



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (10/1/89)

- Permanent Rule
- Emergency Rule

Agency: ENERGY FACILITY SITE EVALUATION COUNCIL

(1) Date of adoption: JULY 11, 1994

(2) Purpose: To update EFSEC's air rules to be consistent with the requirements of the 1990 Clean Air Act amendments and Washington's Clean Air Act and Ecology's rules.

(3) Citation of existing rules affected by this order: New Sections WAC 463-39-070, 090, and 230.

Repealed:

Amended: WAC 463-39-005, 115; and WAC 463-54-020, 040, 050, 060, and 070.

Suspended:

(4) Authority for adoption:

Statute: RCW 80.50.040(1)

Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 94-12-036 on May 25, 1994 (date).

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

NONE

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

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

Reasons for this finding:

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

Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

Emergency Rules

31 days after filing

Immediately

Other (specify) _____ *

Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JUL 26 1994

TIME: 1:34

WSR 94-12-036

NAME (TYPE OR PRINT)

JASON ZELLER

SIGNATURE

Jason Zeller

TITLE

EFSEC Manager

DATE

7/19/94

AMENDATORY SECTION (Amending WSR 93-23-035, filed 11/10/93, effective 12/11/93)

WAC 463-39-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-400 WAC by reference.

- WAC 173-400-030: Definitions.
- WAC 173-400-040: General standards for maximum emissions.
- WAC 173-400-050: Emission standards for combustion and incineration units.
- WAC 173-400-060: Emission standards for general process units.
- WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.
- WAC 173-400-081: Startup and shutdown.
- WAC 173-400-090: Voluntary limits on emissions.
- WAC 173-400-105: Records, monitoring, and reporting.
- WAC 173-400-107: Excess emissions.
- WAC 173-400-110: New source review (NSR).
- WAC 173-400-112: Requirements for new sources in nonattainment areas.
- WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.
- WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
- WAC 173-400-120: Bubble rules.
- WAC 173-400-131: Issuance of emission reduction credits.
- WAC 173-400-136: Use of emission reduction credits.
- WAC 173-400-141: Prevention of significant deterioration (PSD).
- WAC 173-400-151: Retrofit requirements for visibility protection.
- WAC 173-400-161: Compliance schedules.
- WAC 173-400-171: Public involvement.
- WAC 173-400-180: Variance.
- WAC 173-400-190: Requirements for nonattainment areas.
- WAC 173-400-200: Creditable stack height and dispersion techniques.
- WAC 173-400-205: Adjustment for atmospheric conditions.

(2) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-401 WAC by reference.

- WAC 173-401-100: Program overview.
- WAC 173-401-200: Definitions.
- WAC 173-401-300: Applicability.
- WAC 173-401-500: Permit applications.
- WAC 173-401-520: Certification.
- WAC 173-401-600: Permit content.
- WAC 173-401-605: Emission standards and limitations.

WAC 173-401-610: Permit Duration.
 WAC 173-401-615: Monitoring and related recordkeeping and reporting requirements.
 WAC 173-401-620: Standard terms and conditions. Except (2) (i)
 WAC 173-401-625: Federally enforceable requirements.
 WAC 173-401-630: Compliance requirements.
 WAC 173-401-635: Temporary sources.
 WAC 173-401-640: Permit shield.
 WAC 173-401-645: Emergency provision.
 WAC 173-401-650: Operational flexibility.
 WAC 173-401-700: Action on application.
 WAC 173-401-705: Requirement for a permit.
 WAC 173-401-710: Permit renewal, revocation and expiration.
 WAC 173-401-720: Administrative permit amendments.
 WAC 173-401-722: Changes not requiring permit revisions.
 WAC 173-401-725: Permit modifications.
 WAC 173-401-730: Reopening for cause.
 WAC 173-401-750: General permits.
 WAC 173-401-800: Public involvement.
 WAC 173-401-810: EPA Review.
 WAC 173-401-820: Review by affected states.

NEW SECTION

WAC 463-39-070 Radioactive emissions. (1) Energy facilities subject to chapter 80.50 RCW which emit radionuclides to the air shall meet standards and conditions pursuant to RCW 70.94.331, as promulgated by chapters 173-480 and 246-247 WAC.

(2) The council will enter into a memorandum of agreement with the state department of health regarding the regulation of radionuclides.

(3) The monitoring and regulation of radionuclides emissions from major energy facilities shall be consistent with the memorandum of agreement referenced in subsection (2) of this section between the state department of health and the council.

NEW SECTION

WAC 463-39-090 Permit application form. Applications for air operating permits shall be on the standard form(s) developed by the department of ecology and shall contain the information required pursuant to WAC 173-401-510.

WAC 463-39-115 Standards of performance for new stationary sources. Subparts A, D, Da, GG, J, K, Kb, Y, KKK, LLL, QQQ of Title 40, Code of Federal Regulations, Part 60 (standards of performance for new stationary sources), are by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council.

Sections 60.5 and 60.6 of Title 40, Code of Federal Regulations, are not incorporated herein because they provide for preconstruction review of new stationary sources only on request. By virtue of WAC ((463-39-110)) 173-400-110, such review under the state program is mandatory and an order of approval is required before the construction, installation or establishment of a new stationary source may commence.

NEW SECTION

WAC 463-39-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

(1) Enforcement actions--Notice of violation. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing the council information pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431(1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amount established in RCW 70.94.431 may be increased annually to account for inflation as determined by the state office of economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 70.94.422.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

(e) In addition to other penalties provided by this chapter, persons knowingly under-reporting emission or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) Assurance of discontinuance. The chair, or his/her authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining orders, injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the council, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. The council may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

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

WAC 463-54-020 Compliance to be determined. Compliance determination procedures shall be implemented by the council as necessary to keep it and the public properly informed as to the status of compliance with the terms of certification agreements ((and)), PSD, NPDES ((permits)), or other permits issued by the council.

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

WAC 463-54-040 Compliance reports and determinations. Written reports by state agencies, or their authorized representatives reporting to the council under interagency agreements shall be submitted regularly and contain certifications as to the certificate holders satisfactory compliance or noncompliance with the appropriate terms of the site certification agreement. Certifications of satisfactory compliance in the absence of compelling evidence to the contrary shall be deemed by the council as bona fide compliance by the certificate holder.

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

WAC 463-54-050 Noncompliance determinations and enforcement. The council shall make the determination of noncompliance with the terms of a certification agreement ((or)), PSD, NPDES, or other permits where circumstances so warrant and on such finding of noncompliance will institute appropriate enforcement action.

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

WAC 463-54-060 ((DOE)) Ecology monitoring and enforcement ((role)). (1) The ((DOE)) department of ecology, or its authorized representative, is delegated the monitoring activities pertaining to air and water discharges except as provided in subsection (2) of this section, and when it reports to the council that appropriate enforcement activities are required relative thereto the council shall take or initiate action to enforce the terms of the appropriate certification agreement and the incorporated PSD, NPDES, or other permits. Immediate enforcement action as needed

may be undertaken by ((DOE)) ecology, or its authorized representative, subject to subsequent confirmation or modification by the council.

(2) The department of health is responsible for monitoring activities pertaining to radionuclide emission to the air in accordance with an approved memorandum of agreement. When it reports to the council that appropriate enforcement activities are required relative thereto the council shall take or initiate action to enforce the terms of the appropriate certification agreement or attached permit. Immediate enforcement action as needed may be undertaken by health subject to subsequent confirmation or modification by the council.

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

WAC 463-54-070 Enforcement actions. Consistent with RCW 70.94.422, all enforcement actions and penalties for all air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431 (1) through (7), and 70.94.435.

(1) General. The council establishes four types of enforcement action in order to provide the council with a range of responses to apparent violations of a site certification agreement or the laws and rules enforced by the council. The range allows the chair or the council to choose an approach which it determines, in its discretion, to be best suited in light of the apparent seriousness of an apparent violation, the potential danger to humans or the environment, the willingness and ability of the violator to make required corrections, and the speed with which corrective action should be taken.

(2) Emergency action by chair.

(a) Emergency action is appropriate when the chair or chair's designee believes that the nature of an apparent violation requires action too swiftly to allow for deliberation and decision by the full council or that action is required pending the completion of other enforcement action.

(b) The chair of the council or the chair's designee is authorized to take immediate action to halt or eliminate any imminent or actual substantial danger to health or welfare of persons or the environment resulting from violation of law or of terms of the site certification agreement, including the release of pollutants from facilities sited under chapter 80.50 RCW. The chair may:

(i) Order the immediate termination of an endangerment or an endangering release and the immediate suspension of ((an)) a PSD, NPDES, or other permits issued by the council, or order the immediate commencement of corrective action;

(ii) Notify appropriate agencies that protective measures are required immediately to safeguard public health and safety;

(iii) Request the prosecuting attorney of an affected county or the attorney general to take immediate enforcement action for violations of certification agreements or permits pursuant to RCW 80.50.150(6).

(c) The council shall consider any emergency action at a regular or special meeting as soon as practical after the action is taken. It may adopt, rescind, or modify emergency action and may take other enforcement action as specified in this rule. The council retains jurisdiction to maintain or modify emergency action until the circumstances requiring the action are cured to the council's satisfaction or until other enforcement actions supersede the emergency action, whichever first occurs.

(d) If feasible, the council shall allow the subject of emergency action to present its views prior to adopting, affirming, or modifying the action.

(3) Notice of incident and request for assurance of compliance.

(a) A notice of incident is appropriate when the council believes that a violation has occurred; that it is being corrected quickly and effectively by the violator; that the violation caused no substantial danger to humans or the environment; and that a penalty assessment does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

(b) Whenever the council has probable cause to believe that any term or condition of a certificate agreement or permit has been violated, the council may serve a notice of incident and request for assurance of compliance upon the certificate holder. Within thirty days after service of the notice, the certificate holder shall provide the council with a report of the incident and assurance of compliance, including appropriate measures to preclude a recurrence of the incident. The council shall review the assurance of compliance. It may close out the matter by resolution or take such further action as it believes to be necessary.

(4) Notice of violation.

(a) A notice of violation is appropriate when the council believes: That a violation has occurred; that a violation is not being timely or effectively corrected; that a violation may cause a substantial risk of harm to humans or the environment; or that a penalty may be appropriate as an incentive to future compliance.

(b) Whenever the council has probable cause to believe that a violation of any term or condition of a certificate agreement or permit has occurred, the council may serve upon the certificate holder a notice of violation and may include the assessment of a penalty pursuant to RCW 80.50.150(5) or RCW 74.90.431 if the violation is of the Washington Clean Air Act. The notice shall specify the provisions of law or rule or the certificate agreement or permit which are alleged to have been violated and shall include a requirement that corrective action be taken.

(c) Review procedure. The certificate holder named in a notice of violation may appeal the notice to the council and it may seek remission or mitigation of any penalty.

(i) A request for mitigation or remission of a penalty must be filed within fifteen days after service of the notice of violation. A decision upon a request for remission or mitigation of a penalty is an administrative decision which the council may make in its discretion.

(ii) An appeal of a notice of violation must be filed within thirty days after service of the notice of violation. The appeal is an application for an adjudicative proceeding under RCW 34.05.410. It must be in writing, timely filed in the offices of

the council, and state the basis of the contention and exactly what change or remedy is sought from the council. Unless the application is denied or settled, the council shall conduct an adjudicative proceeding upon the challenge pursuant to chapter 34.05 RCW.

(iii) Any penalty imposed in a notice of violation shall be due and payable thirty days after the following: Service of the notice of violation, if no review is sought; service of the council's decision upon remission or mitigation, if no appeal is made; or service of the council's final order on review of an appeal of a notice of violation. If the penalty is not paid when due, the council shall request the attorney general to commence an action in the name of the state to recover the penalty pursuant to RCW 80.50.150.

(5) Air pollution episodes. The council may enter such orders as authorized by chapter 80.50 RCW regarding air pollution episodes, as set forth in WAC ((463-39-130)) 463-39-230.

(6) Judicial enforcement.

(a) Judicial enforcement is available through chapter 80.50 RCW. It is appropriate when the council believes that judicial action may be of substantial assistance in securing present or future compliance or resolution of the underlying problem.

(i) The council may request the attorney general or the prosecuting attorney of any county affected by a violation to commence civil proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(ii) The council may request the prosecuting attorney of any county affected by a violation to commence criminal proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(b) The council may also secure judicial enforcement of its rules or orders pursuant to RCW 34.05.578.