meeting the proposed effluent limitations identified pursuant to WAC 463-38-054; and

(iii) A brief description of any other proposed special conditions (other than those required pursuant to WAC 463-38-055) which will have a significant impact upon the discharges described in the NPDES Application.

(2) The Council shall organize the tentative determination prepared pursuant to paragraph 1 of this section into a draft NPDES Permit.

WAC 463-38-034 FACT SHEETS. (1) For every discharge in excess of 500,000 gallons on any one day of the year, the Council shall prepare and include in any public notice given pursuant to WAC 463-38-041 a fact sheet with respect to the Refuse Act or NPDES Application described in the public notice. Such fact sheet shall include at least the following:

(a) A sketch or detailed description of the location of the discharge described in the NPDES Application;

(b) A quantitative description of the discharge described in the NPDES Application which includes at least the following:

AND (i) The rate of frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day of million gallons per day;

OR (ii) For thermal discharges subject to limitation under the Act, the estimated maximum, minimum and average summer and winter temperatures in degrees Fahrenheit of effluent discharges; and

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under sections 301, 302, 306 or 307 of the Act and regulations published thereunder;

(c) The tentative determinations required under WAC 463-38-033.

(d) A brief citation, including a brief identification of the uses for which the waters receiving said discharges have been classified by DOE, of the water quality standards and of the effluent standards and limitations applied to the proposed discharge; and

(e) A fuller description than that given in the public notice of the procedures to be used by the Council in formulating final determinations for an NPDES Permit, which shall include, but not be limited to:

(i) Thirty (30) day comment period required by WAC 463-38-041(2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate, either directly or through Counsel for the Environment, in the formulation of the final determinations, including the availability of any environmental assessments or detailed statements of environmental impact and any public hearings

which may be held by the Council prior to the final determination on the Refuse Act or NPDES Application.

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to each person or group on such mailing list.

WAC 463-38-040 NOTICE, HEARINGS AND INFORMATION ACCESSIBILITY.

WAC 463-38-041 NOTICE, PROVISIONS. (1) Notices shall be circulated within the geographical areas of the proposed discharge, and shall be published in a local or daily newspaper of general circulation; such circulation may include any or all of the following:

(a) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(b) Posting at or near the entrance of the applicant's principal place of business and in nearby places.

(2) Any persons may, within thirty (30) days following the date of the public notice, submit their written views on the tentative determinations with respect to the NPDES Application. All written comments submitted during the 30 day comment period shall be retained by the Council and considered in their final determination with respect to the NPDES Applications. The period for comments may be extended at the discretion of the Council.

(3) The contents of public notice of application for NPDES Permits shall include at least the following:

(a) Name, address and telephone number of agency issuing the public notice;

(b) Name and address of applicant;

(c) Brief description of applicant's activities or operations which result in the discharge described in the NPDES Application (e.g., thermal electric power generating facility stationary or floating);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is new, a modification, or an existing discharge;

(e) A statement of the tentative determination to issue or deny an NPDES Permit for the discharge described in the NPDES Application;

(f) A brief description of the procedures for the formulation of final determinations, including the 30 day comment period required by paragraph 2 of this section and any other means set forth in WAC 463-38-034 (1) (e).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to WAC 463-38-033(2), request a copy of the fact sheet



described in WAC 463-38-034 and inspect and copy NPDES Forms and related documents at a reasonable charge.

(4) Public and agency notice will be given as set forth below:

(a) Notice shall be mailed to any person or group carried on the mailing list identified in WAC 463-38-034(2). The name of any person or group shall be added upon written request to a mailing list for distributing copies of notices for all NPDES Applications within the state or within a certain geographical area.

(b) At the time of issuance of public notice pursuant to WAC 463-38-041 a fact sheet will be sent to:

(i) Any other state whose waters may be affected by the issuance of the NPDES Permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a Permit and, upon request, providing such state and interstate agencies with a copy of the NPDES Application and a copy of the proposed permit prepared pursuant to WAC 463-38-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the Council and to the Regional Administrator, which shall be duly considered by the Council in accordance with the policies, provisions and regulations of the Act, chapter 80.50 RCW et seq., and chapter 34.04 RCW et seq.

(ii) The District Engineer of the Army Corps of Engineers for NPDES Applications for discharges (other than minor discharges) into navigable waters.

(iii) Any other federal, state or local agency or any affected county upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC 463-38-042. Such agencies shall include at least the following:

(a) the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the Act;

(b) DOE; and

(c) appropriate public health agencies, including those represented on the Council.

WAC 463-38-042 PUBLIC HEARINGS. (1) Any applicant affected state, affected interstate agency, affected county, any interested agency, person or group of persons, or the Regional Administrator may request of or petition the Council for a public hearing to be held with respect to an NPDES Application. Any such request or petition for public hearing shall be filed within thirty (30) days after the giving of public notice pursuant to WAC 463-38-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing. Instances of doubt should be resolved by the Council in favor of holding the hearing.



(3) Any hearings brought pursuant to this section shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Council, and may, as appropriate, consider related groups of permit applications.

(4) Any public hearings held hereunder will be conducted in accordance with provisions of RCW 80.50.090, chapter 34.04 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC 463-38-042(1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

(a) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and Government agencies which received a copy of the notice or the fact sheet for the NPDES application;

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least [thirty (30)] days in advance of the hearing. The Council may give notice of a public hearing concurrent with public notice given pursuant to WAC 463-38-041.

(6) The contents of public notice of any hearing held pursuant to WAC 463-38-042(1) through (4) shall include at least the following notice which meets the requirements of this section:

(a) Name, address and phone number of the Council;

(b) Name and address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance (where applicable);

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A short and plain statement of the matters asserted;

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC 463-38-033(2) above, request a copy of each fact sheet prepared pursuant to WAC 463-38-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

WAC 463-38-043 PUBLIC ACCESS TO INFORMATION. (1) All NPDES Forms (including the draft NPDES Permit prepared pursuant to WAC 463-38-033(2) or any public comment upon those forms

pursuant to WAC 463-38-041(2)) shall be available to the public for inspection and copying at a nominal charge. Any other records, reports, plans or information received by the Council or the State pursuant to its participation in the NPDES Program shall be available at a reasonable charge to the public in accordance with existing law.

(2) Any information (other than effluent data) received by the Council and contained in any NPDES Forms, or other records, reports or plans shall be protected as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES Form, the Council shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the Office of General Counsel stating the reasons for his disagreement with the determination of the Council. The Regional Administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determination, he shall consider any additional information submitted to the Office of the General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No later than 30 days following the mailing of such notice, the Regional Administrator shall communicate to the Council his decision not to concur in the withholding of such information and the Council and the Regional Administrator shall then make available to the public upon request that information determined not to constitute trade secrets.

(3) Any information afforded confidential status whether or not contained in an NPDES Form shall be disclosed upon request to the Regional Administrator or his authorized representative who shall maintain the disclosed information as confidential.

(4) The Council shall provide facilities for the inspection of information relating to NPDES Forms during normal business hours of the Council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with Council business. The Executive Secretary shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the Council.

WAC 463-38-050 NPDES PERMIT CONTENTS. The terms, conditions and content of any NPDES Permit issued by the Council shall be in accordance with the following subsections.

WAC 463-38-051 GENERAL CONDITIONS. (1) Any NPDES Permit shall be issued for a period of five (5) years, which period shall start on the date of issuance of said permit. The permittee shall inform the Council at least 180 days prior to any initiation of such a discharge.

(2) The decision to approve or reject, and on what conditions an NPDES Permit shall be issued, shall be in conformance with the requirements of this section. A majority vote of Council members listed in RCW 80.58.030(3) shall resolve any dispute and shall determine the approval or rejection of a Refuse Act or NPDES Application.

WAC 463-38-052 PROHIBITED DISCHARGES. (1) No discharge shall be made by energy facilities subject to the jurisdiction of the Council unless authorized by an NPDES Permit issued pursuant to these regulations.

(2) No NPDES Permit issued by the Council shall authorize any person to:

(a) Discharge any radiological, chemical or biological warfare agent or high-level radioactive waste into navigable waters;

(b) Discharge any pollutants which the Secretary of the Army acting through the Chief, Corps of Engineers, finds would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(c) Discharge any pollutant to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 402(d) of the Act;

(d) Discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the Act.

WAC 463-38-053 EFFLUENT LIMITATIONS, WATER QUALITY STANDARDS AND OTHER REQUIREMENTS FOR NPDES PERMITS. (1) Any NPDES Permit issued by the Council shall apply and insure compliance with all of the following, whenever applicable:

(a) Effluent limitations under sections 301 and 302 of the Act;

(b) Standards of performance for new sources under section 306 of the Act;

(c) Effluent standards, effluent prohibitions and pre-treatment standards under section 307 of the Act;

(d) Any more stringent limitation, including those:

(i) Necessary to meet water quality standards, treatment standards or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the Act; or



(ii) Necessary to meet any applicable federal law or regulation other than the Act or regulations thereunder; or

(iii) Required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;

(e) Any more stringent legal applicable requirements necessary to comply with a plan approved pursuant to section 208(d) of the Act; and

(f) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the Act, such conditions as the Council determines are necessary to carry out the provisions of the Act.

(2) In any case where an issued NPDES Permit applies the effluent standards and limitations described in paragraph 1 of this section, the Council shall make a finding that any discharge authorized by the permit will not violate applicable water quality standards and will have prepared some explicit verification of that fact. In any case where an issued NPDES Permit applies any more stringent effluent limitation, based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

(3) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to paragraphs 1 and 2 hereof, each issued NPDES Permit shall specify average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate.

WAC 463-38-054 SCHEDULES OF COMPLIANCE. (1) In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, all pursuant to WAC 463-38-052(1), (2), the Council shall establish schedules in NPDES Permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

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With respect to any discharge which is found by the Council not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC 463-38-053(1) (d) (e), the permittee shall be required to take specific steps to achieve compliance with the following:

- (a) Any legally applicable schedule of compliance contained in:
  - (i) applicable effluent standards and limitations;



(ii) if more stringent, water quality standards; or

(iii) if more stringent, legally applicable requirements listed in WAC 463-38-053(1)(d)(e); or

(b) In the absence of any legally applicable schedule of compliance, in a reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

(2) In any case where the period of time for compliance specified in paragraph 1(a) of this section exceed nine (9) months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; however, in no event shall more than nine (9) months elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than nine (9) months and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each NPDES Permit schedule of compliance, interim dates and the final date of compliance shall, to the extent practicable, fall on the last day of the months of March, June, September and December.

(3) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the Council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

WAC 463-38-055 OTHER TERMS AND CONDITIONS. In addition to the requirements of WAC 463-38-051, 463-38-052 and 463-38-053, each issued NPDES Permit shall require that:

(1) All discharges authorized by the NPDES Permit shall be consistent with the terms and conditions of the Permit; any facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants must be reported to the Council by submission of a new NPDES Application or supplement thereto or, if such discharge does not violate effluent limitations specified in the NPDES Permit, by submission to the Council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES Permit shall constitute a violation of the terms and conditions of the NPDES Permit;

(2) The Permit may be modified, suspended or revoked in whole or in part during its terms for cause including, but not limited to, the following:

(a) Violation of any term or condition of the NPDES Permit;

(b) Obtaining an NPDES Permit by misrepresentation or failure to disclose fully all relevant facts; and

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(3) The permittee shall allow the Council or its authorized representative upon the presentation of credentials and at reasonable times:

(a) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the NPDES Permit;

(b) To have access to and copy at reasonable cost any records required to be kept under terms and conditions of the NPDES Permit;

(c) To inspect any monitoring equipment or method required in the NPDES Permit; or

(d) To sample any discharge of pollutants.

(4) The permittee shall at all times maintain a good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES Permit.

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section. 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES Permit, the Council shall revise or modify the NPDES Permit in accordance with the toxic effluent standard of prohibition and so notify the permittee.

WAC 463-38-060 NPDES PERMITS REVIEW AND APPEAL. This section governs the procedures for reissuance, modification, suspension and revocation of NPDES Permits. In addition, the appeal procedure for an applicant or permittee is set out.

WAC 463-38-061 REISSUANCE OF NPDES PERMITS. (1) Any permittee shall make application for reissuance of NPDES Permits or continuation of discharges after the expiration date of his NPDES Permit by filing with the Council an application for reissuance of his permit at least 180 days prior to its expiration. The filing requirement for reissuance shall be satisfied in the first instance by a simply written request for reissuance by the permittee to the Council, except that the Council in its discretion may require any and/or all permittees to request a reissuance by submitting to the Council all then applicable NPDES Forms.

(2) The scope and manner of any review of an application for reissuance of an NPDES Permit by the Council shall be sufficiently detailed as to insure the following:

(a) That the permittee is in compliance with or has substantially complied with all of the terms, conditions, requirements and schedules of compliance of the expired NPDES Permit;

(b) That the Council has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, content and frequencies of permittee's

received by him and to have such deficiency corrected so long as he acts to inform by written letter the Council within twenty (20) days after his receipt of the NPDES Application or reporting form. If the Regional Administrator's objection relates to an NPDES Application, the Regional Administrator will be sent any information necessary to correct the deficiency. If the Regional Administrator so requests, the Council will not issue the NPDES Permit until they receive notice from the Regional Administrator that the deficiency has been corrected, which notice shall not be withheld for more than 30 days.

(3) For all minor discharges, the Council may require the operator of such a discharge to submit NPDES Application Forms or such other information as may be requested by the Regional Administrator.

WAC 463-38-090 CONFLICT OF INTEREST. No member of the Council shall have received, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for an NPDES permit/ ~~UNDER THE JURISDICTION OF THIS COUNCIL~~

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports resubmitted to the Council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC 463-38-053(1)(2), including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and ~~public participation~~ procedures specified in WAC 463-38-041 and WAC 463-38-042 are applicable to each request for reissuance of an NPDES Permit.

(4) Notwithstanding any other provision any point source of a discharge having a thermal component the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance with respect to the thermal component of its discharge during a ten (10) year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

WAC 463-38-062 MODIFICATION OF NPDES PERMIT. (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended or revoked for cause, in whole or in part during its term.

(2) The Council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES Permit if the Council determines good and valid cause exists for such revision and if within 30 days following receipt of notice from the Council, the Regional Administrator does not object in writing.

(3) Any such modifications shall be executed by the Council and the permittee in the same manner as the NPDES Permit was executed, including full compliance with the requirements of WAC 463-38-041, WAC 463-38-042 and WAC 463-38-043.

WAC 463-38-063 APPEAL. (1) The approval, rejection, or modification of an NPDES Permit shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

(2) No appeal shall be taken under paragraph 1 until such time as the Council makes its recommendations to the Governor pursuant to RCW 80.50.100(2).

WAC 463-38-064 TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMIT. (1) Each proposed NPDES Permit will be transmitted to the Regional Administrator in accordance with the following procedures:



(a) A copy of the proposed NPDES Permit, including any and all terms, conditions, requirements or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants except as to classes, types or sizes within any category of point sources waived in writing by the Regional Administrator.

(b) The Regional Administrator shall be provided a ninety (90) day period in which to comment upon, make recommendations with respect to, or object in writing to the issuance of the proposed permit pursuant to any right to object provided the Administrator in section 402(d)(2) of the Act. No permit shall be issued if the Regional Administrator objects in writing to the issuance of such permit pursuant to any such right within said period, unless such objection is waived or withdrawn by the Regional Administrator in writing. Should no such objection be received within said period, it shall be presumed that the Administrator has no objection to the issuance of the proposed permit.

(2) A copy of every issued NPDES Permit immediately following execution by the applicant and the state, along with any and all terms, conditions, requirements or documents which are a part of such NPDES Permit or which will affect the authorization of the discharge of pollutants will be sent to the Regional Administrator.

WAC 463-38-065 MONITORING AND ENFORCEMENT. The Council hereby delegates to the DOE the monitoring activities of water discharges under a Certification Agreement which incorporates the NPDES Permit. As a result of said monitoring activities, DOE shall report to the Council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the Council including those in WAC 463-38-055, pursuant to RCW 80.50.150. The Council shall then take or initiate action to enforce the terms of any Certification Agreement and the incorporated NPDES Permit. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the Act or any statute or regulation derived therefrom, it is delegated the enforcement authority and responsibility to carry out such immediate action as it deems necessary and shall report such actions to the Council. Such action shall remain in effect until confirmed or modified by the Council.

WAC 463-38-080 TRANSMITTAL OF DATA TO REGIONAL ADMINISTRATOR. (1) Copies of NPDES Forms received by the Council as outlined below shall be transmitted to the Regional Administrator:

(a) Upon receipt by the Council;

(b) A complete copy, or relevant portions thereof, of any appropriate NPDES Form received by the Council;

(2) The Regional Administrator may object in writing to deficiencies in any NPDES Application or reporting form

Chapter 463-38

REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

Chapter 463-38

REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM.

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WAC 463-38-010 DEFINITIONS. As used in this chapter, the following terms shall have the meanings indicated below:

(1) The term "Act" means the Federal Water Pollution Control Act as amended, Public Law 92-500 (33 U.S.C. 1314, et seq.).

(2) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(3) The term "applicable effluent standards and limitations" means all State of Washington and Federal effluent standards and limitations to which a discharge is subject under the Act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(4) The term "applicable water quality standards" means all water quality standards of the State of Washington to which a discharge is subject under the Act and which have been:

(a) approved or permitted to remain in effect by the Administrator pursuant to section 303(a) or section 303(c) of the Act, or,

(b) promulgated by the Administrator pursuant to section 303(b) or section 303(c) of the Act.

(5) The term "applicant" shall mean any person who has applied for an NPDES Permit pursuant to the Act and section 402(b) thereof.

(6) The term "Certification Agreement" means that binding agreement executed between an applicant under chapter 80.50 RCW and the state which embodies compliance with the siting guidelines adopted in RCW 80.50.050, and shall contain the conditions set forth in the NPDES Permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(7) The term "Chairman" means the Chairman of the Energy Facility Site Evaluation Council.

(8) The term "Council" means the Washington State Energy Facility Site Evaluation Council.

(9) The term "discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) any addition of any pollutant to navigable waters from any point source,

(b) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(10) The term "DOE" means the Washington State Department of Ecology.

(11) The term "effluent limitations" means any restriction established pursuant to the Act by the State of Washington or the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone or the ocean, including schedules of compliance.

(12) The term "EPA" means the United States Environmental Protection Agency.

(13) The term "Executive Secretary" means the individual holding the position of Executive Secretary of the Council.

(14) The term "Governor" shall mean the Governor of the State of Washington.

(15) The term "minor discharge" means any discharge which:

(a) has a total volume of less than 50,000 gallons on every day of the year,

(b) does not affect the waters of any state other than Washington, and,



(c) is not identified by the Council, the Regional Administrator or by the Administrator in regulations issued pursuant to section 307(a) of the Act as a discharge which is not a minor discharge.

If there is more than one discharge from a facility and the sum of the volumes of all discharges exceeds 50,000 gallons on any one day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

(16) The term "National Data Bank" means a facility or system established or to be established by the Administrator for the purpose of assembling, organizing and analyzing data pertaining to water quality and the discharge of pollutants.

(17) The term "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the Act and includes the Washington State Program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the Administrator in whole pursuant to section 402 of the Act.

(18) The term "new source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under section 306 of the Act, which will be applicable to such source if such standard is thereafter promulgated in accordance with section 306 of the Act.

(19) The term "NPDES Application" means the uniform national forms for application for a NPDES Permit (including subsequent additions, revisions or modifications duly promulgated by the Administrator pursuant to the Act) as adopted by the Council for use in the Washington State NPDES program.

(20) The term "NPDES Form" means any issued NPDES Permit, Refuse Action Application, the NPDES Application and the NPDES Reporting Form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the Administrator.

(21) The term "NPDES Permit" means the permit incorporated in the Certification Agreement issued by the Council which regulates the discharge of pollutants pursuant to section 402 of the Act.

(22) The term "NPDES Program" means that program of the State of Washington pursuant to section 402 of the Act.

(23) The term "NPDES Reporting Form" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the Administrator pursuant to the Act) for reporting data and information pursuant to monitoring and other conditions of NPDES Permits.

(24) The term "permittee" means any person who has been issued a complete Refuse Act or an NPDES Permit.

(25) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

(26) The term "Refuse Act" means section 13 of the River and Harbor Act of March 3, 1899.

(27) The term "Refuse Act Application" means the application for a permit under the Refuse Act.

(28) The term "Refuse Act Permit" means any permit issued under the Refuse Act.

(29) The term "Regional Administrator" means the EPA's Region X Administrator.

(30) The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions

or operations leading to compliance with an effluent limitation, prohibition or standard.

(31) The term "sewage" means human body waste and the wastes from toilets and other receptacles intended to receive or retain body wastes.

(32) The term "sewage sludge" means the solids and precipitates separated from waste water by unit processes.

(33) The term "energy facility" means any energy facility, as defined in RCW 80.50.020(11).

(34) "Trade Secrets" as used in these regulations means information having an alleged commercial importance which, under relevant State law, is protected by reason of a confidential relationship, exclusive, however, of any data or information required by Federal law or regulation to be made publicly available.

(35) The definitions of the following terms contained in section 502 of the Act shall be applicable to such terms as used in these regulations unless the context otherwise requires:

(a) The term "interstate agency" means an agency of two or more states established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(b) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian Tribal organization, or a designated and approved management agency under section 208 of this Act.

(d) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(e) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(i) sewage from vessels within the meaning of section 312 of this Act; or,

(ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(f) The term "navigable waters" means the waters of the United States, including the territorial seas.

(g) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(h) The term "contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(i) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(j) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after the discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(k) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(l) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants

(i) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and

(ii) at appropriate frequencies and locations.

(m) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

WAC 463-38-020 SCOPE AND PURPOSE. (1) This chapter established regulations specifying procedures and other rules which will be utilized by the Council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 86 Stat. 816, 33 U.S.C. 1314 et seq.

(2) The purpose of these regulations is to establish an orderly procedure which not only complies with the requirements of EPA and the Administrator for portions of the Washington State NPDES Program, but also is to integrate the NPDES Permit Program into the existing Council procedures for processing applications pursuant to chapter 80.50 RCW and the rules and regulations made pursuant thereto.

(3) These regulations apply to:

(a) Any energy facility for which a Certification Agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application may be made to or is pending before the Council for Certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 155, Laws of 1973, and the act.



WAC 463-38-030 NPDES APPLICATION AND TENTATIVE DETERMINATION.

WAC 463-38-031 APPLICATION FILING WITH THE COUNCIL. (1) For each energy facility described in WAC 463-38-020(3), there shall be filed with the Council:

(a) A complete Refuse Act Application as previously submitted to the U.S. Corps of Engineers unless such application has been transmitted to the Council by the Regional Administrator; or,

(b) A complete NPDES Application no later than 60 days following receipt by the person identified in WAC 463-38-032 for such energy facility of notice from the Council that the previously filed Refuse Act Application is so deficient as not to have satisfied the filing requirements; or

(c) A complete NPDES Application at the time of submitting an application to the Council pursuant to RCW 80.50.070. Any subsequent determination of such an NPDES Application's adequacy shall not affect the Council's finding that a complete application pursuant to RCW 80.50.070 has been received.

(d) A complete NPDES Application for any energy facility described in WAC 463-38-020(3) and not covered in paragraph 1(a), (b) or (c) above. Such NPDES Application shall be filed either:

(i) no less than 180 days in advance of the day on which it desires to commence the discharge of pollutants, or,

(ii) in sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the Act, or with any applicable zoning or siting requirements established pursuant to section 208(b)2(c) of the Act and other applicable water quality standards and applicable effluent standards and limitations.

(2) Each person requesting an NPDES Permit from the Council shall be required to submit additional information as determined necessary by the Council after a Refuse Act or an NPDES Application has been filed.

(3) If a Refuse Act or an NPDES Application is determined to be incomplete or otherwise deficient, the NPDES portion of any application filed pursuant to RCW 80.50.070 shall not be processed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

(4) The Council shall not consider any NPDES Application for a energy facility included within WAC 463-38-020(3)(b) until and unless an application for certification is filed with the Council pursuant to RCW 80.50.070.

(5) Each NPDES Application will be submitted on such form as specified by the Council.

WAC 463-38-032 SIGNATURE FORM. Any NPDES form submitted to the Council shall be signed as follows:

(1) In the case of private corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is



responsible for the overall operation of the facility from which the discharge described in the NPDES Form originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal corporation, state or other public organization, by either a principal executive officer or the ranking elected official or a duly authorized employee.

WAC 463-38-033 TENTATIVE DETERMINATION ON NPDES PERMITS.

(1) The Council shall formulate and prepare tentative determinations with respect to an NPDES Application in advance of public notice as to the proposed issuance or denial of the NPDES Permit. Such tentative determination shall be made no later than six (6) months after receipt of a complete NPDES Application, or such later time as determined by the Council. Such tentative determination shall include at least the following:

(a) A proposed determination to issue or deny an NPDES Permit for the discharge described in the Refuse Act or NPDES Application; and

(b) If the proposed determination in paragraph 1 of this section is to issue the NPDES Permit, the following additional tentative determinations shall be made by the Council:

(i) Proposed effluent limitations, identified pursuant to WAC 463-38-053(1, 2);

(ii) A proposed schedule of compliance including interim dates and requirements for meeting the proposed effluent limitations identified pursuant to WAC 463-38-054; and

(iii) A brief description of any other proposed special conditions (other than those required pursuant to WAC 463-38-055) which will have a significant impact upon the discharges described in the NPDES Application.

(2) The Council shall organize the tentative determination prepared pursuant to paragraph 1 of this section into a draft NPDES Permit.

WAC 463-38-034 FACT SHEETS. (1) For every discharge in excess of 500,000 gallons on any one day of the year, the Council shall prepare and include in any public notice given pursuant to WAC 463-38-041 a fact sheet with respect to the Refuse Act or NPDES Application described in the public notice. Such fact sheet shall include at least the following:

(a) A sketch or detailed description of the location of the discharge described in the NPDES Application;

(b) A quantitative description of the discharge described in the NPDES Application which includes at least the following:

(i) The rate and frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(ii) For thermal discharges subject to limitation under the Act, the estimated maximum, minimum and average summer and winter temperatures in degrees Fahrenheit; and

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under sections 301, 302, 306 or 307 of the Act and regulations published thereunder;

(c) The tentative determinations required under WAC 463-38-033.

(d) A brief citation, including a brief identification of the uses for which the waters receiving said discharges have been classified by DOE, of the water quality standards and of the effluent standards and limitations applied to the proposed discharge; and

(e) A fuller description than that given in the public notice of the procedures to be used by the Council in formulating final determinations for an NPDES Permit, which shall include, but not be limited to:

(i) Thirty (30) day comment period required by WAC 463-38-041(2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate, either directly or through Counsel for the Environment, in the formulation of the final determinations, including the availability of any environmental assessments or detailed statements of environmental impact and any public hearings which may be held by the Council prior to the final determination on the Refuse Act or NPDES Application.

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to each person or group on such mailing list.

WAC 463-38-040 NOTICE, HEARINGS AND INFORMATION ACCESSIBILITY.

WAC 463-38-041 NOTICE, PROVISIONS. (1) Notices shall be circulated within the geographical areas of the proposed discharge, and shall be published in a local or daily newspaper of general circulation; such circulation may include any or all of the following:

(a) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(b) Posting at or near the entrance of the applicant's principal place of business and in nearby places.

(2) Any persons may, within thirty (30) days following the date of the public notice, submit their written views on the tentative determinations with respect to the NPDES Application. All written comments submitted during the 30 day comment period shall be retained by the Council and considered in their final determination with respect to the NPDES Applications. The period for comments may be extended at the discretion of the Council.

(3) The contents of public notice of application for NPDES Permits shall include at least the following:

(a) Name, address and telephone number of agency issuing the public notice;

(b) Name and address of applicant;

(c) Brief description of applicant's activities or operations which result in the discharge described in the NPDES Application (e.g., thermal electric power generating facility stationary or floating);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is new, a modification, or an existing discharge;

(e) A statement of the tentative determination to issue or deny an NPDES Permit for the discharge described in the NPDES Application;

(f) A brief description of the procedures for the formulation of final determinations, including the 30 day comment period required by paragraph 2 of this section and any other means set forth in WAC 463-38-034 (1) (e).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to WAC 463-38-033(2), request a copy of the fact sheet described in WAC 463-38-034 and inspect and copy NPDES Forms and related documents at a reasonable charge.

(4) Public and agency notice will be given as set forth below:

(a) Notice shall be mailed to any person or group carried on the mailing list identified in WAC 463-38-034(2). The name of any person or group shall be added upon written request to a mailing list for distributing copies of notices for all NPDES Applications within the state or within a certain geographical area.

(b) At the time of issuance of public notice pursuant to WAC 463-38-041 a fact sheet will be sent to:

(i) Any other state whose waters may be affected by the issuance of the NPDES Permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a Permit and, upon request, providing such state and interstate agencies with a copy of the NPDES Application and a copy of the proposed permit prepared pursuant to WAC 463-38-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the Council and to the Regional Administrator, which shall be duly considered by the Council in accordance with the policies, provisions and regulations of the Act, chapter 80.50 RCW et seq., and chapter 34.04 RCW et seq.

(ii) The District Engineer of the Army Corps of Engineers for NPDES Applications for discharges (other than minor discharges) into navigable waters.

(iii) Any other federal, state or local agency or any affected county upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC 463-38-042. Such agencies shall include at least the following:

(a) the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the Act;

(b) DOE; and

(c) appropriate public health agencies, including those represented on the Council.



WAC 463-38-042 PUBLIC HEARINGS. (1) Any applicant affected state, affected interstate agency, affected county, any interested agency, person or group of persons, or the Regional Administrator may request of or petition the Council for a public hearing to be held with respect to an NPDES Application. Any such request or petition for public hearing shall be filed within thirty (30) days after the giving of public notice pursuant to WAC 463-38-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing. Instances of doubt should be resolved by the Council in favor of holding the hearing.

(3) Any hearings brought pursuant to this section shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Council, and may, as appropriate, consider related groups of permit applications.

(4) Any public hearings held hereunder will be conducted in accordance with provisions of RCW 80.50.090, chapter 34.04 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC 463-38-042(1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

(a) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and Government agencies which received a copy of the notice or the fact sheet for the NPDES application;

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least [thirty (30)] days in advance of the hearing. The Council may give notice of a public hearing concurrent with public notice given pursuant to WAC 463-38-041.

(6) The contents of public notice of any hearing held pursuant to WAC 463-38-042(1) through (4) shall include at least the following notice which meets the requirements of this section:

(a) Name, address and phone number of the Council;

(b) Name and address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance (where applicable);

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A short and plain statement of the matters asserted;

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC 463-38-033(2) above, request a copy of each fact sheet prepared pursuant to



WAC 463-38-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

WAC 463-38-043 PUBLIC ACCESS TO INFORMATION. (1) All NPDES Forms (including the draft NPDES Permit prepared pursuant to WAC 463-38-033(2) or any public comment upon those forms pursuant to WAC 463-38-041(2)) shall be available to the public for inspection and copying at a nominal charge. Any other records, reports, plans or information received by the Council or the State pursuant to its participation in the NPDES Program shall be available at a reasonable charge to the public in accordance with existing law.

(2) Any information (other than effluent data) received by the Council and contained in any NPDES Forms, or other records, reports or plans shall be protected as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES Form, the Council shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the Office of General Counsel stating the reasons for his disagreement with the determination of the Council. The Regional Administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determination, he shall consider any additional information submitted to the Office of the General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No later than 30 days following the mailing of such notice, the Regional Administrator shall communicate to the Council his decision not to concur in the withholding of such information and the Council and the Regional Administrator shall then make available to the public upon request that information determined not to constitute trade secrets.

(3) Any information afforded confidential status whether or not contained in an NPDES Form shall be disclosed upon request to the Regional Administrator or his authorized representative who shall maintain the disclosed information as confidential.

(4) The Council shall provide facilities for the inspection of information relating to NPDES Forms during normal business hours of the Council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with Council business. The Executive Secretary shall insure that a machine or device for the copying of papers

and documents is available for a reasonable fee as determined by the Council.

WAC 463-38-050 NPDES PERMIT CONTENTS. The terms, conditions and content of any NPDES Permit issued by the Council shall be in accordance with the following subsections.

WAC 463-38-051 GENERAL CONDITIONS. (1) Any NPDES Permit shall be issued for a period of five (5) years, which period shall start on the date of issuance of said permit. The permittee shall inform the Council at least 180 days prior to any initiation of such a discharge.

(2) The decision to approve or reject, and on what conditions an NPDES Permit shall be issued, shall be in conformance with the requirements of this section. A majority vote of Council members listed in RCW 80.58.030(3) shall resolve any dispute and shall determine the approval or rejection of a Refuse Act or NPDES Application.

WAC 463-38-052 PROHIBITED DISCHARGES. (1) No discharge shall be made by energy facilities subject to the jurisdiction of the Council unless authorized by an NPDES Permit issued pursuant to these regulations.

(2) No NPDES Permit issued by the Council shall authorize any person to:

(a) Discharge any radiological, chemical or biological warfare agent or high-level radioactive waste into navigable waters;

(b) Discharge any pollutants which the Secretary of the Army acting through the Chief, Corps of Engineers, finds would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(c) Discharge any pollutant to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 402(d) of the Act;

(d) Discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the Act.

WAC 463-38-053 EFFLUENT LIMITATIONS, WATER QUALITY STANDARDS AND OTHER REQUIREMENTS FOR NPDES PERMITS. (1) Any NPDES Permit issued by the Council shall apply and insure compliance with all of the following, whenever applicable:

(a) Effluent limitations under sections 301 and 302 of the Act;

(b) Standards of performance for new sources under section 306 of the Act;

(c) Effluent standards, effluent prohibitions and pre-treatment standards under section 307 of the Act;

(d) Any more stringent limitation, including those:

(i) Necessary to meet water quality standards, treatment standards or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the Act; or

(ii) Necessary to meet any applicable federal law or regulation other than the Act or regulations thereunder; or

(iii) Required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;

(e) Any more stringent legal applicable requirements necessary to comply with a plan approved pursuant to section 208(d) of the Act; and

(f) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the Act, such conditions as the Council determines are necessary to carry out the provisions of the Act.

(2) In any case where an issued NPDES Permit applies the effluent standards and limitations described in paragraph 1 of this section, the Council shall make a finding that any discharge authorized by the permit will not violate applicable water quality standards and will have prepared some explicit verification of that fact. In any case where an issued NPDES Permit applies any more stringent effluent limitation, based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

(3) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to paragraphs 1 and 2 hereof, each issued NPDES Permit shall specify average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate.

WAC 463-38-054 SCHEDULES OF COMPLIANCE. (1) In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, all pursuant to WAC 463-38-053(1), (2), the Council shall establish schedules in NPDES Permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

With respect to any discharge which is found by the Council not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC 463-38-



053(1)(d)(e), the permittee shall be required to take specific steps to achieve compliance with the following:

(a) Any legally applicable schedule of compliance contained in:

- (i) applicable effluent standards and limitations;
- (ii) if more stringent, water quality standards; or
- (iii) if more stringent, legally applicable requirements listed in WAC 463-38-053(1)(d)(e); or

(b) In the absence of any legally applicable schedule of compliance, in a reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

(2) In any case where the period of time for compliance specified in paragraph 1(a) of this section exceed nine (9) months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; however, in no event shall more than nine (9) months elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than nine (9) months and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each NPDES Permit schedule of compliance, interim dates and the final date of compliance shall, to the extent practicable, fall on the last day of the months of March, June, September and December.

(3) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the Council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

WAC 463-38-055 OTHER TERMS AND CONDITIONS. In addition to the requirements of WAC 463-38-051, 463-38-052 and 463-38-053, each issued NPDES Permit shall require that:

(1) All discharges authorized by the NPDES Permit shall be consistent with the terms and conditions of the Permit; any facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants must be reported to the Council by submission of a new NPDES Application or supplement thereto or, if such discharge does not violate effluent limitations specified in the NPDES Permit, by submission to the Council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES Permit shall constitute a violation of the terms and conditions of the NPDES Permit;

(2) The Permit may be modified, suspended or revoked in whole or in part during its terms for cause including, but not limited to, the following:

(a) Violation of any term or condition of the NPDES Permit;

(b) Obtaining an NPDES Permit by misrepresentation or failure to disclose fully all relevant facts; and

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.



(3) The permittee shall allow the Council or its authorized representative upon the presentation of credentials and at reasonable times:

(a) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the NPDES Permit;

(b) To have access to and copy at reasonable cost any records required to be kept under terms and conditions of the NPDES Permit;

(c) To inspect any monitoring equipment or method required in the NPDES Permit; or

(d) To sample any discharge of pollutants.

(4) The permittee shall at all times maintain a good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES Permit.

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES Permit, the Council shall revise or modify the NPDES Permit in accordance with the toxic effluent standard of prohibition and so notify the permittee.

WAC 463-38-060 NPDES PERMITS REVIEW AND APPEAL. This section governs the procedures for reissuance, modification, suspension and revocation of NPDES Permits. In addition, the appeal procedure for an applicant or permittee is set out.

WAC 463-38-061 REISSUANCE OF NPDES PERMITS. (1) Any permittee shall make application for reissuance of NPDES Permits or continuation of discharges after the expiration date of his NPDES Permit by filing with the Council an application for reissuance of his permit at least 180 days prior to its expiration. The filing requirement for reissuance shall be satisfied in the first instance by a simply written request for reissuance by the permittee to the Council, except that the Council in its discretion may require any and/or all permittees to request a reissuance by submitting to the Council all then applicable NPDES Forms.

(2) The scope and manner of any review of an application for reissuance of an NPDES Permit by the Council shall be sufficiently detailed as to insure the following:

(a) That the permittee is in compliance with or has substantially complied with all of the terms, conditions, requirements and schedules of compliance of the expired NPDES Permit;

(b) That the Council has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, content and frequencies of permittee's discharge, either pursuant to the submission of new forms and

applications or pursuant to monitoring records and reports resubmitted to the Council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC 463-38-053(1)(2), including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and procedures specified in WAC 463-38-041 and WAC 463-38-042 are applicable to each request for reissuance of an NPDES Permit.

(4) Notwithstanding any other provision any point source of a discharge having a thermal component the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance with respect to the thermal component of its discharge during a ten (10) year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

WAC 463-38-062 MODIFICATION OF NPDES PERMIT. (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended or revoked for cause, in whole or in part during its term.

(2) The Council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES Permit if the Council determines good and valid cause exists for such revision and if within 30 days following receipt of notice from the Council, the Regional Administrator does not object in writing.

(3) Any such modifications shall be executed by the Council and the permittee in the same manner as the NPDES Permit was executed, including full compliance with the requirements of WAC 463-38-041, WAC 463-38-042 and WAC 463-38-043.

WAC 463-38-063 APPEAL. (1) The approval, rejection, or modification of an NPDES Permit shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

(2) No appeal shall be taken under paragraph 1 until such time as the Council makes its recommendations to the Governor pursuant to RCW 80.50.100 (2).

WAC 463-38-064 TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMIT. (1) Each proposed NPDES Permit will be

transmitted to the Regional Administrator in accordance with the following procedures:

(a) A copy of the proposed NPDES Permit, including any and all terms, conditions, requirements or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants except as to classes, types or sizes within any category of point sources waived in writing by the Regional Administrator.

(b) The Regional Administrator shall be provided a ninety (90) day period in which to comment upon, make recommendations with respect to, or object in writing to the issuance of the proposed permit pursuant to any right to object provided the Administrator in section 402(d)(2) of the Act. No permit shall be issued if the Regional Administrator objects in writing to the issuance of such permit pursuant to any such right within said period, unless such objection is waived or withdrawn by the Regional Administrator in writing. Should no such objection be received within said period, it shall be presumed that the Administrator has no objection to the issuance of the proposed permit.

(2) A copy of every issued NPDES Permit immediately following execution by the applicant and the state, along with any and all terms, conditions, requirements or documents which are a part of such NPDES Permit or which will affect the authorization of the discharge of pollutants will be sent to the Regional Administrator.

WAC 463-38-065 MONITORING AND ENFORCEMENT. The Council hereby delegates to the DOE the monitoring activities of water discharges under a Certification Agreement which incorporates the NPDES Permit. As a result of said monitoring activities, DOE shall report to the Council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the Council including those in WAC 463-38-055, pursuant to RCW 80.50.150. The Council shall then take or initiate action to enforce the terms of any Certification Agreement and the incorporated NPDES Permit. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the Act or any statute or regulation derived therefrom, it is delegated the enforcement authority and responsibility to carry out such immediate action as it deems necessary and shall report such actions to the Council. Such action shall remain in effect until confirmed or modified by the Council.

WAC 463-38-080 TRANSMITTAL OF DATA TO REGIONAL ADMINISTRATOR. (1) Copies of NPDES Forms received by the Council as outlined below shall be transmitted to the Regional Administrator:

- (a) Upon receipt by the Council;
- (b) A complete copy, or relevant portions thereof, of any appropriate NPDES Form received by the Council;

(2) The Regional Administrator may object in writing to deficiencies in any NPDES Application or reporting form received by him and to have such deficiency corrected so long as he acts to inform by written letter the Council within twenty (20) days after his receipt of the NPDES Application or reporting form. If the Regional Administrator's objection relates to an NPDES Application, the Regional Administrator will be sent any information necessary to correct the deficiency. If the Regional Administrator so requests, the Council will not issue the NPDES Permit until they receive notice from the Regional Administrator that the deficiency has been corrected, which notice shall not be withheld for more than 30 days.

(3) For all minor discharges, the Council may require the operator of such a discharge to submit NPDES Application Forms or such other information as may be requested by the Regional Administrator.

WAC 463-38-090 CONFLICT OF INTEREST. No member of the Council shall have received, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for an NPDES permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.



REP

WAC 463-16-010, 463-16-020, 463-16-030, 463-16-031,  
463-16-032, 463-16-033, 463-16-034, 463-16-040, 463-16-041,  
463-16-042, 463-16-043, 463-16-050, 463-16-051, 463-16-052,  
463-16-053, 463-16-054, 463-16-055, 463-16-060, 463-16-061,  
463-16-062, 463-16-063, 463-16-064, 463-16-065, 463-16-080,  
and 463-16-090 are each hereby repealed.