

WSR 21-20-035

PERMANENT RULES

BENTON CLEAN AIR AGENCY

[Filed September 27, 2021, 11:49 a.m., effective October 28, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The changes to Benton Clean Air Agency (BCAA) Regulation 1 are to address outdated RCW codes throughout the regulation and update them with the correct new codes. References to fee tables no longer contained within BCAA Regulation 1 were removed. Addition of language regarding variances to the rule was added.

Citation of Rules Affected by this Order: Amending BCAA Regulation 1.

Statutory Authority for Adoption: RCW 70A.15.2040, 70A.15.3050(2).

Adopted under notice filed as WSR 21-13-125 on June 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: None, other than to include the effective date of November 1, 2021.

Date Adopted: September 23, 2021.

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Regulation 1

November 1, 2021

TABLE OF CONTENTS

REGULATION 1

ARTICLE 1 Policy, Purpose and Applicability

Section 1.01 Name of the Agency.	1-3
Section 1.02 Policy and Purpose.	1-3
Section 1.03 Applicability.	1-3

ARTICLE 2 General Provisions

Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA).	2-1
Section 2.02 Requirements for Board of Directors Members.	2-1
Section 2.03 Powers and Duties of the Board of Directors.	2-2
Section 2.04 Powers and Duties of the Control Officer.	2-3
Section 2.05 Severability.	2-4
Section 2.06 Confidentiality of Records and Information.	2-4
Section 2.07 Entering Private, Public Property.	2-4
Section 2.08 Authority to Collect Fees.	2-5
Section 2.09 Variances.	2-6

ARTICLE 3 Industrial Source Regulations

Section 3.01 Incinerator Burning and Incineration Hours.	3-1
Section 3.02 General Surface Coating.	3-1
Section 3.03 General Air Pollution Control for Industrial Sources.	3-8
Section 3.04 Standards for Marijuana Production and Marijuana Processing.	3-8

ARTICLE 4 General Standards for Particulate Matter

Section 4.01 Definitions.	4-1
Section 4.02 Particulate Matter Emissions.	4-1
Section 4.03 Agricultural Particulate Matter Emissions.	4-3

ARTICLE 5 Outdoor Burning

Section 5.01 Definitions.	5-1
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Section 5.02 Special Burning Permits. 5-1
 Section 5.03 Outdoor Burning Requirements. 5-2
 Section 5.04 Benton Clean Air Agency Requirements. 5-3

ARTICLE 6 Agricultural Burning
 Section 6.01 Definitions. 6-1
 Section 6.02 Agricultural Burning Permit. 6-1

ARTICLE 7 Solid Fuel Burning Device
 Section 7.01 Definitions. 7-1
 Section 7.02 Solid Fuel Burning Device, Prohibitions. 7-2

ARTICLE 8 Asbestos
 Section 8.01 Definitions. 8-1
 Section 8.02 Asbestos Survey Requirements. 8-4
 Section 8.03 Notification Requirements. 8-7
 Section 8.04 Asbestos Removal Requirements Prior to
 Renovation or Demolition. 8-9
 Section 8.05 Procedures for Asbestos Projects. 8-10
 Section 8.06 Alternate Means of Compliance. 8-12
 Section 8.07 Exception for Hazardous Conditions. 8-15
 Section 8.08 Disposal of Asbestos-Containing Waste
 Material. 8-15
 Section 8.09 Compliance With Other Rules. 8-16

ARTICLE 9 Source Registration
 Section 9.01 Source Registration Required. 9-1
 Section 9.02 Source Registration Program Purpose
 and Components. 9-1
 Section 9.03 Registered Source General Requirements. 9-2
 Section 9.04 Registered Source Emission Level
 Classification. 9-2

ARTICLE 10 Fees and Charges
 Section 10.01 Fees and Charges Required. 10-1
 Section 10.02 Fees Otherwise Provided. 10-1
 Section 10.03 Fee Exemptions. 10-1
 Section 10.04 General Administrative Fees. 10-1
 Section 10.05 Registered Source Fees. 10-1
 Section 10.06 Fees for Application for Notice of Construction
 (NOC) for Stationary and Portable Sources, and Notice of
 Intent to Operate (NIO) Relocating Portable Sources. 10-2
 Section 10.07 State Environmental Policy Act (SEPA) Fees. 10-3
 Section 10.08 Asbestos Fees and Waiting Periods. 10-4
 Section 10.09 Title 5 Air Operating Permit Fees. 10-5
 Section 10.10 Special Burning Permit Fees. 10-11
 Section 10.11 Agricultural Burning Permit Fees. 10-11

ABBREVIATIONS AND ACRONYMS A-1

ARTICLE 1

Policy, Purpose and Applicability

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((~~70.94.205~~)) 70A.15.2510]

Section 1.01 Name of the Agency

The name of this Air Pollution Control Agency is the Benton Clean Air Agency, referred to as the Agency.

Section 1.02 Policy and Purpose

[Statutory Authority: RCW ((~~70.94.011~~)) 70A.15.1005, RCW ((~~70.94.057~~)) 70A.15.1520, and RCW ((~~70.94.141~~)) 70A.15.2040]

A. The public policy of the Agency under chapter ((~~70.94~~)) 70A.15 RCW is to:

1. Provide for the systematic control of air pollution from air contaminant sources within Benton County and for the proper development of the county's natural resources.

2. Secure and maintain such levels of air quality that protect human health and safety, including the most sensitive members of the population;

3. Secure compliance with the requirements of the Federal Clean Air Act;

4. Prevent injury to plant and animal life and to property;

5. Foster the comfort and convenience of its inhabitants;

6. Promote the economic and social development of Benton County; and

7. Facilitate the enjoyment of the natural attractions of Benton County.

B. The purpose of Regulation 1 is to establish technically feasible and reasonably attainable standards and to establish rules applicable to the control and/or prevention of the emission of air contaminants.

C. The intent of Regulation 1 is to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

D. The Agency intends to implement and enforce the state regulations. Wherever Regulation 1 restates the requirements and purposes of chapter ((~~70.94~~)) 70A.15 RCW, it is the intent of the Agency that Regulation 1 be interpreted in the same manner as the enabling statute.

Section 1.03 Applicability

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040, RCW ((~~70.94.395~~)) 70A.15.3080, and RCW ((~~70.94.422~~ RCW)) 70A.15.3130]

A. The Agency implements and enforces the Washington Administrative Code State Air Pollution Control rules adopted by Ecology in Title 173 under chapter ((~~70.94~~)) 70A.15 RCW, as in effect now and including all future amendments, except where specific provisions of BCAA Regulation 1 apply.

B. The provisions of this regulation shall apply within Benton County of Washington State.

C. The Agency is authorized to enforce this regulation and may also adopt standards or requirements.

D. The Agency does not have jurisdiction over the following sources:

1. Specific source categories over which the State assumes jurisdiction.

2. Automobiles, trucks, aircraft, chemical pulp mills and primary aluminum reduction facilities.

3. Sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) through chapter 80.50 RCW.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring and strike-through in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 2

General Provisions

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA)

[Statutory Authority: RCW ((~~70.94.081~~)) 70A.15.1560, and RCW ((~~70.94.141~~)) 70A.15.2040]

A. RCW ((~~70.94.081~~)) 70A.15.1560 deems Benton Clean Air Agency a municipal corporation with the following authorities:

1. Right to perpetual succession;
2. Adopt and use a seal;
3. Sue and be sued in the name of the Agency in all courts and in all proceedings;
4. Receive, account for, and disburse funds;
5. Employ personnel; and
6. Acquire or dispose of any interest in real or personal property within or without the Agency in the furtherance of its purposes.
7. The Board will have all the powers and duties of Section 2.02 of this Regulation and of an activated air pollution control authority under RCW ((~~70.94.081~~)) 70A.15.1560 and ((~~70.94.141~~)) 70A.15.2040.

Section 2.02 Requirements for Board of Directors Members

[Statutory Authority: RCW ((~~70.94.100~~)) 70A.15.2000]

A. Public interest.

1. A majority of the members of the Agency's Board of Directors (Board) will represent the public interest.
2. A majority of the members of the Board will not derive a significant portion of their income from persons subject to enforcement orders pursuant to the State and Federal Clean Air Acts.
3. An elected public official and the Board will be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she will delegate sole responsibility for administration of any part of the program that involves these persons to an assistant.

B. Disclosure.

1. Each member of the Board will disclose any potential conflict of interest in any matter prior to any action or consideration before the Board.
2. The member will remove themselves from participation as a Board member in any action, including voting on the matter.
3. The Board will, if the potential conflict of interest, in the judgment of a majority of the Board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.
 - a. Definition of significant income: For the purposes of this Section, "significant portion of their income" means twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" will mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government will not be considered in the determination of "significant portion of income."

Section 2.03 Powers and Duties of the Board of Directors

A. Pursuant to the provisions of chapter ((~~70.94~~)) 70A.15 RCW, the Board will:

1. Establish procedures and take action required to implement Regulation 1 consistent with federal, state, and local air pollution laws or regulations;
2. Take action as may be necessary to prevent air pollution including control and measurement of the emission of air contaminant from a source; and
3. Appoint a Control Officer, in accordance with RCW (~~(70.94.170)~~) 70A.15.2300, competent in the control of air pollution who will, with the Board's advice and approval, enforce the provisions of Regulation 1 and all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.
 - B. Under RCW (~~(70.94.141)~~) 70A.15.2040, the Board will have the power to:
 1. Adopt, amend, and repeal its own rules and regulations, implementing chapter (~~(70.94)~~) 70A.15 RCW and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations will also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules will not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency will be in accordance with Part V of chapter 34.05 RCW;
 2. Hold hearings relating to any aspect of or matter in the administration of chapter (~~(70.94)~~) 70A.15 RCW not prohibited by the provisions of Chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath;
 3. Issue such notices, orders, permits, or determinations as may be necessary to effectuate the purposes of federal, state, or local air pollution laws or regulations and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.;
 4. Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere;
 5. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
 6. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction;
 7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of federal, state and local air pollution laws or regulations;
 8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;
 9. Collect and disseminate information and conduct educational and training programs relating to air pollution;
 10. Advise, consult, cooperate and contract with:
 - a. State agencies, departments, and educational institutions;
 - b. Other political subdivisions, other states, interstate or interlocal agencies, and the United States government; and

c. Industries, interested persons or groups.

11. Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation will be construed to relieve any person from compliance with any federal, state, or local law or regulation in force pursuant thereto, or any other provision of law; and

12. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for carrying out any of the functions any federal, state, or local law or regulation.

C. Exception to powers of the Agency.

The Agency may not hold adjudicative proceedings pursuant to the Administrative Procedures Act, chapter 34.05 RCW. Decisions and orders may be appealed to the Pollution Control Hearings Board as provided in WAC 173-400-250.

Section 2.04 Powers and Duties of the Control Officer

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040, RCW ((~~70.94.170~~)) 70A.15.2300, RCW ((~~70.94.200~~)) 70A.15.2500 RCW]

A. The Control Officer and duly authorized representatives of the Agency will observe and enforce applicable federal, state, and local air pollution laws and regulations and all orders, ordinances, resolutions, or rules and regulations of the Agency pertaining to the control and prevention of air pollution pursuant to the policies set down by the Board.

B. The Control Officer, with the approval of the Board, will have the authority to appoint and remove such staff persons as are necessary to the performance of the duties assigned and to incur necessary expenses within the limitations of the budget.

C. The Control Officer will maintain appropriate records and submit reports as required by the Board, state agencies, and federal agencies.

D. The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants that are or may be discharged from any source within Benton County.

E. As authorized under RCW ((~~70.94.200~~)) 70A.15.2500, for the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer and duly authorized representatives of the Agency will have the power to enter, at reasonable times, upon any private or public property, excepting non-multiple unit private dwellings housing two (2) families or less. No person may refuse entry or access to the Control Officer or duly authorized representatives of the Agency who requests entry for the purpose of inspection and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection.

F. If the Control Officer or a duly authorized representative of the Agency during the course of an inspection desires to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, the Control Officer or a duly authorized representative will:

1. Notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and

2. Will give a receipt to the owner or operator for the sample obtained.

G. The Control Officer will be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

Section 2.05 Severability

[Statutory Authority: chapter 43.21B RCW]

The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.

Section 2.06 Confidentiality of Records and Information

[Statutory Authority: RCW ((~~70.94.205~~)) 70A.15.2510]

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information will be only for the confidential use of the Agency. Nothing herein will be construed to prevent the use of records or information by the Agency in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this Section: PROVIDED FURTHER, That emission data furnished to or obtained by the Agency will be correlated with applicable emission limitations and other control measures and will be available for public inspection during normal business hours at offices of the Agency.

Section 2.07 Entering Private, Public Property

[Statutory Authority: RCW ((~~70.94.200~~)) 70A.15.2500]

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants in the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who request entry for the purpose of inspection, and who present appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

Section 2.08 Authority to Collect Fees

[Statutory Authority: RCW ((~~70.94.151~~)) 70A.15.2200]

A. Legal Authority.

Washington Clean Air Act authorizes the agency to assess fees and recover costs for permits, registrations, and professional services.

B. Charges.

Charges include but are not limited to the following:

1. Reimbursement of agency staff time for review of complex projects of lengthy enforcement action;
2. Costs incurred by the authority for the implementation of the Air Operating Permit program as defined in WAC 173-401;
3. Reimbursement of agency staff time for costs to prepare notices of construction;
4. Reimbursement of the costs for annual registrations including periodic inspections;
5. Charges from Ecology for state level support and oversight work, and;
6. Appropriate charges incurred by other agencies and requested to be collected shall be billed as part of a penalty.

C. Refunds

1. The following fees are non-refundable:
 - a. Actual costs incurred by the authority;
 - b. Application fees.
2. Fees collected in excess of actual cost will be refunded with interest.
3. Fees collected in error will be refunded with interest.

D. Fees

1. Adoption of fee schedules.

Fee Schedules shall be adopted by board resolution under the authority of RCW 42.30 at any time after receiving public comment.

2. Fees for the Registration and Notice of Construction Programs are contained in the Fee Schedule. (~~Other fees are listed in Article 10 of Regulation 1.~~)

3. Availability of Fee Schedules and Related Information. The Fee Schedule and billing rate schedule for reimbursable fees shall be made available upon request.

Section 2.09 Variances

[Statutory Authority: RCW 70A.15.2310]

A. Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the board for a variance from the rules or Regulation governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health or safety; and
2. Compliance with the rules or Regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public.

B. No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, other owners or property likely to be affected by the discharge, and the general public.

C. Any variance or renewal thereof shall be granted within the requirements of Section 2.09A and for time periods and under conditions consistent with reasons therefore, and with the following limitations:

1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes

known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

2. If the variance is granted on the ground that compliance with the particulate requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection 2.09 (C) (1) and 2.09 (C) (1), it shall be for not more than one year.

D. Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a complaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.

E. A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

F. Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6040 to any person or his property.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 3

Industrial Source Regulations

ADOPTED: 11-Dec-2014

AMENDED: 5 August 2020

[Statutory Authority RCW ((~~70.94.141~~)) 70A.15.2040]

PURPOSE: This Article establishes controls on incinerator operations and Surface Coating operations in Benton County in order to reduce particulate emissions, reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, and to encourage pollution prevention in Benton County.

Section 3.01 Incinerator Burning and Incineration Hours

A. The Agency implements and enforces WAC 173-400-050, in Benton County in addition to Parts B through E of this Section. The more stringent requirement in WAC 173-400-050 or Section 3.01 of this Regulation supersedes the lesser.

B. It shall be unlawful for any person to burn any combustible refuse in any incinerator within the jurisdiction of this Agency except in an approved multiple-chambered incinerator or in equipment found by the Control Officer in advance of such use to be equally effective for the purpose of air pollution control. The Control Officer may require the installation of additional control apparatus on an incinerator of approved design, if he/she finds that it is not effectively controlling air pollution emissions or is the cause of legitimate complaints.

C. It shall be unlawful for any person to cause or allow the operation of an incinerator at any time other than daylight hours, except with the approval of the Control Officer.

D. Approval of the Control Officer for the operation of an incinerator at other than daylight hours may be granted upon the submission of a written request stating:

1. Full name and address of the applicant;
2. Location of the incinerator;
3. A description of the incinerator and its control equipment;
4. Good cause for issuance of such approval;
5. The hours, other than daylight hours, during which the applicant seeks to operate the equipment; and
6. The length of time for which the exception is sought.

E. No one shall install or operate an "Air Curtain Incinerator" or "Wigwam Burner" within the Agency's jurisdiction.

Section 3.02 General Surface Coating

A. Purpose. This Section establishes controls on surface coating operations in Benton County in order to:

1. Reduce particulate emissions from coating overspray;
2. Reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC;
3. Reduce emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants; and
4. Encourage pollution prevention.

B. Applicability.

This Section applies to all surface preparation, surface coating, cleanup, and disposal associated with general surface coating in Benton County, unless specifically exempted.

C. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this Section have the following meaning:

1. "Airless Spray" means a spraying system that uses hydraulic atomization instead of air atomization. The coating is supplied to the gun under high fluid pressure between 1000 and 3000 psig and the coating is forced through a small orifice.
2. "Air-Assisted Airless Spray" means a spraying system that combines air and airless features. An airless type fluid tip atomizes the paint and shapes the fan pattern at fluid pressures between 300 and 1000 psig. Lower pressure air from 10 to 30 psig combines at the spray cap to adjust the fan shape to eliminate heavy edges (tails).
3. "Automated" means the technique, method, or system of operating or controlling a process by mechanical, electrical, hydraulic, or electronic means independent of human intervention.
4. "Brush Coat Application" means manual application of coatings by use of a paint brush.

5. "Coating" means a material or formulation of materials that is applied to or impregnated into a surface in order to beautify, protect, enhance the function, or otherwise cover the surface.

6. "Container" means the individual receptacle that holds a coating or coating component for storage and distribution.

7. "Dip Coat Application" means application of coatings in which the surface to be coated is immersed in a solution (or dispersion) containing the coating material and withdrawn.

8. "Electrostatic Application" means application of coatings where an electrostatic potential is created between the part to be coated and the paint particles.

9. "Exempt Solvent" means a solvent or solvent component, which is not a volatile organic compound (VOC).

10. "Flow Coat Application" means application of coatings by flowing the coating over the surface to be coated and draining the excess coating to a collection system.

11. "High Volume, Low Pressure (HVLP) or Low Volume, Low Pressure (LVLP) coating system" means equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied.

12. "Light Duty Vehicle" means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of 8500 pounds or less, or components thereof.

13. "Multi-Coat System" means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system are calculated as follows:

$$VOC_{TM} = \frac{VOC_{BC} + VOC_{X1} + VOC_{X2} + \dots + VOC_{Xn} + 2XVOC_{CC}}{n + 3}$$

where:

VOC_{TM} is the average sum of the VOC content, as applied to the surface, in a multi-coat system; and

VOC_{BC} is the VOC content, as applied to the surface, of the base coat; and

VOC_X is the VOC content, as applied to the surface, of each sequentially applied mid-coat; and

VOC_{CC} is the VOC content, as applied to the surface, of the clear coat (Two coats are applied); and

n is the total number of coats applied to the primer coat(s) surface.

14. "Pre-packaged Aerosol Can Application" means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

15. "Primer" means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

16. "Reducer" means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

17. "Refinishing" means reapplying coating to a surface to repair, restore, or alter the finish.

18. Roll Coat Application" means manual application of coatings by the use of a paint roller.

19. "Solvent Consumption" means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In the absence of records which document the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

20. "Standard engineering practices" means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

21. "Surface Coating" means the application of coating to a surface.

22. "VOC Content" means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$VOC_{CT} = \frac{W_V}{V_M - V_W - V_{ES}}$$

where:

VOC_{CT} is the VOC content of the coating, as applied to the surface; and

W_V is the weight of VOC per unit volume of coating, as applied to the surface; and

V_M is the unit volume of coating, as applied to the surface; and

V_W is the volume of water per unit volume of coating, as applied to the surface; and

V_{ES} is the volume of exempt solvents per unit volume of coating, as applied to the surface.

23. "Wash Solvent" means any solution, solvent, suspension, compound, or other material, excluding water that is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

24. "Wipe-Down Agent" means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

D. Prohibitions on emissions.

1. No person may cause or allow the application of any coating which contains greater than 0.1% by weight of one or more compounds of lead or hexavalent chromium.

2. Light duty vehicle refinishing - prohibitions on VOC content. Except as provided in Section 3.02.F of this Regulation, no person shall cause or allow the application of any coating or other agent to any light duty vehicle or light duty vehicle component, with a VOC content in excess of the limits listed in 40 C.F.R. 59, Subpart B, Table 1 - EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

E. Requirements.

All persons subject to the requirements of Section 3.02 of this Regulation must comply with all of the following, unless exempted under Section 3.02.F of this Regulation.

1. Enclosure and Controls.

Spray application must be conducted in a booth or area which is vented to an operating particulate control system. The particulate

control system, including filtration, ducting, and fan must be installed and sized according to standard engineering practices. Acceptable filtration methods may include:

- a. Filter banks supplied with filter media designed for spray booth applications.
- b. Water baths where the inlet air flow to the water bath is submerged.
- c. Water wall systems that form a continuous water curtain through which the particulate flow stream must pass.
- d. Other filtration methods that have received the prior written approval of the Control Officer, which meet the following conditions:
 - i. The control system must be equipped with a fan which is capable of capturing all visible overspray;
 - ii. Emissions from the booth/area must be vented to the atmosphere through a vertical stack;
 - iii. The top of the exhaust stack/vent must be at least 6 feet above the penetration point of the roof, or if the exhaust stack/vent exits horizontally out the side of the building, then the exhaust stack/vent must vent vertically at least 6 feet above the eave of the roof;
 - iv. A higher stack/vent may be required if the Agency determines that it is necessary for compliance with WAC 173-400-040;
 - v. There must be no flow obstruction (elbows, tees, or stack caps) inside of, or at the top of, the stack that will impede upward vertical flow of the exhausted air; and
 - vi. It is the owner/operator's responsibility to comply with other applicable federal, state, and local regulations for the stack/vent.

2. Visible Emissions.

Visible emissions from the stack may not exceed 10% opacity averaged over any six minute period, as determined by EPA Method 9.

3. Application methods.

Except as provided in Section 3.02.F. of this Regulation, no person may cause or allow the application of any coating or other agent containing VOC unless the coating or agent is applied by one of the following methods:

- a. High Volume, Low Pressure coating system;
- b. Low Volume, Low Pressure coating system;
- c. Wet or Dry electrostatic application;
- d. Flow coat application;
- e. Dip coat application;
- f. Brush coat application;
- g. Pre-packaged aerosol can application;
- h. Roll coat application;
- i. A spraying technique that when tested, using the methodology presented in ASTM Standard D 5327-92, or when test documentation, provided to and approved by the Agency, exhibits that the spraying technique has a transfer efficiency of at least 65%;
- j. Alternate application methods that have received the written approval of the Control Officer.

Such alternate methods may be used, provided that the owner or operator makes a written request to use an alternate method and the Control Officer grants approval. These methods include but are not limited to the following application methods and circumstances:

- i. Airless and Air-Assisted Airless Spray systems may be used under any of the following circumstances:

(a) when the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions that would be generated by a spray application with a transfer efficiency of 65%;

(b) when the spraying operation is automated;

(c) when spray painting structural steel members where the coating, as formulated by the coating manufacturer, does not require addition of reducers to spray, and is delivered under high pressure (> 1,000 psig for airless, or > 300 psig for air-assisted airless) to the application system; or

(d) where the Control Officer has determined that the coating cannot be feasibly applied with a method that has a minimum transfer efficiency of 65%.

4. Equipment Cleanup.

Equipment cleanup and any other use of wash solvent must be totally enclosed during washing, rinsing, and draining; or wash solvent, after making contact with the equipment being cleaned, must be immediately drained to a closed sump which is an integral part of the cleaning system.

5. General Clean-up.

a. All unused or partially used containers of coatings, wipe-down agents, wash solvents, reducers, and waste materials containing VOC must be closed, except when in use, when being filled or emptied.

b. Spills must be cleaned up upon discovery and the clean-up materials and collected waste must be stored in closed metal containers.

c. All disposable materials which contain VOCs associated with wipe-down or application of coatings and other agents must be stored in closed metal containers for disposal.

6. Recordkeeping.

All persons subject to Section 3.02 of this Regulation must maintain the following records for the previous 24-month period at the place of business where surface coating is performed:

a. The most current material safety data sheets (MSDS) or other data sheets which clearly indicate the VOC content of the product and of any multi-coat system.

b. Records of purchases and usage, including unused materials returned to the supplier.

i. Light duty vehicle refinishing. Annual purchases and usage of total primers, total top coats, total clear coats, and total gun cleaner. Usage must be reported "as applied", i.e. after reducing and catalyzing, if applicable.

ii. Other surface coating facilities. Annual purchases and usage of individual coatings, coating additives, wipe-down agents, wash solvents, reducers, there materials containing volatile organic compounds or volatile toxic air pollutants.

c. Waste materials disposal records, including volumes of waste solvents and coatings transferred in sealed containers to authorized waste haulers.

F. Exceptions.

Exceptions to Section 3.02 of this Regulation must be made as follows:

1. Noncommercial exemption.

Nothing in Section 3.02 of this Regulation may apply to surface coating operations conducted solely for personal, noncommercial purposes if, on a facility-wide basis, less than 5 gallons of surface coatings are applied per year.

2. Coating process exemptions.

Nothing in Section 3.02 of this Regulation applies to the following coating processes:

- a. The application of architectural coatings to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs;
 - b. Fiberglass resin application operations;
 - c. Gel coating operations;
 - d. The application of asphaltic or plastic liners. This includes undercoating, sound deadening coating, and spray on bed lining for trucks;
 - e. Spray plasma plating operations; or
 - f. Application of coatings to farming equipment.
7. Low usage exemption.

Nothing in Sections 3.02.E.3 & 4 applies to surface coating operations which, on a facility-wide basis, apply less than 10 gallons per year of surface coatings.

8. Exemption for large objects.

Nothing in Subsection 3.02.E.1. of this Regulation applies to the infrequent outdoor surface coating of large objects where the Control Officer determines that it is impractical to totally enclose the object inside a booth or vented area. The request for this exemption must be made in writing to the Control Officer and the approval must be in writing. Infrequent means outdoor spray surface coating that amounts to 10% or less of the total annual gallons of paint applied at the facility in the previous 12 months. Annual records must be kept of the number of gallons of paint that are sprayed outdoors. In such case, a temporary enclosure (tarps) must be maintained around the object during the surface coating operation, sufficient at all times to prevent overspray from remaining airborne beyond the property line of the facility.

9. Wash solvent exemption.

Nothing in Subsection 3.02.E.4. of this Regulation applies to:

- a. the use of wash solvents with composite vapor pressure of organic compounds less than 45mm Hg at 20°C as determined by ASTM Method D-2306-81; or
- b. wash solvent operations if total wash solvent consumption does not exceed 10 gallons per year.

10. Stack exemption.

The stack/vent requirements in Subsection 3.02.E.1. of this Regulation does not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of toxic air pollutants will not exceed the Acceptable Source Impact Levels as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.

11. Non-spray and aerosol can application exemption.

Nothing in Subsection 3.02.E.1 of this Regulation applies to the application of any coating or other agent from pre-packaged aerosol cans, flow coat, dip coat, brush coat, or roll coat applications.

12. Low VOC content exemption.

Nothing in Subsection 3.02.E.3 of this Regulation applies to the application of coatings where the VOC content does not exceed 2.1 Lb/Gal or 250 G/L.

13. Lead or Hexavalent Chrome exemption.

The prohibition in Subsection 3.02.D.1 of this Regulation does not apply to a surface coating operation where the control officer determines that no practical alternative coating is available.

14. Enclosure and/or particulate control exemption.

The enclosure and/or particulate control requirements of Subsection 3.02.E.1 of this Regulation does not apply to a surface coating operation where the control officer determines that such requirements would be ineffective, or unreasonable in capturing or controlling particulate or volatile organic compounds emissions from the facility.

15. Inside exhaust exemption.

If the Department of Labor & Industries or another agency of jurisdiction determines that the emissions from a surface coating operation to an inside work area are below the threshold where an exhaust system is required and the Fire Department or District of jurisdiction has no objection, then the Control Officer may grant an exemption to Subsection 3.02.E.1 of this Regulation.

G. Compliance with other laws and regulations.

Compliance with Section 3.02 of this Regulation or qualifying for an exemption in Section 3.02.F. of this Regulation does not necessarily mean that the surface coating operation complies with fire protection, waste disposal, or other federal, state, or local applicable laws or regulations.

Section 3.03 General Air Pollution Control for Industrial Sources

A. Air Pollution sources not specifically regulated in this Section are regulated by the current 173-400 WAC General Regulations for Air Pollution Sources and 173-460 WAC Controls for New Sources of Toxic Air Pollutants.

B. In addition to the source-specific requirements in this Section, requirements of Article 9 Source Registration of this Regulation apply.

Section 3.04 Standards for Marijuana Production and Marijuana Processing

A. Purpose.

The production and processing of marijuana emits air contaminants. Section 3.04 establishes standards to minimize air contaminants from stationary sources that produce or process marijuana.

B. Authority.

BCAA implements and enforces WAC 173-400-040 (General standards for maximum emissions) in Benton County in addition to Section 3.04. The provisions of RCW (~~(70.94.141)~~) 70A.15.2040 (Air pollution control authority—Powers and duties of activated authority) are herein incorporated by reference.

C. Applicability.

This section applies to all persons or entities having an active Washington State Liquor and Cannabis Board (LCB) license for marijuana production operations and marijuana processing operations in Benton County.

D. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this section will have the following meaning:

1. "Control of environmental conditions" means modifying surroundings to facilitate plant growth, may include, but is not limited to; lighting, temperature, relative humidity, and carbon dioxide levels. For implementation of Section 3.04, watering plants and short term covering of plants for a portion of each day as needed for frost protection are not considered control of environmental conditions.

2. "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living

quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

3. "Indoor marijuana production and indoor marijuana processing" means production or processing occurring in a fully enclosed building that is permanently affixed to the ground, has permanent rigid walls, a roof that is permanent and non-retractable, and doors. The building is equipped to maintain control of environmental conditions. Hoop houses, temporary structures, or other similar structures are not considered indoor.

4. "Marijuana" means all parts of the cannabis plant, as defined in Chapter 69.50 RCW as it now exists or as amended.

5. "Processor (process, processing)" means LCB licensed operations that dry, cure, extract, compound, convert, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products.

6. "Producer (production, producing)" means LCB licensed operations that propagate, grow, harvest, and trim marijuana to be processed.

7. "Public Place" - means that portion of any building used by and open to the public. A public place does not include a private residence. A public place also includes a lot, parcel, or plot of land that includes a building or structure thereon that is used by and open to the public.

8. "Responsible person" means any person who owns or controls property on which Section 3.04 is applicable.

E. Marijuana Odor.

With respect to odor, it shall be unlawful for any production or processing facility of marijuana to cause an odor that can be detected beyond the facilities property line. The agency may take enforcement action pursuant to chapter (~~70.94~~) 70A.15 RCW, under this section if the Control Officer or a duly authorized representative has documented the following:

1. The odor or can be readily smelled from a public place or the private property of another housing unit;

2. An affidavit from a person making a complaint that demonstrates that they have experienced the odor of marijuana so as to unreasonably interfere with their life and property. (The affidavit should describe or identify, to the extent possible, the location, duration, and offensiveness of the odor experienced by the complainant);

3. The source of the odor.

F. With respect to odor, the agency will determine whether or not a violation of Section 3.04E has occurred based on its review of the information obtained during the investigation.

G. When determining whether to take formal enforcement action authorized in Section 3.04E, the agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the agency may decline to pursue formal enforcement action.

H. Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such

place, manner or concentration as to constitute air pollution or a common law nuisance.

I. Requirements.

All persons or entities subject to the requirements of Section 3.04 must comply with the following:

1. Production and processing must occur indoors, as defined in 3.04(B), unless the operation is exempt under Section 3.04(N);
2. Indoor production and processing requirements:
 - a. Control equipment and facility design:
 - i. Operations must be equipped with air pollution control equipment that is properly sized for the air flow to be controlled. Air pollution control equipment may include, but is not limited to, carbon adsorption within the facility, carbon filtration on facility exhaust points, vertical exhaust stacks. Air pollution control equipment is not required for windows, doors, or other openings, provided these openings are kept closed except as needed for active ingress or egress; or
 - ii. Operations must be designed to prevent exhaust from production and processing operations directly to the outside; or
 - iii. Both.
 - b. Operations must meet the requirements of Section 3.04(E).
3. Operation and maintenance plan. Air pollution control equipment must be operated and maintained in accordance with the manufacturers recommendations. An operation and maintenance plan for the air pollution control equipment must be available on site. The plan must include written operation instructions and maintenance schedules. Record shall be kept of the dates and description of all maintenance and repair performed on the air pollution control equipment. Record must be kept on site for the previous 24 months and be provided to the agency upon request.

J. Compliance with Other Laws and Regulations. Compliance with Regulation I, Article 3, Section 3.04, does not constitute an exemption from compliance with other Sections of Regulation I, or other laws or regulations.

K. Producers, Processors and Responsible Persons. If there is a violation of Regulation I, Article 3, Section 3.04E, a Notice of Violation may be issued to all producers and processors on the parcel, and all responsible persons.

L. Compliance Schedule. All persons or entities subject to the requirements of Article 3, Section 3.04 must be in compliance with Section 3.04 requirements as follows:

1. New producers and processors or expansion at existing producers and processors, that begin or expand operations after August 17, 2018, must be in full compliance with Section 3.04 requirements before production and/or processing begins.

M. Any new marijuana production or processing facility must notify the agency by completing the proof of notification form found on www.bentoncleanair.org.

N. Exemptions.

1. Existing marijuana producers and processors, in-operation prior to the Section 3.04 effective date August 17, 2018 are exempt from of Section 3.04I. This exemption does not exclude them from the requirements of Section 3.04E.

2. Any existing marijuana producer or processor, in-operation prior to the section 3.04 effective date August 17, 2018 found to be in violation of Section 3.04E, may be required to comply with Section 3.04I within 180 days of receipt of the penalty from said violation or

as defined by a compliance schedule agreed upon with the Benton Clean Air Agency.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 4

General Standards for Particulate Matter

ADOPTED: 11-Dec-2014

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040]

PURPOSE: This Article is intended to prevent and reduce fugitive dust emissions from projects which destabilize soil in Benton County.

Section 4.01 Definitions

A. "Fugitive dust" means a particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive Dust is a type of fugitive emissions.

B. "Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

C. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products.

D. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

E. "Destabilization project" means construction, repair, or demolition of any building or road, or landscaping work on a property, which destabilizes the soil and thus has potential for fugitive dust emissions.

F. "Emergency" means:

1. Active operations conducted during emergency, life threatening situations, or in conjunction with an officially declared disaster or state of emergency; or

2. Active operations conducted by public service utilities to provide electrical, natural gas, telephone, water, or sewer service during emergency outages.

G. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative).

H. "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

Section 4.02 Particulate Matter Emissions

A. Fallout.

No person may cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited. [WAC 173-400-040(3)]

B. Fugitive emissions.

The owner or operator of any emissions unit or operation engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission: [WAC 173-400-040(4)]

1. Must take reasonable precautions to prevent the release of air contaminants from the operation located in an attainment or unclassifiable area and not impacting any nonattainment area. [WAC 173-400-040(4)(a)]

2. Are required to use reasonable and available control methods if the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area. The methods must include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated. [WAC 173-400-040(4)(b)]

C. Fugitive dust [WAC 173-400-040(9)]

1. The owner or operator of a source, including developed or undeveloped property, or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions. [WAC 173-400-040(9)(a)]

2. These reasonable precautions may include, but are not limited to watering, chemical stabilizers, physical barriers, compaction, gravel, vegetative stabilization, mulching and keeping open areas to a minimum.

3. The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4). [WAC 173-400-040(9)(b)]

D. Project Notification.

1. Applicability.

The owner or operator of any destabilization project must notify the Agency of the project prior to commencement of any work that destabilizes the soil via the Agency website, www.bentoncleanair.org.

2. Exemptions.

a. Any project at an existing facility.

b. Any emergency project.

c. Any agricultural operation.

3. Requirements.

The notification must include all of the following:

a. At least two contacts, including name and phone number, for those responsible for mitigating fugitive dust 24 hours a day.

b. The Benton County Parcel ID of each parcel affected by the destabilization project.

c. The owner and operator(s) of the site.

d. statement, electronically signed by the owner or operator of the site, accepting responsibility for controlling fugitive dust emissions.

E. Dust Control Plans.

1. Applicability.

The owner or operator of any destabilization project must maintain a written dust control plan for the project and make the dust control plan readily available.

2. Exemptions.

a. Any project at an existing facility.

b. Any emergency project.

c. Any agricultural operation.

4. Dust Control Plan Requirements.

- a. Dust control plans must identify management practices and operational procedures which will effectively control fugitive dust emissions.
- b. Dust control plans must contain the following information:
 - i. A detailed map or drawing of the site;
 - ii. A description of the water source to be made available to the site, if any;
 - iii. A description of preventive dust control measures to be implemented, specific to each area or process; and
 - iv. A description of contingency measures to be implemented in the event any of the preventive dust control measures become ineffective.
- c. An owner or operator must implement effective dust control measures outlined in dust control plans.
- d. The owner or operator must provide the Agency with a copy of the plan within two business days of it being requested.

5. Master Dust Control Plan.

- a. As an alternative to a site dust control plan, an owner or operator may develop a master dust control plan that applies to more than one site or project. The master plan must:
 - i. Address all the requirements in Section 4.02.E.3 of this Regulation; and
 - ii. Provide for effective control of fugitive dust emissions to all sites and projects.
 - iii. Prior to the commencement of work at any site or project covered by the master plan, the owner or operator must notify the Agency.

Section 4.03 Agricultural Particulate Matter Emissions

A. Exemption.

Fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of Section 4.02 unless they have a substantial adverse effect on public health.

B. Establishing Good Agricultural Practices.

1. In determining whether agricultural activity is consistent with good agricultural practices, the Agency shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

2. Additionally, at the Agency's written request, the operator of the agricultural activity must provide the following within 5 business days to assist in determining whether agricultural activity is consistent with good agricultural practices:

- a. A description of the agricultural activity.
- b. A timeline of the agricultural activity of a length appropriate to that activity.
- c. A description of the good agricultural practices employed with respect to wind erosion.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 5

Outdoor Burning

ADOPTED: 17-Feb-2005

AMENDED: 11-Dec-2014

[Statutory Authority: RCW ((~~70.94.6511~~)) 70A.15.500, RCW ((~~70.94.6554~~)) 70.15.5220]

PURPOSE: This Article establishes controls on outdoor burning in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 5.02 Definitions

Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-425-030.

A. "Burn day" means a day, as determined by the Agency, during which outdoor burning may take place in areas where outdoor burning is allowed. The length of the burn day is defined as the period from 9:00 AM until one hour before sunset.

B. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

C. "Urban Growth Area" or "UGA" means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

Section 5.02 Special Burning Permits

A. All types of outdoor burning require a special burning permit, unless exempted in Section 5.02.F or 5.03 of this Regulation.

B. A request for special burning permit application for a special burning permit must be submitted at least five (5) working days before the proposed burning dates. Special burning permits are subject to a fee as described in (~~Article 10 of this Regulation~~) the Benton Clean Air Agency fee schedule, Table 6: Burning Fees, and payable at the time of application. Payment of the application fee does not guarantee the applicant that a special burning permit will be approved.

C. Any special burning permit issued by the Agency will specify restrictions and conditions on a case-by-case basis.

D. Permit holders must comply with all conditions listed in the permit.

E. Special burning permits are valid for a period not to exceed one (1) year.

F. The Agency will approve with conditions, or deny, any outdoor burning permits as needed to comply with state and local air pollution rules and regulations. All permits will include conditions to satisfy the requirements in WAC 173-425-050, and may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions. The Agency may also include conditions to comply with other state and local air pollution rules and regulations pertaining to outdoor burning.

G. A special burning permit will not be required by fire protection districts for firefighting instruction fires for training to fight:

1. Structural fires by fire protection districts outside the UGAs provided that the Agency Form *Fire Training Notification Outside Urban Growth Areas* is submitted and approved prior to conducting the training fire as provided in RCW 52.12.150;

2. Aircraft crash rescue fires as provided in RCW ((~~70.94.650(5)~~)) 70A.15.5180(2); or

3. Forest fires as provided in RCW ((~~70.94.650.1.b~~)) 70A.15.5180(4).

Section 5.03 Outdoor Burning Requirements

A. The person responsible for the fire must contact the Agency to determine if the type of burning to be conducted is permitted for the day and may not burn when the type of burning to be conducted is prohibited.

B. Inside Urban Growth Areas.

Residential and land clearing burning is prohibited inside all UGAs of Benton County, which include but are not limited to Kennewick, Richland, West Richland, Prosser, and Benton City.

C. Outside Urban Growth Areas.

1. Residential burning may be conducted without obtaining a permit, if such burning can be conducted in accordance with the requirements of Section 5.03.E of this Regulation and the following:

a. Residential burning may only occur during permitted hours on a burn day;

b. Residential burns may contain only material that was generated at the residence where the burn occurs;

c. The pile may not be larger than four feet by four feet by three feet (4 ft. x 4 ft. x 3 ft.);

d. Only one pile at a time may be burned, and each pile must be extinguished before lighting another; and

e. No outdoor fire is permitted within five hundred (500) feet of forest slash.

D. Inside and Outside Urban Growth Areas.

1. A permit is not required to burn tumbleweeds that have been blown by the wind.

2. A permit is not required for recreational fires with a total fuel area that is less than three feet in diameter and/or two feet in height.

E. General Requirements.

1. All outdoor burning is subject to the following:

a. The following materials may not be burned in any outdoor fire:

- Garbage;
- Dead animals;
- Asphalt;
- Petroleum products;
- Paints;
- Rubber products;
- Plastics;
- Paper (other than what is necessary to start a fire);
- Cardboard;
- Treated wood;
- Construction/demolition debris;
- Metal; or
- Any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned.

b. No outdoor fire may contain material (other than firewood) that has been hauled from inside the UGA to a location outside the UGA;

c. If material is transferred from multiple locations outside the UGA to a single location outside the UGA, a special burning permit must be obtained before burning the material;

d. No outdoor fire may be ignited:

- i. When the Benton County Fire Marshall has declared a ban on burning due to fire safety; or
 - ii. On a day when burning is not permitted by the Agency, during any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode declared under RCW ((70.94.715)) 70A.15.6010.
 - e. It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.
 - f. The use of an outdoor container for burning, such as a "burn barrel", for burning, unless regulated under WAC 173-400-070(1), is prohibited throughout Benton County;
 - g. A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it;
 - h. No fires are to be within fifty (50) feet of structures; and
 - i. Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.
 - j. Agricultural heating devices that otherwise meet the requirements of chapter ((70.94)) 70A.15 RCW will not be considered outdoor fires under this article.
2. Outdoor burning is not allowed on any construction or demolition site. However, Section 5.02.G of this Regulation provides requirements for demolition of a structure by a fire protection district for firefighting instructional purposes.
3. Material, other than firewood, may not be hauled or transferred from inside the UGA to an area outside the UGA for the purposes of burning.

Section 5.04 Benton Clean Air Agency Requirements

The Agency will make a daily decision determining the restriction on all types of outdoor burning.

ARTICLE 6

Agricultural Burning

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: chapter ((70.74)) 70.15.5070 RCW, RCW ((70.94.6528)) 70A.15.5090]

PURPOSE: This Article establishes controls on agricultural burning in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 6.01 Definitions

Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-430-030.

A. "Agricultural burn day" means a day, as determined by the Agency, during which permitted agricultural burning may take place in areas where agricultural burning is allowed. The length of the burn day is defined as the period from 9:00 AM until one hour before sunset.

B. "Incidental agricultural burning" means agricultural burning that is incidental to commercial agricultural activities and meets one of the following conditions:

1. Orchard prunings: An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training

and improve the management of plant and disease, and pest infestations.

2. Organic debris along fencelines: A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field.

3. Organic debris along or in irrigation or drainage ditches: An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field.

4. Organic debris blown by the wind: The primary example is tumbleweeds.

C. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

Section 6.02 Agricultural Burning Permit

A. Agricultural Burning Permit Required.

1. All agricultural burning, except for incidental agricultural burning, requires a written agricultural burning permit from the Agency. Agricultural burning permits are subject to a fee as described in (~~Article 10 of this Regulation~~) the Benton Clean Air Agency fee schedule, Table 6: Burning Fees, and payable at the time of application.

2. Permitted agricultural burning is allowed only on designated agricultural burn days.

3. It is the responsibility of the person conducting agricultural burning to be informed of additional fire safety rules established by the Benton County Fire Marshall.

4. Permit holders must comply with all conditions listed in the permit.

B. Agricultural Burning Permit Not Required.

1. Incidental agricultural burning, as defined in Section 6.01.B of this Regulation, is allowed without obtaining an agricultural burning permit from the Agency and on days that are not agricultural burn days, except when restricted by the Agency under the following conditions:

a. The Benton County Fire Marshall declared a ban on burning due to fire safety; or

b. During any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode; or

c. The National Weather Service (NWS) in Pendleton, Oregon forecasts surface wind speeds 20 mph or greater.

2. The operator must notify the local fire department within the area and the Agency.

3. The burning does not occur during an air pollution episode or any stage of impaired air quality.

ARTICLE 7

Solid Fuel Burning Device

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((~~70.94,141~~)) 70A.15.2040; RCW ((~~70.94.450-477~~)) 70A.15.3500-3600]

PURPOSE: This Article establishes controls on solid fuel burning devices in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 7.01 Definitions

Definitions of all terms in this article, unless otherwise defined, are as defined in WAC 173-433-030.

A. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

B. "Solid fuel burning device" (same as solid fuel heating device) means a device that burns wood, coal, or any other nongaseous or non-liquid fuels, and includes any device burning any solid fuel, except those prohibited by WAC 173-443-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one (1) million BTU/hr.

C. "Woodstove" (same as "wood heater") means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

1. An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

2. A useable firebox volume of less than twenty cubic feet;

3. A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

4. A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

5. Any combination of parts, typically consisting of but not limited to: Doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

D. "Fireplace" means: Any permanently installed masonry fireplace; or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

Section 7.02 Solid Fuel Burning Device, Prohibitions

A. Within Benton County, a person may not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install woodstoves, factory-built fireplaces, or other solid fuel burning devices that do not meet the requirements of WAC 173-433-100.

B. The Agency may declare first and second state air quality impairment in accordance with WAC 173-433-150. During those declarations, the use of any solid fuel burning device is restricted as per WAC 173-433-150.

1. Whenever the Agency has declared the first stage impaired air quality conditions, declared under RCW ((~~70.94.715~~)) 70A.15.6010, residences and commercial establishments with an adequate source of heat other than a solid fuel burning device, may not operate any solid fuel burning device, unless the solid fuel burning device is:

a. A non-affected pellet stove; or

b. A woodstove certified and labeled by the EPA under "40 CFR. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

c. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon

Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

2. Whenever the Agency has declared the second stage of impaired air quality for a geographical area a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device must not operate any solid fuel burning device.

C. A person must not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period. The provision does not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

D. A person may not cause or allow any of the following materials to be burned in a solid fuel burning device, including fireplaces:

- Garbage;
- Treated wood, defined as wood of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration;
- Plastic and plastic products;
- Rubber products;
- Animal carcasses;
- Asphaltic products;
- Waste petroleum products;
- Paints and chemicals; or
- Any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire, properly seasoned fuel wood, or coal with sulfur content less than one percent (1.0%) by weight burned in a coal-only heater.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 8 Asbestos

ADOPTED: 17-Feb-2005

AMENDED: 5 August 2020

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040]

PURPOSE: The Board of Directors of the Benton Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects in order to protect the public health.

Section 8.01 Definitions

A. "AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. "AHERA Project Designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. "Asbestos" means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

D. "Asbestos-Containing Material" means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA.

E. "Asbestos-Containing Waste Material" means any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. "Asbestos Project" means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

G. "Asbestos Survey" means a written report resulting from a thorough inspection performed pursuant to Section 8.02 of this Regulation.

H. "Asphalt Shingles" means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

I. "Competent Person" means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

J. "Component" means any equipment, pipe, structural member, or other item or material.

K. "Contiguous" means touching or adjoining.

L. "Controlled Area" means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

M. "Demolition" means wrecking, razing, leveling, dismantling, or intentional burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. It also includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member.

N. "Disposal Container" means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

O. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

P. "Homogenous Area" means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by the Agency, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

Q. "Friable Asbestos-Containing Material" means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal.

4. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

R. "Leak-Tight Container" means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

S. "Nonfriable Asbestos-Containing Material" means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

T. "Owner-Occupied, Single-Family Residence" means any non-multiple residential unit that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g. utility bills). This term does not include rental properties, multiple unit buildings (e.g. duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g. a business being operated out of a residence), structure, or installation that contains a residential unit.

U. "Owner's Agent" means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article 8 of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 8.03 of this Regulation and/or performing the asbestos survey.

V. "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

W. "Renovation" means altering a structure or component in any way, other than demolition, that disturbs materials totaling greater than or equal to 10 linear feet, or greater than or equal to 48 square feet, that was considered a suspect asbestos containing material prior to performing an asbestos survey.

X. "Residential Unit" means any building with four or fewer dwelling units each containing space for uses such as living, sleeping, preparation of food, and eating that is used, occupied, or intended or designed to be occupied by one family as their domicile. This term includes houses, mobile homes, trailers, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include any facility that contains a residential unit.

Y. "Structure" means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

Z. "Surfacing Material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

AA. "Suspect Asbestos-Containing Material" means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g. as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993).

AB. "Thermal System Insulation" means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AC. "Visible Emissions" means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AD. "Wallboard System" means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A wallboard system where joint compound and tape have become an integral system (40 C.F.R. Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AE. "Waste Generator" means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AF. "Workday" means Monday through Friday 8:00 a.m. to 5:00 p.m. excluding legal holidays observed by the Agency.

Section 8.02 Asbestos Survey Requirements

A. Except as provided for in Section 8.02.F of this Regulation, it is unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 C.F.R. 763.86 or an alternate asbestos survey method pursuant to Section 8.02.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 8.02.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a material is not a suspect asbestos-containing material and that a suspect asbestos-containing material does not contain asbestos.

3. All loose vermiculite insulation must be sampled and analyzed according to EPA 600 PLM method with milling (EPA/600/R-93/116, July 1993) or CARB 435 (California Air Resources Board Method 435, June 1991) or must be presumed to be a friable asbestos-containing material.

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA regulation 40 C.F.R. 763.85, asbestos surveys must contain, at a minimum, all of the following information:

1. General Information.

- a. Date that the inspection was performed;
- b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;
- c. Site address(es)/location(s) where the inspection was performed;
- d. Description of the structure(s)/area(s) inspected (e.g. use, approximate age and approximate outside dimensions);
- e. The purpose of the inspection (e.g. pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;
- f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);
- g. Identify and describe locations of all homogeneous areas of suspect asbestos-containing materials, except where limitations of the asbestos survey identified in Section 8.02.C.1.f prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;
- h. Identify materials presumed to be asbestos-containing material;

- i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other detailed description sufficient for any person to match the bulk sample results to the material on site);
- j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:
 - i. Laboratory name, address and NVLAP certification number;
 - ii. Bulk sample numbers;
 - iii. Bulk sample descriptions;
 - iv. Bulk sample results showing asbestos content; and
 - v. Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

- a. Describe the color of each asbestos-containing material;
- b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g., schematic and/or other detailed description);
- c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet; and
- d. Describe the condition of each asbestos-containing material (e.g. good, damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, fire damage).

D. Asbestos Survey Posting.

Except as provided for in Section 8.02.F of this Regulation, a complete copy of an asbestos survey must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by the Agency and all persons at the work site. This applies even when the asbestos survey performed by an AHERA Building Inspector states there are no asbestos-containing materials in the work area. If it is not practical to post the asbestos survey in this manner, it must be made readily available for inspection by the Agency and all persons at the demolition site.

E. Asbestos Survey Retention.

The property owner, owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), must retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Demolition of a Structure 120 sq. ft. or less at a residential unit.

For demolition of a structure 120 sq. ft. or less at a residential unit, an asbestos survey is not required. A property owner's assessment for the presence of asbestos-containing material prior to demolition is adequate. A written report is not required.

3. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination must be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination must include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, must retain a complete copy of the written determination for at least 24 months from the date it was made and must provide a copy to the Agency upon request. Except for Section 8.02.A through E of this Regulation, all other requirements remain in effect.

4. Alternate Asbestos Survey.

A written alternate asbestos survey method must be prepared and used on occasions when conventional sampling methods required in EPA regulation 40 C.F.R. 763.86 cannot be exclusively performed (all other asbestos survey requirements in Section 8.02 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof (e.g., when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by the Agency. If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, alternate asbestos survey methodology must be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

Section 8.03 Notification Requirements

A. General Requirements.

Except as provided for in Section 8.03.A.7 of this Regulation, it is unlawful for any person to cause or allow any work on a renovation or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in ~~((Article 10, Section 10.08 of this Regulation.))~~ the fee schedule, Table 5: Asbestos Fees. Unless otherwise approved by the Agency, the notification must be submitted by the property owner or owner's agent via the Agency's website, www.bentoncleanair.org. Notifications will not be accepted if the earliest project start date is greater than 365 days from the date of submittal.

1. When the Notification Waiting Period Begins.

The notification waiting period begins on the workday on which a complete notification is received by the Agency and ends after the notification waiting period in ~~((Section 10.08 of this Regulation))~~ the fee schedule, Table 5: Asbestos Fees has passed (e.g., A 10-day notification period means work on an asbestos project or demolition can

begin on day 11). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period does not begin for incomplete notifications (e.g. unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos are unknown, etc.).

2. Project Duration.

The duration of an asbestos project must be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g., asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner).

3. Multiple Asbestos Projects or Demolitions.

Notification for multiple structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to renovations or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g., alley or roadway).

b. The work will be performed by the same abatement and/or renovation/demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g., at a large commercial (site with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. The Agency may revoke a notification for cause (e.g., providing any false material statement, representation, or certification) and may require that a new notification be submitted with the appropriate non-refundable fee as set forth in ~~((Section 10.08 of this Regulation))~~ the fee schedule, Table 5: Asbestos Fees prior to work continuing.

5. Notification Posting.

A copy or printout of the notification and all amendments to the notification must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by the Agency and all persons at the asbestos project or demolition site. If it is not practical to post the notification and all amendments to the notification in this manner, the documents must be made readily available for inspection by the Agency and all persons at the demolition site.

6. Notification Retention.

The property owner, owner's agent, and the person that filed the notification, must retain a complete copy of all notification records for at least 24 months from the date the notification was filed with the Agency and provide a copy to the Agency upon request.

7. Notification Exceptions.

a. Renovation Performed by Owner-Occupant of an Owner-Occupied, Single Family Residence with No Asbestos.

Notification is not required for renovation of an owner-occupied, single family residence when the work is performed by the owner-occupant and asbestos will not be disturbed.

b. Demolition of Structures at Residential Units With a Projected Roof Area \leq 120 Square Feet.

Notification is not required for demolition of structures at residential units with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article 8 of this Regulation.

c. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

d. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately due to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by non-routine failures of equipment.

e. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization must reference the applicable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

B. Amendments.

1. Mandatory Amendments.

An amendment must be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with Section 8.03.A of this Regulation and the advance notification requirements in (~~Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees, and must be accompanied by the appropriate nonrefundable fee established in (~~Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition).

b. Job Size.

Increases in the job size category, which increase the fee or when the amount of asbestos affected changes by at least 20 percent. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category must be submitted. When there is an increase in the job size category which increases the fee, the additional quantities of friable asbestos-containing material must be itemized on the amendment form. If the original notification was filed as an emergency and there is an in-

crease in the job size category which increases the notification fee category, the emergency fee applies to the new fee category.

c. Type of Asbestos.

Changes in the type or new types of asbestos-containing material that will be removed. All types and quantities of asbestos-containing material must be itemized on the amendment form.

d. Start Date.

Changes in the asbestos project start date (i.e. asbestos removal start date or earliest demolition start date). This includes placing a project "on hold" (e.g., an asbestos project is temporarily delayed and a new project date has not been determined). If an asbestos project date is placed "on hold", an amendment taking it "off hold" must be filed prior to work on the asbestos project resuming. The new asbestos project date must be provided when the project is taken "off hold".

e. End Date.

Changes in the asbestos project end date greater than two days after the original end date.

Section 8.04 Asbestos Removal Requirements Prior to Renovation or Demolition

A. Removal to Prevent Disturbance.

Except as provided in Section 8.04B of this Regulation, it is unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

B. Exceptions.

1. Hazardous Conditions.

Asbestos-containing material need not be removed prior to a demolition or renovation, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination, along with any notification required in Section 8.03, of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

2. Leaving Nonfriable Asbestos-Containing Material in Place During Demolition.

Nonfriable asbestos-containing material may be left in place during demolition, if an AHERA Project Designer has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates, via written report, to the Agency that the asbestos-containing material will remain nonfriable during all demolition activities and subsequent disposal of the debris. The written report must include a description of the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls. No asbestos-containing material shall remain in place if the demoli-

tion involves burning or other activities that would result in the potential release of asbestos-containing materials to the ambient air.

Section 8.05 Procedures for Asbestos Projects

A. Training Requirements.

It is unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) commensurate to the type of work being performed and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Standard Asbestos Project Work Practices.

Standard asbestos project work practices generally involve manual removal methods used for asbestos-containing material that is intact and readily identifiable. Standard asbestos work practices require removal of asbestos-containing material using all procedures described in Section 8.05.B.1-6 of this Regulation. Except as provided in Sections 8.06, 8.07, and 8.08 of this Regulation, it is unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project must be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area must be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it must be equipped with transparent viewing ports, if feasible, and must be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, must be saturated with a liquid wetting agent prior to removal. Wetting must continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal must be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, must be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal must be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project must be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material must be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material must be kept coated with a liquid wetting agent until sealed in leak-tight containers.

b. All asbestos-containing waste material resulting from an asbestos project must be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

c. The exterior of each leak-tight container must be free of all asbestos residue and must be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

d. Immediately after sealing, each leak-tight container, or the outer packaged container if the waste is aggregated, must be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers must not be dropped, thrown, slid, or otherwise damaged.

6. Visible Emissions.

No visible emissions may result from an asbestos project.

Section 8.06 Alternate Means of Compliance

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Renovation or Demolition.

Unless otherwise approved by the Agency in writing, alternate means of compliance must be used where standard asbestos project work practices in Section 8.05.B of this Regulation cannot be utilized to remove asbestos-containing material (financial considerations aside) prior to renovation or demolition; when asbestos-containing material has been disturbed or is otherwise no longer intact (e.g., when demolition has already occurred or a similar situation exists, typically leaving a pile/area of debris, rubble, ash, or soil); or when mechanical methods are used for removal. Projects performed under this section must be performed under the alternate asbestos project work practice notification category and must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 8.05.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices cannot be utilized;

b. Date(s) the work area was evaluated by the person(s) that prepared the AWP;

- c. Site address(es)/location(s) where the inspection was performed;
- d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);
- e. If an asbestos survey was performed, incorporate it by reference;
- f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;
- g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;
- h. A statement that the AWP will be as effective as the work practices in Section 8.06.B of this Regulation;
- i. Signature(s) of the person(s) that prepared the AWP; and
- j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 8.02 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). All procedures and requirements in the AWP must be followed. Unless alternate procedures are specified in the AWP by an AHERA Project Designer and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer, the AWP must include all of the following requirements in Section 8.06.A.4.a through g of this Regulation:

a. Controlled Area.

The asbestos project must be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area must be restricted to authorized personnel only. The controlled area must protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris must be handled in a wet condition.

- i. Absorbent materials must be saturated with a liquid wetting agent prior to removal. Wetting must continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal must be wetted immediately.

- ii. Nonabsorbent materials must be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They must be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal must be wetted immediately.

c. Asbestos-Containing Waste Materials.

- i. All asbestos-containing waste material and/or asbestos contaminated waste material must be kept wet and must be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

- ii. The exterior of each leak-tight container must be free of all asbestos residue and must be permanently labeled with an asbestos

warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

iii. Immediately after sealing, each leak-tight container must be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

iv. Leak-tight containers must be kept leak-tight.

v. The asbestos-containing waste material must be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that must be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

i. The procedures must require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work must stop until an AHERA Project Designer has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

ii. The Agency must immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work must stop until an AHERA Project Designer has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

i. A competent person must be present for the duration of the asbestos project (includes demolition) and must observe work activities at the site.

ii. The competent person must stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

iii. The competent person must stop work if AWP procedures are not be followed and must ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures must be included in the AWP. In addition to these procedures, the following requirements apply:

i. The AWP must identify what materials will be separated from the asbestos-containing material waste stream and must describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream must be free of asbestos-containing material.

ii. A competent person must ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

g. Visible Emissions.

No visible emissions may result from an asbestos project.

5. Record Keeping

a. The AWP must be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP must retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project must also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests must also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

((77))

Section 8.07 Exception for Hazardous Conditions

When the exception for hazardous conditions is being utilized, all of the following apply:

A. Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health.

B. An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health. The determination must be retained for at least 24 months from the date it was prepared and made available to the Agency by the property owner or owner's agent upon request.

C. An AHERA Project Designer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be protective of public health. The AWP must contain all of the following information:

1. Date(s) the work area was evaluated by the person(s) that prepared the AWP;

2. Site address(es)/location(s) where the inspection was performed;

3. A copy of the hazardous conditions determination from a government official or licensed structural engineer;

4. If an asbestos survey was performed, include a copy or incorporate it by reference;

5. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

6. A statement that the AWP will be protective of public health;

7. Signature(s) of the person(s) that prepared the AWP; and

8. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

D. AWP Procedures.

The requirements of Section 8.06.A.3-5 of this Regulation and all other applicable requirements, including those specified in the AWP, must be complied with.

Section 8.08 Disposal of Asbestos-Containing Waste Material**A. Disposal Within 10 Days of Removal.**

Except as provided in Section 8.08.B of this Regulation, it is unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Temporary Storage Site.

A person may establish a temporary storage site for the purpose of collecting and temporarily storing asbestos-containing waste material if it is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.
2. The application must be accompanied by a non-refundable fee as set in the fee schedule.
3. Accumulated asbestos-containing waste material must be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.
4. All asbestos-containing waste material must be stored in leak-tight containers which are maintained in leak-tight condition.
5. The storage area must be locked except during transfer of asbestos-containing waste material.
6. Storage, transportation, and disposal must not exceed 90 calendar days. An extension may be granted upon written request.
7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

Section 8.09 Compliance With Other Rules

Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the Agency's rules must be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 9**Source Registration**

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority RCW ((~~70.94.151~~)) 70A.15.2200]

PURPOSE: This Article establishes source registration requirements for sources of air pollution in Benton County.

Section 9.01 Source Registration Required

A. The Agency regulates the sources of air contaminants in Benton County under the authority of RCW ((~~70.94.151~~)) 70A.15.2200. Any source identified in WAC 173-400-100 whether publicly or privately owned, must register with the Agency unless exempted.

B. All facilities with Permits issued under the Notice of Construction Program (WAC 173-400-110) are considered part of the Registration Program (WAC 173-400-099) and subject to annual registration fees.

Section 9.02 Source Registration Program Purpose and Components

A. Program purpose.

The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

B. Program components.

The components of the registration program consist of:

1. Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter RCW ((70.94))

70A.15.

2. On-site inspections necessary to verify compliance with registration requirements.

3. Data storage and retrieval systems necessary for support of the registration program.

4. Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

5. Staff reviews including engineering analysis for accuracy and currency of information provided by source owners pursuant to registration program requirements.

6. Clerical and other office support in direct furtherance of the registration program.

7. Administrative support provided in directly carrying out the registration program.

Section 9.03 Registered Source General Requirements

A. General.

Any person operating or responsible for the operation of an air contaminant source in Benton County for which registration and reporting are required must register the source emission unit with the Agency. The owner or operator must make reports containing information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

B. Registration form.

Registration information must be provided on forms supplied by the Agency and must be completed and returned within the time specified on the form. Emission units within the facility must be listed separately unless the Agency determines that certain emission units may be combined into process streams for purposes of registration and reporting.

C. Signatory responsibility.

The owner, operator, or their designated management representative must sign the registration form for each source. The owner or op-

erator of the source must be responsible for notifying the Agency of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

D. Operational and maintenance plan.

Owners or operators of registered sources within Benton County must maintain an operation and maintenance plan for process and control equipment. The plan must reflect good industrial practice and must include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan must be reviewed and updated by the source owner or operator at least annually. A copy of the plan must be made available to the Agency upon request.

E. Report of closure.

A report of closure must be filed with the Agency within ninety (90) days after operations producing emissions permanently cease at any applicable source under this Section.

F. Report of change of ownership.

A new owner or operator must report to the Agency within ninety (90) days of any change of ownership or change in operator.

G. Operating permit program source exemption.

Permit program sources, as defined in RCW ((70.94.030)) 70A.15.1030 are not required to comply with the registration requirements of this Section.

Section 9.04 Registered Source Emission Level Classification

A. Gasoline Facilities:

1. Gasoline dispensing facilities (gas stations) using Stage I or Stage II vapor recovery systems, as defined in WAC 173-491;
2. Bulk gasoline plants, as defined in WAC 173-491;
3. Bulk gasoline terminals, as defined in WAC 173-491;

B. Class 1.

Facilities and sources whose actual annual emissions are less than the following will be classified as Class 1 sources:

1. 20 tons/yr of carbon monoxide (CO);
2. 8 tons/yr of nitrogen oxides (NO_x);
3. 8 tons/yr of sulfur dioxide (SO₂);
4. 5 tons/yr of total suspended particulate (TSP);
5. 3 tons/yr of fine particulate matter (PM₁₀);
6. 8 tons/yr of volatile organic compounds (VOC);
7. 240 pounds/yr of lead;
8. 1,200 pounds/yr of fluorides;
9. 2,800 pounds/yr of sulfuric acid mist;
10. 2 tons/yr of hydrogen sulfide (H₂S); or
11. 2 tons/yr of total reduced sulfur, including H₂S.

C. Class 1 Toxic Source.

Toxic air pollutants are those listed in WAC 173-460-150. Facilities and sources whose actual emissions are less than the following will be classified as Class 1 Toxic Sources:

1. One (1.0) ton/yr of a single toxic air pollutant; or
2. Two and one-half (2.5) tons/yr of a combination of toxic air pollutants will be classified as Class 1 Toxic Sources.

D. Class 2.

Sources whose actual annual emissions are greater than that listed in Section 9.04.B, of this Regulation but less than one hundred

(100) tons/yr of CO, NO_x, SO₂, TSP, PM₁₀, VOCs, or lead, will be classified as Class 2 Sources.

E. Class 2 Toxic Sources.

Toxic air pollutants are those listed in WAC 173-460-150. Sources whose actual emissions are greater than that listed in Section 9.04.C of this Regulation, but less than ten (10) tons/yr of any single toxic air pollutant or less than twenty-five (25) tons/yr of a combination of toxic air pollutants, will be classified as Class 2 Toxic Sources.

F. Synthetic Minor Source.

Sources that have requested and received a federally enforceable emissions limit that limits the total potential-to-emit of the facility to less than one hundred (100) tons/yr of any criteria pollutant, ten (10) tons/yr of any single hazardous air pollutant, or twenty-five (25) tons/yr of any combination of hazardous air pollutants are synthetic minor sources.

ARTICLE 10

Fees and Charges

ADOPTED: 17-Feb-2005

AMENDED: 5 August 2020

[Statutory Authority RCW ((~~70.94.151~~)) 70A.15.2200, RCW ((~~70.94.152~~)) 70A.15.2210]

Section 10.01 Fees and Charges Required

A. Unless otherwise provided, any fee assessed by the Agency must be paid within thirty (30) days of assessment. Failure to pay a fee may result in the commencement of a formal enforcement action.

B. Upon approval by the Board as part of the annual budget process, fees may be increased annually by at least the fiscal growth factor as determined by the Washington State Office of Financial Management.

C. Electronic Payment of Fees. A convenience fee, charged by the fee processor, may be charged to a source for the electronic payment of all or part of the fee at the rates set by the processor.

Section 10.02 Fees Otherwise Provided

All fees and charges provided for in this Article must be in addition to fees otherwise provided for or required to be paid by Regulation 1, provided the Control Officer waives payment of any fee or service charge hereby required if such fee duplicates a fee charged or required to be paid by another Article of this Regulation.

Section 10.03 Fee Exemptions

A. The Control Officer may waive or reduce the registration fee for an operation provided a source presents sufficient demonstration of hardship circumstances.

B. Stationary sources subject to the Operating Permit Regulation, Chapter 173-401 WAC.

Section 10.04 General Administrative Fees

A (~~(fifty dollar (\$50.00))~~) fee, according to the fee schedule, will be assessed for any check written to the Agency returned due to non-sufficient funds.

Section 10.05 Registered Source Fees

A. The Agency will charge an annual registration fee pursuant to RCW ((~~70.94.151~~)) 70A.15.2200 for services provided in administering the registration program. Fees received under the registration program

will not exceed the cost of administering the registration program. The Board will review the registration program on an annual basis.

B. All registrants must pay a fee in accordance with the current Fee Schedule.

C. Fee Payment.

1. Fee Payment. The annual registration fee is due and payable by the date on the invoice, unless otherwise specified in writing to the source by the Agency.

2. Late Payment of Fees.

A late fee will be charged to a source for late payment of all or part of its annual registration fee at the following rates:

a. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

b. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

c. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

3. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its annual registration fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee. Failure to pay all or part of an annual registration fee after the ninety first day past the due date may result in enforcement action.

4. Other Penalties.

The penalties authorized in Section 10.08.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

5. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual registration fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

6. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay registration fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

Section 10.06 Fees for Application for Notice of Construction (NOC) for Stationary and Portable Sources, and Notice of Intent to Operate (NIO) Relocating Portable Sources

A. NOC Application Filing Fee.

An application filing fee will be due and payable at the time of filing the NOC application. The filing fee is non-refundable and is contained in the Fee Schedule.

B. Portable Source NIO Filing Fee.

A Filing fee will be due and payable at the time of filing the NIO form. The fee is contained in the Fee Schedule. The filing fee is non-refundable. NIO must be received at least 15 days prior to starting operation.

1. Notice of Intent to Operate: The owner or operator of a portable source with a valid permit per WAC 173-400-036 must notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NIO). You must receive an Approval to Operate Portable Source from Benton Clean Air Agency prior to starting operation.

C. NOC or NIO Engineering Examination and Inspection Fee.

1. An examination and inspection fee will be charged according to the Fee Schedule. The engineering and inspection fee will be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the Agency.

2. Emergency application or expedited review fee will be two (2) times the normal application and review fee.

D. Additional Fees.

Additional fees may be charged according to the Fee Schedule. Fees are cumulative. The additional fees will be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the Agency.

1. Fee amounts in the Fee Schedule listed as "Actual" are based upon the Agency's actual cost to complete a review or task and will be determined using the actual or direct hours expended completing the specific review or task.

2. If an NOC or NIO applicability determination fee is received by the Agency and an NOC or NIO is determined not to be required, the Engineering Examination and Inspection Fee will be the actual time expended at the current engineering charge rate in dollars per hour.

E. Any NOC or NIO application received by the Agency without the accompanying fee will be rejected and returned to sender. Such action will not constitute a determination of completeness or incompleteness as per WAC 173-400-111.

Note: Tables 10-1 and 10-2 have been deleted. The Fee Schedule for the Registration and Notice of Construction Programs is approved by the board per Article 2.8 D.

Section 10.07 State Environmental Policy Act (SEPA) Fees

A. Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an addendum to, or adoption of, an existing environmental document pursuant to Chapter 197-11 WAC is required, in association with an NOC or a NIO, the applicant will pay a review fee of the greater of:

1. ~~((One hundred fifty dollars (\$150.00), due and payable at the time of submittal))~~ A fee as listed in the fee schedule for SEPA review; or

2. Actual costs to complete the review or task and will be determined using the actual or direct hours expended completing the specific review and the corresponding hourly rate of each staff person directly involved. Actual costs will be billed by the Agency to the owner, operator, or applicant after a threshold determination has been made and/or a preliminary determination has been issued.

B. Additional fees may be charged according to the Fee Schedule. Fees are cumulative. The additional fees will be due and payable at

the time of filing, unless otherwise specified to the applicant by the Agency.

Section 10.08 Asbestos Fees and Waiting Periods

A. Any fee required for asbestos projects will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

B. Failure to pay all or part of the fee may result in the commencement of a formal enforcement action.

The notification waiting period begins on the workday on which a complete notification is received

Note: Table 10-3 has been deleted. The Fee Schedule for the Asbestos Program is approved by the board per Article 2.8 D.

Section 10.09 Title 5 Air Operating Permit Fees

[Statutory Authority RCW ((~~70.94.161~~)) 70A.15.2260]

All eligible sources under Chapter 173-401 WAC will be subject to the annual fees described in this Section.

A. Permanent annual fee determination and certification.

1. Fee Determination.

a. Fee Determination.

The Agency will develop a fee schedule using the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees will be sufficient to cover all permit administration costs. The Agency will also collect its jurisdiction's share of Ecology's development and oversight costs. The fee schedule will differentiate as separate line items the Agency and Ecology's fees. Opportunities for public participation will be afforded throughout the fee determination process, as provided in Section 10.0((8))9.A.3((-a)) of this Regulation.

b. Fee Eligible Activities.

The costs of permit administration and development and oversight activities are fee eligible.

i. Permit Administration.

Permit administration costs are those incurred by the Agency in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Eligible permit administration costs are as follows:

(a) Pre-application assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspection, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

- (g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;
- (h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;
- (i) The share attributable to permitted sources of the development and maintenance of emissions inventories;
- (j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;
- (k) Training for permit administration and enforcement;
- (l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;
- (m) Required fiscal audits, periodic performance audits, and reporting activities;
- (n) Tracking of time, revenues and expenditures, and accounting activities;
- (o) Administering the permit program including the costs of clerical support, supervision, and management;
- (p) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the Federal Clean Air Act; and
- (q) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

- ii. Ecology Development and Oversight.

Development and oversight costs are those incurred by Ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. (~~Development and oversight costs are in Chapter 252, Laws of 1993 Section 6.2.b of this Regulation.~~)

- c. Workload Analysis.

- i. The Agency will conduct an annual workload analysis of the previous years' work, to projecting resource requirements for the purpose of preparation for permit administration. The workload analysis will include resource requirements for both the direct and indirect costs of the permit administration activities in Section 10.0((8))9.A.1.b.i of this Regulation.

- ii. Ecology will, for the two-year period corresponding to each biennium, identify the development and oversight activities that it will perform during that biennium. The eligible activities are those referenced in Section 10.0((8))9.A.1.b.ii of this Regulation.

- d. Budget Development.

The Agency will annually prepare an operating permit program budget. The budget will be based on the resource requirements identified in an annual workload analysis and will take into account the projected fund balance at the start of the calendar year. The Agency will publish a draft budget for the following calendar year on or before May 31 and will provide opportunity for public comment in accordance with Chapter 173-401 WAC Operating Permit Regulation. The Agency will publish a final budget for the following calendar year on or before June 30.

- e. Allocation Method.

- i. Permit Administration Costs.

The Agency will allocate its permit administration costs and its share of Ecology's development and oversight costs among the permit

program sources for which it acts as permitting authority, according to a three-tiered model based upon:

- (a) The number of sources under its jurisdiction;
- (b) The complexity of the sources under its jurisdiction, and
- (c) The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted. The quantity of each regulated pollutant emitted by a source will be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers will be equally weighted.

ii. Ecology Development and Oversight Costs.

Ecology will allocate its development and oversight costs among all permitting authorities, including the Agency based upon the number of permit program sources under the jurisdiction of each permitting authority. If Ecology determines that it has incurred extraordinary costs in order to oversee a particular permitting authority and that those costs are readily attributable to the particular permitting authority, Ecology may assess to that permitting authority such extraordinary costs.

f. Fee Schedule.

The Agency will issue annually a fee schedule reflecting the permit administration fee and Ecology's development and oversight fee to be paid by each permit program source under its jurisdiction. The fee schedule will be based on the information contained in the final source data statements for each year; the final source data statements will be issued after opportunity for petition and review has been afforded in accordance with Section 10.0((8))9.A((-)).4 of this Regulation.

2. Fee Collection - Ecology and Benton Clean Air Agency.

a. Collection from Sources.

The Agency, as a delegated local authority, will collect the fees from the permit program sources under its jurisdiction.

i. Permit Administration Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its permit administration costs.

ii. Ecology Development and Oversight Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its share of Ecology's development and oversight costs.

b. Dedicated Account.

All receipts from fees collected by the Agency, as a delegated local authority, from permit program sources will be deposited in - dedicated account -. Expenditures from these dedicated accounts will be used only for the activities described in RCW ((70.94.162)) 70A.15.2270.

3. Accountability.

a. Public Participation during Fee Determination Process.

The Agency will provide for public participation in the fee determination process described under Section 10.09.A((-)) of this Regulation which provision will include but not be limited to the following:

i. The Agency will provide opportunity for public review of and comment on:

- (a) Each annual ((workload analysis)) AOP fee calculation;
- (b) Each annual Agency budget; and
- (c) Each annual Agency fee schedule

~~ii. ((The Agency will submit to Ecology for publication in the Permit Register notice of issuance of its draft annual workload analysis, issuance of its draft annual budget and issuance of its draft annual fee schedule.))~~

~~((iii.))~~ ii. The Agency will make available for public inspection and to those requesting opportunity for review copies of its draft:

(a) Annual ~~((workload analysis))~~ AOP fee calculation on or before May 31;

(b) Annual Agency budget on or before May 31; and

(c) Annual Agency fee schedule on or before May 31.

~~((iv.))~~ iii. The Agency will provide a minimum of thirty (30) days for public comment on the ~~((draft annual workload analysis and))~~ draft annual budget. Such thirty-day period for comment will run from the date of publication of notice in the Permit Register as provided in this Section.

b. Tracking of Revenues, Time and Expenditures.

i. Revenues.

The Agency will track revenues on a source-specific basis.

ii. Time and Expenditures.

The Agency will track time and expenditures on the basis of functional categories as follows:

(a) Application review and permit issuance;

(b) Permit modification;

(c) Permit maintenance;

(d) Compliance and enforcement;

(e) Business assistance;

(f) Regulation and guidance development;

(g) Management and training; and

(h) Technical support.

iii. Use of Information Obtained from Tracking Revenues, Time and Expenditures.

The Agency will use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during each calendar year's review provided for under Section 10.09.A.1.d of this Regulation.

iv. The information obtained from tracking revenues, time, and expenditures will not provide a basis for challenge to the amount of an individual source's fee.

c. Periodic Fiscal Audits, Reports and Performance Audits.

A system of regular, periodic fiscal audits, reports and performance audits will be conducted in order to evaluate Ecology's and the Agency's operating permit program administration, as follows:

i. Fiscal Audits.

The Agency will contract with the State Auditor to perform a standard fiscal audit of its operating permit program every other year.

ii. Annual Routine Performance Audits.

The Agency will be subject to annual routine performance audits, except that the routine audit will be incorporated into the extensive performance audit, conducted pursuant to Section 10.09.A.3.c.v of this Regulation in each year during which an extensive performance is conducted. Ecology will issue guidance regarding the content of the routine performance audits and will conduct the Agency audits.

iii. Annual Random Individual Permit Review.

One permit issued by the Agency will be subject to review in conjunction with the annual routine performance. The permit to be reviewed will be selected at random. Ecology will issue guidance regard-

ing the content of the random individual permit review and will conduct the Agency's review.

iv. Periodic Extensive Performance Audits.

The Agency will be subject to extensive performance audits every five years. In addition, the Agency may be subject to an extensive performance audit more frequently under the conditions of Section 10.09.A.3.c.v of this Regulation. Ecology will issue guidance regarding the content of the extensive performance audits and will conduct the audits of this agency.

v. Finding of Inadequate Administration or Need for Further Evaluation.

If, in the process of conducting a fiscal audit, annual routine audit, or annual random individual permit review, the auditor or Ecology finds that the Agency is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit will be conducted, as provided in Section 10.09.A.3.c.iv of this Regulation.

vi. Annual Reports.

The Agency will prepare an annual report evaluating its operating permit program administration. Such report will include any findings of the auditor or Ecology resulting from the relevant fiscal audits, annual routine audits, annual random individual permit reviews or periodic extensive performance audits. The Agency will submit its report to its Board and to Ecology.

4. Administrative Dispute Resolution.

a. Preliminary Statement of Source Data.

The Agency will provide to the permit program sources under their respective jurisdictions a preliminary statement of emissions and other data from that source upon which the Agency intends to base its allocation determination under Section 10.09.A.1.e of this Regulation. Such preliminary statement will be provided to the permit program sources on or before September 30 of each year. Such preliminary statement will indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under Section 10.0((8))9.A.4.b of this Regulation regarding the accuracy of the data contained therein.

b. Petition for Review of Statement.

A permit program source or other individual under the jurisdiction of the Agency as a delegated local authority, may petition to review for accuracy the data contained in the preliminary source data statement provided for under Section 10.0((8))9.A.4.a of this Regulation. Such petition will be lodged on or before October 31 of each year. Such petition will be in writing, directed to the individual indicated on the statement of source data. Such petition will indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition will, in addition, state the name, address and telephone number of the person or persons to whom the Agency may direct inquiries regarding the request. Upon receipt of such a petition, the Agency, as a delegated local authority, must issue its written response to the petitioner on or before November 30 of each year. Such response will state the conclusions of the review and the reasons therefore, and will contain a new preliminary source data statement, revised to reflect any changes necessitated by the Agency's response.

c. Final Source Data Statement.

The Agency will provide to the permit program sources under its jurisdiction a final statement of emissions and other data from that source upon which the Agency will base its allocation determination under Section 10.0((8))9.A.1 of this Regulation along with an invoice reflecting the fee billed to that source on or before ((January)) February 20th of each year.

5. Fee Payment and Penalties.

a. Fee Payment.

Each permit program source will pay a fee in the amount reflected in the invoice issued under Section 10.09.A.4.c of this Regulation. Fees will be invoiced by ((January)) February 20th of each year. Such fee will be due on or before April 15th of each year.

b. Late Payment of Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for late payment of all or part of its operating permit fee at the following rates:

i. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

ii. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

iii. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

c. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee.

d. Other Penalties.

The penalties authorized in Section 10.0((8))9.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

e. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

f. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

6. Development and Oversight Remittance by Local Authorities to Ecology.

a. Ecology will provide to the Agency a statement of the share of Ecology's development and oversight costs for which it is responsible

for collecting from sources under its jurisdiction on or before December 31 of each year.

b. The Agency will remit to Ecology one-half of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and will remit to Ecology the balance of its share of Ecology's development and oversight costs on or before June 30 of each year.

B. Air Operating Permit sources are not subject to fees under the Registration Program.

Section 10.10 Special Burning Permit Fees

[Statutory Authority RCW ((70.94.6528)) 70A.15.5090]

A. An application fee ((of fifty dollars (\$75.00)) as listed in the fee schedule) is due and payable at the time of submittal of a request for special burning permit. The application fee is non-refundable. A fee will be charged for each additional inspection that's required.

B. ((An additional fee for inspection and oversight costs will be charged for each submittal of a request for special burning permit.)) An ((The)) additional fee will be calculated based upon the volume of the material to be burned. The additional fee will not exceed ((eight dollars and fifty cents (\$8.50)) the amount listed in the fee schedule per cubic yard or the adjusted amount according to Chapter 173-425 WAC.

C. The additional fee will be due and payable within thirty (30) days of issuance of the special burning permit. Special burning permit fees will be due within thirty (30) days of issuance of the special burning permit.

D. A late fee ((of twenty-five dollars (\$25.00)) as listed in the fee schedule) may be charged for special burning permit fees that have not been paid within thirty (30) days of issuance of the special burning permit. Failure to pay said fee within sixty (60) days of the issuance of the special burning permit may result in the commencement of a formal enforcement action.

Section 10.11 Agricultural Burning Permit Fees

A. An application fee for an agricultural burning permit will be due and payable at the time of submittal of the application. Refunds may be issued by the Agency for acres or tons not burned under each permit provided the adjusted fee after subtracting refunds is no less than the minimum fee.

B. Permit Fee Schedule.

The agricultural burning permit fee schedule established through Chapter 173-430 WAC applies in the Agency.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

ACRONYMS AND ABBREVIATIONS

- ACM. Asbestos Containing Material
- ARP. Application for Relief from Penalty
- AWP. Alternate Work Plan
- BACT. Best Available Control Technology
- BART. Best Available Retrofit Technology
- BCAA. Benton Clean Air Agency
- Board. Benton Clean Air Agency Board of Directors
- BTU. British Thermal Unit (unit of measure)
- CEM. Continuous Emission Monitoring

C.F.R. U.S. Code of Federal Regulations
Ecology. Washington State Department of Ecology
ERC. Emission Recovery Credit
LAER. Lowest Achievable Emission Rate
MACT. Maximum Achievable Control Technology
NESHAP. National Emission Standards for Hazardous Air Pollutants
NOC. Notice of Construction
NIO. . Notice of Intent to Install and Operate a Temporary Source
NOI. Notice of Intent to Demolish or Remove Asbestos
NOP. Notice of Penalty
NSPS. New Source Performance Standard
PCHB. Washington State Pollution Control Hearings Board
PSD. Prevention of Significant Deterioration
RACM. Regulated Asbestos Containing Material
RACT. Reasonably Available Control Technology
RCW. Revised Code of Washington
SEPA. State Environmental Policy Act
UGA. Urban Growth Area
USC. United States Code
WAC. Washington Administrative Code