

Title 463 WAC

ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: THERMAL POWER PLANT EVALUATION COUNCIL)

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Chapter 463-06 WAC

GENERAL—ORGANIZATION—PUBLIC RECORDS

WAC

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WAC 463-06-010 Organization of this title. This title (Title 463 WAC) contains the regulations by which the Energy Facility Site Evaluation Council (hereafter, the Council) functions under state and federal law.

Chapter 463-06 WAC contains general informational provisions relating to agency operation and public records handling which are required by the state administrative procedure act and state laws relating to public records.

Chapter 463-10 WAC contains definitions of terms used throughout this title.

Chapter 463-14 WAC sets forth a number of significant policy and interpretive provisions relating to the scope and application of chapter 80.50 RCW and these rules.

Chapter 463-18 WAC deals with procedures for the conduct of business at regular and special Council meetings.

Chapter 463-22 WAC sets forth procedures to be followed when a request for a potential site study is submitted under RCW 80.50.175.

Chapter 463-26 WAC sets forth procedures governing the public hearings referred to in RCW 80.50.090(1), (2), and (4).

Chapter 463-30 WAC contains procedural provisions governing contested case hearings held pursuant to RCW 80.50.090(3).

Chapter 463-34 WAC outlines procedures for rule-making and for obtaining declaratory rulings from the Council.

Chapter 463-38 WAC contains procedure and guidelines relating to issuance of permits to discharge pollutants into Washington waters pursuant to federal law.

Chapter 463-42 WAC embodies Council procedures and guidelines governing preparation of applications for energy facility site certification.

Chapter 463-46 WAC contains guidelines relating to information which may have to be included in an application for site certification pursuant to the state environmental policy act.

Chapter 463-50 WAC defines guidelines for the use of independent consultants pursuant to RCW 80.50.070 and RCW 80.50.175.

Chapter 463-54 WAC sets forth procedures and guidelines for performance of surveillance monitoring by the Council pursuant to RCW 80.50.040(11). [Order 103, § 463-06-010, filed 11/4/76.]

WAC 463-06-020 Description of organization. (1) The voting membership of the Council consists of the authorized representatives of the member agencies listed in RCW 80.50.030. In addition, a voting county representative and a nonvoting port district representative may sit with the Council under the circumstances described in RCW 80.50.030.

(2) The chairman of the Council is the director of the state energy office, or such deputy or assistant director as the director has designated. The chairman is nonvoting.

(3) The Council has an Executive Secretary. The Executive Secretary and all members of the Council staff are officed at the Council office. [Order 103, § 463-06-020, filed 11/4/76.]

WAC 463-06-030 Council office—Business hours. The Council office is located at 820 East Fifth Avenue, Olympia, Washington. It is open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. Notices, applications, business correspondence, or other communication should be sent to the Council office. [Order 103, § 463-06-030, filed 11/4/76. Formerly WAC 463-20-060.]

WAC 463-06-040 Bi-monthly meetings. Regular meetings of Council are held on the second and fourth Mondays of each month. [Order 103, § 463-06-040, filed 11/4/76.]

WAC 463-06-050 General method by which operations are conducted. In general, the Council reaches major policy and operational decisions through formal Council action at regular and special meetings. In some circumstances, the chairman may perform duties which are specifically authorized by the Council. Day-to-day administration is handled by the Executive Secretary and staff. [Order 103, § 463-06-050, filed 11/4/76.]

WAC 463-06-060 Public records available. All public records of the Council are available for public inspection and copying at the Council office pursuant to chapter 42.17 RCW and these rules, except as otherwise provided by RCW 42.17.310 or any superseding law. [Order 103, § 463-06-060, filed 11/4/76. Formerly WAC 463-20-040.]

WAC 463-06-070 Public records officer. The Council's public records officer is the Executive Secretary. He is responsible for implementation of these and other applicable regulations regarding public records. Correspondence regarding public records is to be addressed to the public records officer. [Order 103, § 463-06-070, filed 11/4/76. Formerly WAC 463-20-050.]

WAC 463-06-080 Contents of requests for public records. Public records may be inspected and copied by members of the public when a request is made in writing which reflects the following information:

- (1) name of the person requesting the records; and
- (2) the day on which the written request was prepared or submitted; and
- (3) the nature of the request (to the extent that this may expedite compliance); and
- (4) if the matter requested is indexed, an appropriate index reference; or

(5) if the requested matter is not identifiable by reference to the current index, an adequate description of the record requested; and

(6) a prominent statement that the request is being made pursuant to chapter 42.17 RCW and these regulations. [Order 103, § 463-06-080, filed 11/4/76. Formerly WAC 463-20-070.]

WAC 463-06-090 Staff assistance. It is the obligation of the staff to assist requestors in identifying the public record requested. Staff members who are dealing with requests will make a sincere effort to respond to each initial request within two working days of first receipt. [Order 103, § 463-06-090, filed 11/4/76.]

WAC 463-06-100 Record of requests maintained. A record of requests for public records shall be maintained at the Council office which shall reflect the date received and whether or not the request was granted, in addition to other information deemed relevant by the Council. [Order 103, § 463-06-100, filed 11/4/76.]

WAC 463-06-110 Fees for copying. No fees are charged for inspection of public records. Requestors will be charged a fee not to exceed 25 cents per page of copy for use of the Council's copy equipment in cases where no significant staff time is taken up with the request. In cases where significant staff time is taken up with the request, copying costs shall include the cost of said staff time. Charges for costs of providing records shall be submitted and paid prior to delivery of documents; provided that this advance payment requirement shall not be required of other government agencies or parties or intervenors in proceedings before this Council. [Order 103, § 463-06-110, filed 11/4/76. Formerly WAC 463-20-080.]

WAC 463-06-120 Determination of exempt status. Determination whether a requested record is exempt under the provisions of RCW 42.17.310 will be made in each instance. [Order 103, § 463-06-120, filed 11/4/76. Formerly WAC 463-20-090 (part).]

WAC 463-06-130 Deletion of identifying details. Identifying details will be deleted by the Council in cases where disclosure of such details would be an invasion of privacy under the laws of the State of Washington. Written justification by the Council for deletions will always accompany furnished records where deletions have been made. [Order 103, § 463-06-130, filed 11/4/76. Formerly WAC 463-20-090 (part).]

WAC 463-06-140 Written denials. All denials of requests are by written statement specifying the reasons for denial, including, where appropriate, a reference to the specific exemption and a brief explanation as to how the exemption applies to the record withheld. [Order 103, § 463-06-140, filed 11/4/76. Formerly WAC 463-20-090 (part).]

WAC 463-06-150 Review of denials. Any person is entitled to review of a public record request denial if written request for review is promptly made. The request

should specifically refer to the written statement constituting the denial. Any such written request is to be promptly referred to the Executive Secretary of the Council who shall either affirm or reverse the denial. The Executive Secretary may, in his discretion, request a special meeting of the Council to review the denial if such action is requested in writing and is otherwise warranted. [Order 103, § 463-06-150, filed 11/4/76. Formerly WAC 463-20-100 (part).]

WAC 463-06-160 Time for completion of review. When a written request for review of a denied public record request is made, a final decision will be made and written response will be given to the requestor within two business days. If the written request for review is submitted at the Council office substantially simultaneous with initial denial, then review shall be completed within two business days thereafter. If the initial request and denial are made through the mail, then review shall be completed within two business days after receipt of the written request for review. The review period cited above may be extended only as necessary and for good cause. Where a request for Council review at a regular or special meeting is granted, review shall be complete on Council action. [Order 103, § 463-06-160, filed 11/4/76. Formerly WAC 463-20-100 (part).]

WAC 463-06-170 Records index. The Council maintains an index of those classes of records described in RCW 42.17.260 which is available for public inspection and copying. [Order 103, § 463-06-170, filed 11/4/76. Formerly WAC 463-20-111.]

**Chapter 463-10 WAC
DEFINITIONS**

WAC
463-10-010 Definitions.

WAC 463-10-010 Definitions. Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

- (1) "Council" refers to the Energy Facility Site Evaluation Council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the Council.
- (2) "Applicant" means the person or entity making application for a certification or permit covered by this title.
- (3) "Contested case" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state administrative procedures act. [Order 104, § 463-10-010, filed 11/4/76.]

**Chapter 463-14 WAC
POLICY AND INTERPRETATION**

WAC
463-14-010 Purpose of this chapter.
463-14-020 Need for energy—Legislative intent binding.
463-14-030 Public hearings policy.

463-14-040 County and port district representatives—Segmentation of hearings and issues.
463-14-050 Pre-emption.
463-14-060 Open meetings with full discussion.
463-14-070 Integration of council activities with federal agency activities.

WAC 463-14-010 Purpose of this chapter. The purpose of this chapter is to publicize significant policy determinations and interpretations by which the Council is guided in implementing chapter 80.50 RCW and this title. [Order 104, § 463-14-010, filed 11/4/76.]

WAC 463-14-020 Need for energy—Legislative intent binding. RCW 80.50.010 requires the Council "to recognize the pressing need for increased energy facilities." In acting upon any application for certification, the Council action will be based on the policies and premises set forth in RCW 80.50.010(1), (2), and (3). [Order 104, § 463-14-020, filed 11/4/76.]

WAC 463-14-030 Public hearings policy. RCW 80.50.090 requires a minimum of two public hearings concerning each site for which certification is sought. The first of these is the local public hearing described in RCW 80.50.090(1) and (2) where the Council is obligated to determine whether or not the proposed use of the site is consistent and in compliance with county or regional land use plans or zoning ordinances at the time of application. However, in order to foster general public comment on the proposed site, the Council will allow general public comment at such local public hearings, wherever possible. The Council must also conduct a second public hearing as a contested case proceeding under chapter 34.04 RCW. Although all persons desirous of participating may not be accorded "party" status in this proceeding, upon compliance with reasonable procedures, any person desiring to be heard shall be allowed to speak in favor of or in opposition to the proposed facility after the close of the evidentiary hearing but prior to preparation of any recommendation to the governor. The Council views the provisions of RCW 80.50.090(4) as authorizing it to conduct additional public hearings of either the "local public hearing" or "contested case proceeding" variety. [Order 104, § 463-14-030, filed 11/4/76.]

WAC 463-14-040 County and port district representatives—Segmentation of hearings and issues. RCW 80.50.030(4) and (5) necessitate segmentation of hearings and issues in instances where proposed energy facilities would extend beyond the boundaries of a single county and/or port district. [Order 104, § 463-14-040, filed 11/4/76.]

WAC 463-14-050 Pre-emption. Chapter 80.50 RCW operates as a state pre-emption of all matters relating to energy facility sites. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document which might otherwise be required. [Order 104, § 463-14-050, filed 11/4/76.]

WAC 463-14-060 Open meetings with full discussion. All Council proceedings are to be conducted in a

manner consistent with the spirit of the state open meetings act, and not merely according to the letter of that law. To this same end, full and open discussion between Council members themselves, as well as between Council members, members of the staff and persons appearing before the Council, shall be fostered and encouraged at all regular and special meetings. [Order 104, § 463-14-060, filed 11/4/76.]

WAC 463-14-070 Integration of council activities with federal agency activities. In consonance with RCW 80.50.040(12), the Council hereby adopts a policy of holding joint hearings, whenever practical and desirable, with federal agencies having jurisdiction over matters affecting certification under chapter 80.50 RCW. [Order 104, § 463-14-070, filed 11/4/76.]

Chapter 463-18 WAC PROCEDURE—REGULAR AND SPECIAL COUNCIL MEETINGS

WAC

463-18-010	Purpose of this chapter.
463-18-020	Governing procedure.
463-18-030	Quorum.
463-18-040	Delegation of duties.
463-18-050	Special meetings.
463-18-060	Procedure in the absence of the chairman.
463-18-070	Council duties of temporary chairman.
463-18-080	County representative—Participation.

WAC 463-18-010 Purpose of this chapter. This chapter delineates procedures to be followed in the conduct of council business at regular and special meetings. [Order 105, § 463-18-010, filed 11/4/76.]

WAC 463-18-020 Governing procedure. Council business at regular and special meetings is conducted according to Roberts Rules of Order except as suspended by majority vote. To the extent that any contested case proceeding is dealt with at regular or special meeting of the Council, it is to be governed by the procedures set forth in chapters 463-30 WAC and 463-38 WAC. [Order 105, § 463-18-020, filed 11/4/76.]

WAC 463-18-030 Quorum. A majority of the voting council members constitutes a quorum for the conduct of council business. [Order 105, § 463-18-030, filed 11/4/76.]

WAC 463-18-040 Delegation of duties. The chairman or any member of the Council may perform such duties as are specifically authorized and directed by the Council. [Order 105, § 463-18-040, filed 11/4/76.]

WAC 463-18-050 Special meetings. A special meeting may be called at any time by the chairman or by a majority of the members of the Council by delivering personally or by mail written notice to each member; and to each local newspaper of general circulation and to each local radio or television station which has on file a written request to be notified of such special meetings

of or all special meetings. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the executive secretary a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. [Order 105, § 463-18-050, filed 11/4/76.]

WAC 463-18-060 Procedure in the absence of the chairman. In the event that the chairman is absent from any regular or special meeting, the executive secretary to the Council is to commence the meeting for the purpose of selecting a temporary chairman from among those Council members present. [Order 105, § 463-18-060, filed 11/4/76.]

WAC 463-18-070 Council duties of temporary chairman. Any Council member selected as temporary chairman shall remain entitled to vote on any proposed Council action and shall continue to fulfill his responsibilities to the agency which he represents. [Order 105, § 463-18-070, filed 11/4/76.]

WAC 463-18-080 County representative—Participation. To the extent that Council actions deal with site certification matters relating to specific counties in which an energy facility is sought to be located, they shall be separated and divided to allow individual county representatives to participate in discussion and vote only with regard to matters specifically affecting the concerned county. [Order 105, § 463-18-080, filed 11/4/76.]

Chapter 463-22 WAC PROCEDURE AND GUIDELINES—POTENTIAL SITE STUDIES

WAC

463-22-010	Purpose of this chapter.
463-22-020	Potential site study—Where submitted.
463-22-030	Potential site study—Fee.
463-22-040	Potential site study—Contents.
463-22-050	Retention of consultant.
463-22-060	Notification of local authorities.
463-22-070	Independent consultant study—No preliminary approval.
463-22-080	Procedure where application precedes conclusion of study.
463-22-090	Additional costs procedure.

WAC 463-22-010 Purpose of this chapter. This chapter sets forth procedure and guidelines for processing potential sites studies pursuant to RCW 80.50.170 and RCW 80.50.175. [Order 106, § 463-22-010, filed 11/4/76.]

WAC 463-22-020 Potential site study—Where submitted. Requests shall be submitted to the Energy Facility Site Evaluation Council at the Council office in writing. [Order 106, § 463-22-020, filed 11/4/76.]

WAC 463-22-030 Potential site study—Fee. A fee of \$10,000 shall accompany the study request and shall be a condition precedent to any action by the Council. Payment shall be made by a cashier's check payable to the state treasurer. [Order 106, § 463-22-030, filed 11/4/76.]

WAC 463-22-040 Potential site study—Contents. A request for potential site study is to include a legal description of the proposed site, a general description of the area in which the proposed energy facility is to be located, and a description of the type, size, and significant features of the proposed facility itself. The Council may require further information which it deems necessary to complete the request. [Order 106, § 463-22-040, filed 11/4/76.]

WAC 463-22-050 Retention of consultant. Upon determining that the request is complete, the Council will commission an independent consultant of its choice to study and report in writing to the Council on the potential site. The report of study will set forth analysis of the potential environmental impact of the proposed energy facility and will identify significant areas of environmental concern. The study may also encompass whatever other matters the Council and potential applicant deem essential for an adequate appraisal of the potential site. [Order 106, § 463-22-050, filed 11/4/76.]

WAC 463-22-060 Notification of local authorities. Upon receipt of a request for study of a potential site, the Council will give notice to the county legislative authority in each county which would be directly affected by location of the proposed energy facility at the potential site. [Order 106, § 463-22-060, filed 11/4/76.]

WAC 463-22-070 Independent consultant study—No preliminary approval. Nothing stated or recommended by the consultant, either during the study stage or in its report, shall be interpreted as preliminary approval or disapproval of the potential site by the Council. [Order 106, § 463-22-070, filed 11/4/76.]

WAC 463-22-080 Procedure where application precedes conclusion of study. In the event an application for certification is made prior to completion of the study, the Council may terminate the study prior to completion. [Order 106, § 463-22-080, filed 11/4/76.]

WAC 463-22-090 Additional costs procedure. In the event that the Council determines that the initial fee

of \$10,000 is insufficient to adequately fund the potential site study, the Council shall so advise the potential applicant and shall furnish an estimate of the supplemental fees needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof. [Order 106, § 463-22-090, filed 11/4/76.]

Chapter 463-26 WAC

PROCEDURE--INITIAL PUBLIC HEARING (NONCONTESTED)

WAC

463-26-010	Purpose of this chapter.
463-26-020	Notification of county legislative and port district authorities.
463-26-030	News releases.
463-26-040	Adversary nature of hearings.
463-26-050	Primary purpose for hearing.
463-26-060	Public announcement—Testimony.
463-26-070	Introduction of Counsel for the Environment.
463-26-080	Explanation of entire certification process.
463-26-090	Procedure where certificates affirming compliance with zoning ordinances or land use plans are presented.
463-26-100	Procedure where no certificates relating to zoning ordinances or land use plans are presented.
463-26-110	Determination regarding zoning or land use.
463-26-120	Initial determination subject to review.
463-26-130	Public information meeting.

WAC 463-26-010 Purpose of this chapter. This chapter sets forth the procedures to be followed in the conduct of the initial public hearing held pursuant to RCW 80.50.090(1) and the public informational meeting described in WAC 463-26-130. [Order 109, § 463-26-010, filed 11/16/76.]

WAC 463-26-020 Notification of county legislative and port district authorities. Before scheduling the initial public hearing, the Council will notify the legislative and port district authorities in each concerned county so that the county and port district representatives may be identified pursuant to RCW 80.50.030(4) and (5). [Order 109, § 463-26-020, filed 11/16/76.]

WAC 463-26-030 News releases. It shall be the responsibility of the executive secretary to furnish appropriate news releases to local media outlets at least 10 days in advance of the initial public hearing and informational meetings conducted pursuant to this chapter. [Order 109, § 463-26-030, filed 11/16/76.]

WAC 463-26-040 Adversary nature of hearings. The initial public hearing conducted pursuant to this chapter shall be conducted as adversary proceeding. [Order 109, § 463-26-040, filed 11/16/76.]

WAC 463-26-050 Primary purpose for hearing. At the commencement of the initial public hearing, the Council shall explain that the primary statutory purpose of the initial hearing under RCW 80.50.090(1) is to determine whether the proposed facility is consistent and in compliance with county or regional land use plans or

zoning ordinances and that this matter shall have priority. [Order 109, § 463-26-050, filed 11/16/76.]

WAC 463-26-060 Public announcement—Testimony. At the outset of the initial public hearing, the Council shall publicly announce that opportunity for testimony by anyone shall be allowed relative to the consistency and compliance with county or regional land use plans or zoning ordinances. [Order 109, § 463-26-060, filed 11/16/76.]

WAC 463-26-070 Introduction of Counsel for the Environment. The Council shall invite the Counsel for the Environment to be present at the initial public hearing. Counsel for the Environment shall be introduced and afforded an opportunity to explain his or her statutory duties under chapter 80.50 RCW. [Order 109, § 463-26-070, filed 11/16/76.]

WAC 463-26-080 Explanation of entire certification process. At the commencement of the hearing, the Council shall generally explain the entire hearing process as set forth in RCW 89.50.090 and these regulations. [Order 109, § 463-26-080, filed 11/16/76.]

WAC 463-26-090 Procedure where certificates affirming compliance with zoning ordinances or land use plans are presented. This rule contemplates that applicants will enter as exhibits, at the hearing, certificates from local authorities attesting to the fact that the proposal is consistent and in compliance with county or regional land use plans or zoning ordinances. In cases where this is done, such certificates will be regarded as *prima facie* proof of consistency and compliance with such zoning ordinances or land use plans absent contrary demonstration by anyone present at the hearing. [Order 109, § 463-26-090, filed 11/16/76.]

WAC 463-26-100 Procedure where no certificates relating to zoning ordinances or land use plans are presented. In cases where no certificates relating to zoning or land use are presented to the Council, then the applicant will be required to demonstrate compliance with local zoning or land use plans as part of its presentation. Local authorities shall then be requested to testify on the question of consistency and compliance with county or regional land use plans or zoning ordinances. [Order 109, § 463-26-100, filed 11/16/76.]

WAC 463-26-110 Determination regarding zoning or land use. Prior to the conclusion of the hearing, the Council shall make a determination as to whether the proposed site is consistent and in compliance with land use plans or zoning ordinances pursuant to RCW 80.50.090(2). [Order 109, § 463-26-110, filed 11/16/76.]

WAC 463-26-120 Initial determination subject to review. At the time that the determination on zoning or land use planning is made, the Council shall explain that this determination may be reopened later during the course of a contested case hearing by the parties to that

proceeding when good cause is shown. [Order 109, § 463-26-120, filed 11/16/76.]

WAC 463-26-130 Public information meeting. The Council shall conduct at least one public information meeting concerning each application. At this meeting, the Council will present the general procedure to be followed in processing the application including a tentative sequence of Council actions, the rights and methods of participation by local government in the process, and the means and opportunities for the general public to participate.

The applicant shall make [make] a presentation of the proposed project utilizing appropriate exhibits. The presentation shall include: a general description of the project and the proposed site; reasons why the proposed site or location was selected; and a summary of anticipated environmental, social, and economic impacts.

The general public will be afforded an opportunity to present written or oral comments relating to the proposed project. The comments will not be part of the contested case record.

The informational meeting will be held in the general proximity of the proposed project. Whenever feasible it will be held in conjunction with the land use or zoning hearing as a separate and independent order of business. [Order 109, § 463-26-130, filed 11/16/76.]

Chapter 463-30 WAC

PROCEDURE—CONTESTED CASE HEARINGS

WAC

463-30-010	Purpose and scope of this chapter.
463-30-020	Hearing examiners and panels.
463-30-030	Use of the term "Council."
463-30-040	Hearing examiner designation.
463-30-050	Status of agencies and agency members in contested cases.
463-30-060	Definitions—Persons and parties.
463-30-070	Pleadings—Legibility.
463-30-080	Commencement of contested case proceedings.
463-30-090	Publicity—Commencement of contested case proceedings.
463-30-100	Appearance and practice before the Council.
463-30-110	Notice and opportunity to be heard—Time.
463-30-120	Service—By whom served.
463-30-130	Service—Upon whom served.
463-30-140	Waiver of service—Filing.
463-30-150	Service—Method of service.
463-30-160	Service—When service complete.
463-30-170	Proof of service—Filing with Council.
463-30-180	Proof of service—Method.
463-30-190	Limited discovery practice.
463-30-200	Subpoenas—Practice.
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463-30-220	Request for production.
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463-30-240	Official notice—Material facts.
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463-30-260	Definition of issues before hearing.
463-30-270	Prehearing conferences prior to hearing.
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463-30-330	Proposed order—Exceptions.

463-30-340	Proposed order—Contents of exceptions.
463-30-350	Replies to exceptions.
463-30-360	Replies to exceptions—Contents.
463-30-370	Exceptions and replies to exceptions—Briefs and arguments.
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463-30-390	Recommendation—Transmittal to governor.
463-30-400	Intervention.
463-30-410	Participation by intervenor.
463-30-420	Participation by county representatives.

WAC 463-30-010 Purpose and scope of this chapter. The purpose of this chapter is to set forth procedures by which contested case hearings are to be conducted before the Council. Except as indicated herein, the Uniform Procedural Rules set forth in chapter 1-08 WAC shall not apply to contested case hearings before the Council. [Order 109, § 463-30-010, filed 11/16/76.]

WAC 463-30-020 Hearing examiners and panels. The Council may appoint a single hearing examiner or multimember panel of Council members to conduct contested case hearings. Panels may consist of Council members or hearing examiners or both. This shall not preclude the full participation of any other Council member. [Order 109, § 463-30-020, filed 11/16/76.]

WAC 463-30-030 Use of the term "Council." The term "Council," for purpose of this chapter, shall mean the Council, hearing panel, or hearing examiner, whichever is appropriate in context. [Order 109, § 463-30-030, filed 11/16/76.]

WAC 463-30-040 Hearing examiner designation. An attorney appointed to fulfill the function of hearing examiner under these rules shall be designated "Administrative Law Judge." [Order 109, § 463-30-040, filed 11/16/76.]

WAC 463-30-050 Status of agencies and agency members in contested cases. All state agencies having members on the Council are deemed to be parties to any contested case before the Council. For purpose of any contested case hearing, however, the agency representative on the Council shall be deemed to be a member of the Council and not a member of the agency. It shall be proper for the agency representative on the Council to maintain liaison with the represented agency, excepting those agency employees actively involved in the contested case proceedings. [Order 109, § 463-30-050, filed 11/16/76.]

WAC 463-30-060 Definitions—Persons and parties. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

(1) The "Applicant" as defined in RCW 80.50.020(1).

(2) Each "Member Agency" as defined in RCW 80.50.020(16).

(3) The "Counsel for the Environment" as defined in RCW 80.50.020(13).

(4) Each person admitted to a contested case proceeding as an "Intervenor," provided that the Council order granting intervention specifically provides that such person shall be a party to the proceeding, and provided further that such person shall be a party only for such purposes and subject to such limitations and conditions as may be specified in the Council order granting intervention. [Order 109, § 463-30-060, filed 11/16/76.]

WAC 463-30-070 Pleadings—Legibility. All pleadings shall be typewritten, mimeographed, or printed except for good cause shown. [Order 109, § 463-30-070, filed 11/16/76.]

WAC 463-30-080 Commencement of contested case proceedings. Contested case proceedings pursuant to RCW 80.50.090(3) shall be commenced on receipt of the application. [Order 109, § 463-30-080, filed 11/16/76.]

WAC 463-30-090 Publicity—Commencement of contested case proceedings. Upon the filing of an application for certification, the Council shall prepare an appropriate statement for dissemination to the news media which shall: (1) describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed site to be certified and that advance written notice within a reasonable time shall be required of persons who desire to argue orally. [Order 109, § 463-30-090, filed 11/16/76.]

WAC 463-30-100 Appearance and practice before the Council. In determining who shall be entitled to appear and practice before the Council, the Council will be guided by the provisions of WAC 1-08-040 through WAC 1-08-060. [Order 109, § 463-30-100, filed 11/16/76.]

WAC 463-30-110 Notice and opportunity to be heard—Time. In all cases where a hearing is requested by a party or directed by the Council, parties shall be served with notice within the time required by any governing statute. In the absence of a statutory requirement, then notice shall be given not less than 20 days prior to the date set for hearing. The notice shall state the time, place, and issues involved. These notice provisions may be waived by the Council for good cause shown after assurance that waiver would not substantially affect the rights of any other party. [Order 109, § 463-30-110, filed 11/16/76.]

WAC 463-30-120 Service—By whom served. The Council shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it. [Order 109, § 463-30-120, filed 11/16/76.]

WAC 463-30-130 Service—Upon whom served. All papers served in connection with an application shall

be served upon all members of the Council and upon parties, their counsel of record, or upon agents designated to receive service, subject to the exceptions set forth in the following section. [Order 109, § 463-30-130, filed 11/16/76.]

WAC 463-30-140 Waiver of service—Filing. Any party may file a waiver of service with the Council in any contested case proceeding. In the event of such filing, there shall be no further requirement to effect service upon such party. It is the intent and purpose of this section to enable parties to effect a sizable reduction in required service upon parties who are and wish to remain inactive in the contested case proceeding. [Order 109, § 463-30-140, filed 11/16/76.]

WAC 463-30-150 Service—Method of service. Service of papers may be made personally or by first-class, registered or certified mail, or by telegraph. [Order 109, § 463-30-150, filed 11/16/76.]

WAC 463-30-160 Service—When service complete. Service by mail shall be deemed complete upon deposit in the U.S. Mail, properly stamped and addressed. Service by telegraph shall be deemed complete when deposited with a telegraph company, properly addressed with charges prepaid. [Order 109, § 463-30-160, filed 11/16/76.]

WAC 463-30-170 Proof of service—Filing with council. Papers required to [be] filed with the Council shall be deemed filed upon actual receipt by the Council at its office accompanied by proof of service upon parties required to be served. [Order 109, § 463-30-170, filed 11/16/76.]

WAC 463-30-180 Proof of service—Method. Proof of service should be made in the same manner as in the Superior Court of the State of Washington. [Order 109, § 463-30-180, filed 11/16/76.]

WAC 463-30-190 Limited discovery practice. Formal discovery devices in contested case proceedings shall consist of subpoenas, depositions, interrogatories, and requests for production. [Order 109, § 463-30-190, filed 11/16/76.]

WAC 463-30-200 Subpoenas—Practice. The Council practice regarding subpoenas shall substantially conform to the provisions of WAC 1-08-150 through WAC 1-08-220. [Order 109, § 463-30-200, filed 11/16/76.]

WAC 463-30-210 Depositions and interrogatories—Practice. Council practice regarding depositions and interrogatories shall be governed by the provisions of WAC 1-08-230 through WAC 1-08-360. [Order 109, § 463-30-210, filed 11/16/76.]

WAC 463-30-220 Request for production. Any party may request of any other party the production of original records, documents or other written material, or copies thereof, wherever the request materials are not

reasonably available to the requesting party through other sources. Where the cost to produce becomes significant the Council may, upon motion, determine which party shall bear the burden of cost. The scope of requests for production shall be limited to the matters specified in WAC 1-08-240 and protection shall be afforded comparable to that available under WAC 1-08-270. [Order 109, § 463-30-220, filed 11/16/76.]

WAC 463-30-230 Official notice—Matters of law. Upon written or oral motion, the Council may officially notice any matter of law. The Council will be guided by WAC 1-08-370. [Order 109, § 463-30-230, filed 11/16/76.]

WAC 463-30-240 Official notice—Material facts. Upon written or oral motion, the Council may officially notice relevant facts in the absence of controverting evidence. In implementing this rule, the Council will be guided by WAC 1-08-380. [Order 109, § 463-30-240, filed 11/16/76.]

WAC 463-30-250 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party. Any party bound by a stipulation or admission of record may withdraw the same by showing that it was made inadvertently or under a bona fide mistake of fact and that withdrawal will not unjustly prejudice the rights of other parties to the proceeding. [Order 109, § 463-30-250, filed 11/16/76.]

WAC 463-30-260 Definition of issues before hearing. In all contested case proceedings the issues to be decided shall be made as precise as possible so that the Council may promptly conduct the hearing on relevant and material matter only. It is the intent and purpose of this section to foster agreement by the parties to the issue to be decided. In the event of failure of the parties to agree to definition and refinement of the issues for hearing, the Council may require submission of statements and briefs by the parties defining the principal issues. In such event, the Council shall define the issues for hearing and may limit the scope of hearing to those predetermined issues. [Order 109, § 463-30-260, filed 11/16/76.]

WAC 463-30-270 Prehearing conferences prior to hearing. On its own motion or at the request of a party the Council may direct the parties to appear at a specified time and place for prehearing conferences regarding any scheduled hearing. Primary emphasis shall be on the simplification of issues prior to hearing. In the discretion of the Council, the following matters may also be taken up:

- (1) The necessity of amendments to the pleadings;
- (2) The possibility of obtaining stipulations, admissions of facts, or documents;
- (3) The limitation of the number of expert witnesses;

(4) Other matters which may aid in disposition of the proceeding, including scheduling of the hearing and determination of sequence of the subject matter. [Order 109, § 463-30-270, filed 11/16/76.]

WAC 463-30-280 Attendance by Council members at prehearing conferences. Individual Council members may be present but not participate in prehearing conferences. [Order 109, § 463-30-280, filed 11/16/76.]

WAC 463-30-290 Prehearing conference record of action. The Council shall make an order reciting actions taken during any informal consultation. As appropriate, the order shall also recite amendments to pleadings or stipulations. The order shall control the subsequent course of the proceedings unless modified by subsequent Council action. [Order 109, § 463-30-290, filed 11/16/76.]

WAC 463-30-300 Hearing schedule guidelines. In any contested case proceeding on certification the Council shall, after consultation with the parties schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

- (1) The description of the particular energy facility and the proposed site.
- (2) Consistency of the proposal with zoning and land use regulations.
- (3) Physical site suitability and related safety considerations.
- (4) NPDES permit or permits.
- (5) On-site and local impacts (physical): such as aquatic, terrestrial and atmospheric.
- (6) On-site and local impacts (societal): such as housing, services, recreation, economics, transportation, health, and tax base.
- (7) Peripheral area impacts (all categories).
- (8) Adverse impacts minimization and consideration of conditions of certification.

The Council may alter the sequence in which the foregoing matters are to be considered in any given case. At the commencement of the contested case hearing, the Council shall publicly announce the proposed schedule by which the hearing is to be conducted. It is the intent and purpose of this section to accomplish two equally important objectives. First, interested persons may avail themselves of the opportunity to attend and hear only those segments of the whole hearing process which are of keen personal interest. Second, applicants and other parties may determine the specific nature of Council concern regarding critical issues without the necessity of proceeding through the entire hearing process. [Order 109, § 463-30-300, filed 11/16/76.]

WAC 463-30-310 Rules of evidence. In ruling upon evidentiary matters, the Council shall be guided by the provisions of WAC 1-08-450 through WAC 1-08-530. [Order 109, § 463-30-310, filed 11/16/76.]

WAC 463-30-320 Proposed Council order or recommendation. In any case where a contested case proceeding is conducted before a hearing panel or a hearing examiner, there shall be prepared a proposed Council order, supported by written findings of fact and conclusions of law, copies of which shall be served upon all parties. The proposed order, findings and conclusions shall be transmitted to the Council. In a site certification proceeding, the proposed Council order shall be designated a Proposed Council Recommendation and shall be styled accordingly. [Order 109, § 463-30-320, filed 11/16/76.]

WAC 463-30-330 Proposed order—Exceptions. Any party of record may file exceptions to a proposed Council order. Exceptions must be filed with the Council and one copy must be served upon all parties of record within 10 days of the date of service of the proposed Council order. [Order 109, § 463-30-330, filed 11/16/76.]

WAC 463-30-340 Proposed order—Contents of exceptions. Exceptions to proposed Council orders shall be specific and shall be stated and numbered separately. Exceptions to findings of fact must be supported by reference to the portion of the record or the evidence relied upon and shall be accompanied by a recommended findings of fact. Exceptions to conclusions of law must be supported by specific reference to the appropriate legal authority and accompanied by a suggested corrected conclusion of law. When exceptions are taken to statements in the proposed Council order itself, there shall be included a full written justification for such exceptions. [Order 109, § 463-30-340, filed 11/16/76.]

WAC 463-30-350 Replies to exceptions. Any party of record may file replies to exceptions with the Council. One copy shall be served on all parties within 10 days of the date of service of the exception. [Order 109, § 463-30-350, filed 11/16/76.]

WAC 463-30-360 Replies to exceptions—Contents. Replies to exceptions shall be specific, shall be stated and numbered separately and shall be supported by reference to that page or part of the record or evidence or legal authority relied upon to support the reply. [Order 109, § 463-30-360, filed 11/16/76.]

WAC 463-30-370 Exceptions and replies to exceptions—Briefs and arguments. Briefs or written arguments shall accompany exceptions and replies to exceptions. The Council may, by order, direct oral argument on exceptions at a time and place to be designated by it. [Order 109, § 463-30-370, filed 11/16/76.]

WAC 463-30-380 Adoption of proposed order. After fully considering all objections to the proposed Council order, the Council may approve it in its proposed form or modify it as appropriate. [Order 109, § 463-30-380, filed 11/16/76.]

WAC 463-30-390 Recommendation—Transmittal to governor. Upon the adoption by the Council of

its recommendations as to the approval or disapproval of an application for certification, the Council shall forward such recommendations to the governor. [Order 109, § 463-30-390, filed 11/16/76.]

WAC 463-30-400 Intervention. On timely application in writing to the Council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the Council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the Council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. [Order 109, § 463-30-400, filed 11/16/76.]

WAC 463-30-410 Participation by intervenor. In general, it is the policy of the Council to allow any intervenor broad procedural latitude. To the extent that the Council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and Counsel for the Environment to allowing the Counsel for the Environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the Counsel for the Environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The Council reserves the right to prescribe other limitations and conditions, where appropriate. It is the intent and purpose of this section to prevent unwarranted proliferation of issues leading, in turn, to delay and prejudice to existing parties. [Order 109, § 463-30-410, filed 11/16/76.]

WAC 463-30-420 Participation by county representatives. The Council shall divide and segregate matters in any contested case in a manner which will enable county representatives to participate only in those decisions relating to matters directly affecting the county represented. [Order 109, § 463-30-420, filed 11/16/76.]

Chapter 463-34 WAC

PROCEDURE—RULE-MAKING AND DECLARATORY RULINGS

WAC

463-34-010	Purpose and scope of this chapter.
463-34-020	Scope of petitions for rule-making.
463-34-030	Petitions for rule-making—Contents.
463-34-040	Rule-making petitions—Request for specific time.
463-34-050	Consideration of petition—Further hearing.
463-34-060	Disposition time.
463-34-070	Petitions for declaratory rulings—Possible disposition.

463-34-080	Oral hearing.
463-34-090	Declaratory ruling—Contents.
463-34-100	Form of petitions.

WAC 463-34-010 Purpose and scope of this chapter. This chapter sets forth procedures to be followed in rule-making proceedings before the Council and further specifies the manner in which declaratory rulings may be sought pursuant to chapter 34.04 RCW. [Order 107, § 463-34-010, filed 11/4/76.]

WAC 463-34-020 Scope of petitions for rule-making. Any interested person may petition the Council for the promulgation, amendment, or repeal of any rule. [Order 107, § 463-34-020, filed 11/4/76.]

WAC 463-34-030 Petitions for rule-making—Contents. Where the petition requests amendment to or promulgation of a rule, the amended or proposed rule must be set out in full. The petition must also include the reasons for the request. Where the petition requests repeal of an existing and identified rule, the reasons for the proposed repeal must be set out in the petition. [Order 107, § 463-34-030, filed 11/4/76.]

WAC 463-34-040 Rule-making petitions—Request for specific time. Rule-making petitions are to [be] filed at the Council office in time to allow review prior to Council action. The person submitting the petition should also submit a written request for Council consideration of the petition at a specified regular or special meeting. [Order 107, § 463-34-040, filed 11/4/76.]

WAC 463-34-050 Consideration of petition—Further hearing. All petitions shall be considered by the Council, which may order a hearing for the further consideration and discussion of the requested promulgation, amendment, or repeal of the rule. [Order 107, § 463-34-050, filed 11/4/76.]

WAC 463-34-060 Disposition time. The Council shall notify the petitioning party within 30 days of the disposition, if any, of the petition. [Order 107, § 463-34-060, filed 11/4/76.]

WAC 463-34-070 Petitions for declaratory rulings—Possible disposition. Any interested person may petition the Council for a declaratory ruling. The Council shall consider the petition and, within a reasonable time:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for oral hearing or submission of written evidence upon the matter. [Order 107, § 463-34-070, filed 11/4/76.]

WAC 463-34-080 Oral hearing. If an oral hearing is conducted on a petition for declaratory ruling, the Council shall, within a reasonable time thereafter:

- (1) Issue a binding declaratory ruling; or
- (2) Issue a nonbinding declaratory ruling; or

(3) Notify the person that no declaratory ruling is to be issued. [Order 107, § 463-34-080, filed 11/4/76.]

WAC 463-34-090 Declaratory ruling—Contents. Any person petitioning for declaratory ruling shall state all legal rules or statutes which may bear upon the petition and shall also state all facts relied upon. If a binding declaratory ruling is sought, then the petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior court of this state. [Order 107, § 463-34-090, filed 11/4/76.]

WAC 463-34-100 Form of petitions. Petitions contemplated by the provisions of this chapter may be in any legible form so long as they are adequately identified as such and contain the requisite contents. The name, address, and telephone number of the petitioning person are to be set forth in the petition. [Order 107, § 463-34-100, filed 11/4/76.]

Chapter 463-38 WAC REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

WAC

463-38-010	Definitions.
463-38-020	Scope and purpose.
463-38-030	NPDES application and tentative determination.
463-38-031	Application filing with the council.
463-38-032	Signature form.
463-38-033	Tentative determination on NPDES Permits.
463-38-034	Fact sheets.
463-38-040	Notice, hearings and information accessibility.
463-38-041	Notice, provisions.
463-38-042	Public hearings.
463-38-043	Public access to information.
463-38-050	NPDES Permit contents.
463-38-051	General conditions.
463-38-052	Prohibited discharges.
463-38-053	Effluent limitations, water quality standards and other requirements for NPDES Permits.
463-38-054	Schedules of compliance.
463-38-055	Other terms and conditions.
463-38-060	NPDES Permits review and appeal.
463-38-061	Reissuance of NPDES Permits.
463-38-062	Modification of NPDES Permit.
463-38-063	Appeal.
463-38-064	Transmission to regional administrator of proposed NPDES Permit.
463-38-065	Monitoring and enforcement.
463-38-080	Transmittal of data to regional administrator.
463-38-090	Conflict of interest.

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

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

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

(3) The term "applicable effluent standards and limitations" means all State of Washington and Federal effluent standards and limitations to which a discharge is

subject under the Act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will

not result in the degradation of ground or surface water resources.

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

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

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

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

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

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

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

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

(ii) at appropriate frequencies and locations.

(m) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants. [Order 114, § 463-38-010, filed 2/4/77. Formerly WAC 463-16-020.]

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

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

(3) These regulations apply to:

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

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

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 155, Laws of 1973, and the act. [Order 114, § 463-38-020, filed 2/4/77. Formerly WAC 463-16-020.]

WAC 463-38-030 NPDES application and tentative determination.

WAC 463-38-031 Application filing with the council. (1) For each energy facility described in WAC 463-38-020(3), there shall be filed with the Council:

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

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

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

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

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

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

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

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

(4) The Council shall not consider any NPDES Application for a energy facility included within WAC 463-38-020(3)(b) until and unless an application for

certification is filed with the Council pursuant to RCW 80.50.070.

(5) Each NPDES Application will be submitted on such form as specified by the Council. [Order 114, § 463-38-031, filed 2/4/77. Formerly WAC 463-16-031.]

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

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

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

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

(4) In the case of a municipal corporation, state or other public organization, by either a principal executive officer, the ranking elected official or a duly authorized employee. [Order 114, § 463-38-032, filed 2/4/77. Formerly WAC 463-16-032.]

WAC 463-38-033 Tentative determination on NPDES Permits. (1) The Council shall formulate and prepare tentative determinations with respect to an NPDES Application in advance of public notice as to the proposed issuance or denial of the NPDES Permit. Such tentative determination shall be made no later than six (6) months after receipt of a complete NPDES Application, or such later time as determined by the Council. Such tentative determination shall include at least the following:

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

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

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

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

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

(2) The Council shall organize the tentative determination prepared pursuant to paragraph 1 of this section into a draft NPDES Permit. [Order 114, § 463-38-033, filed 2/4/77. Formerly WAC 463-16-033.]

WAC 463-38-034 Fact sheets. (1) For every discharge in excess of 500,000 gallons on any one day of the year, the Council shall prepare and include in any public notice given pursuant to WAC 463-38-041 a fact

sheet with respect to the Refuse Act or NPDES Application described in the public notice. Such fact sheet shall include at least the following:

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

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

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

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

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

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

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

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

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

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

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

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to each person or group on such mailing list. [Order 114, § 463-38-034, filed 2/4/77. Formerly WAC 463-16-034.]

WAC 463-38-040 Notice, hearings and information accessibility.

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

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

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

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

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

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

(b) Name and address of applicant;

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

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

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

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

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

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

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

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

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

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

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

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

(b) DOE; and

(c) appropriate public health agencies, including those represented on the Council. [Order 114, § 463-38-041, filed 2/4/77. Formerly WAC 463-16-041.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The purpose of the hearing;

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

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

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed. [Order 114, § 463-38-042, filed 2/4/77. Formerly WAC 463-16-042.]

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

(2) Any information (other than effluent data) received by the Council and contained in any NPDES Forms, or other records, reports or plans shall be protected as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES Form, the Council shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the Office of General Counsel stating the reasons for his disagreement with the determination of the Council. The Regional Administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determination, he shall consider any additional information submitted to the Office of the General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets he shall so advise the Regional

Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No later than 30 days following the mailing of such notice, the Regional Administrator shall communicate to the Council his decision not to concur in the withholding of such information and the Council and the Regional Administrator shall then make available to the public upon request that information determined not to constitute trade secrets.

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

(4) The Council shall provide facilities for the inspection of information relating to NPDES Forms during normal business hours of the Council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with Council business. The Executive Secretary shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the Council. [Order 114, § 463-38-043, filed 2/4/77. Formerly WAC 463-16-043.]

WAC 463-38-050 NPDES Permit contents. The terms, conditions and content of any NPDES Permit issued by the Council shall be in accordance with the following subsections. [Order 114, § 463-38-050, filed 2/4/77. Formerly WAC 463-16-050.]

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

(2) The decision to approve or reject, and on what conditions an NPDES Permit shall be issued, shall be in conformance with the requirements of this section. A majority vote of Council members listed in RCW 80.58.030(3) shall resolve any dispute and shall determine the approval or rejection of a Refuse Act or NPDES Application. [Order 114, § 463-38-051, filed 2/4/77. Formerly WAC 463-16-051.]

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

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

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

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

(c) Discharge any pollutant to which the Regional Administrator has objected in writing pursuant to any

right to object provided the Administrator in section 402(d) of the Act;

(d) Discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the Act. [Order 114, § 463-38-052, filed 2/4/77. Formerly WAC 463-16-052.]

WAC 463-38-053 Effluent limitations, water quality standards and other requirements for NPDES Permits.

(1) Any NPDES Permit issued by the Council shall apply and insure compliance with all of the following, whenever applicable:

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

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

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

(d) Any more stringent limitation, including those:

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

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

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

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

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

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

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

are such that other measures are appropriate. [Order 114, § 463-38-053, filed 2/4/77. Formerly WAC 463-16-053.]

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

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

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

(i) applicable effluent standards and limitations;

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

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

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

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

(3) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the Council with written notice of the permittee's compliance or noncompliance with the interim or final requirement. [Order 114, § 463-38-054, filed 2/4/77. Formerly WAC 463-16-054.]

WAC 463-38-055 Other terms and conditions. In addition to the requirements of WAC 463-38-051, 463-38-052 and 463-38-053, each issued NPDES Permit shall require that:

(1) All discharges authorized by the NPDES Permit shall be consistent with the terms and conditions of the Permit; any facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants must be reported to the Council by submission of a new NPDES Application or

supplement thereto or, if such discharge does not violate effluent limitations specified in the NPDES Permit, by submission to the Council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES Permit shall constitute a violation of the terms and conditions of the NPDES Permit;

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

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

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

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

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

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

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

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

(d) To sample any discharge of pollutants.

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

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES Permit, the Council shall revise or modify the NPDES Permit in accordance with the toxic effluent standard of prohibition and so notify the permittee. [Order 114, § 463-38-055, filed 2/4/77. Formerly WAC 463-16-055.]

WAC 463-38-060 NPDES Permits review and appeal. This section governs the procedures for reissuance, modification, suspension and revocation of NPDES Permits. In addition, the appeal procedure for an applicant or permittee is set out. [Order 114, § 463-38-060, filed 2/4/77. Formerly WAC 463-16-060.]

WAC 463-38-061 Reissuance of NPDES Permits.

(1) Any permittee shall make application for reissuance of NPDES Permits or continuation of discharges after the expiration date of his NPDES Permit by filing with the Council an application for reissuance of his permit at least 180 days prior to its expiration. The filing requirement for reissuance shall be satisfied in the first instance

by a simply written request for reissuance by the permittee to the Council, except that the Council in its discretion may require any and/or all permittees to request a reissuance by submitting to the Council all then applicable NPDES Forms.

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

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

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

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

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

(4) Notwithstanding any other provision any point source of a discharge having a thermal component the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance with respect to the thermal component of its discharge during a ten (10) year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first. [Order 114, § 463-38-061, filed 2/4/77. Formerly WAC 463-16-061.]

WAC 463-38-062 Modification of NPDES Permit.

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

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

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

38-042 and WAC 463-38-043. [Order 114, § 463-38-062, filed 2/4/77. Formerly WAC 463-16-062.]

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

(2) No appeal shall be taken under paragraph 1 until such time as the Council makes its recommendations to the Governor pursuant to RCW 80.50.100(2). [Order 114, § 463-38-063, filed 2/4/77. Formerly WAC 463-16-063.]

WAC 463-38-064 Transmission to regional administrator of proposed NPDES Permit. (1) Each proposed NPDES Permit will be transmitted to the Regional Administrator in accordance with the following procedures:

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

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

(2) A copy of every issued NPDES Permit immediately following execution by the applicant and the state, along with any and all terms, conditions, requirements or documents which are a part of such NPDES Permit or which will affect the authorization of the discharge of pollutants will be sent to the Regional Administrator. [Order 114, § 463-38-064, filed 2/4/77. Formerly WAC 463-16-064.]

WAC 463-38-065 Monitoring and enforcement. The Council hereby delegates to the DOE the monitoring activities of water discharges under a Certification Agreement which incorporates the NPDES Permit. As a result of said monitoring activities, DOE shall report to the Council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the Council including those in WAC 463-38-055, pursuant to RCW 80.50.150. The Council shall then take or initiate action to enforce the terms of any Certification Agreement and the incorporated NPDES Permit. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If DOE determines that immediate action is needed to enforce the Act or any statute or regulation

derived therefrom, it is delegated the enforcement authority and responsibility to carry out such immediate action as it deems necessary and shall report such actions to the Council. Such action shall remain in effect until confirmed or modified by the Council. [Order 114, § 463-38-065, filed 2/4/77. Formerly WAC 463-16-065.]

WAC 463-38-080 Transmittal of data to regional administrator. (1) Copies of NPDES Forms received by the Council as outlined below shall be transmitted to the Regional Administrator:

(a) Upon receipt by the Council;

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

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

(3) For all minor discharges, the Council may require the operator of such a discharge to submit NPDES Application Forms or such other information as may be requested by the Regional Administrator. [Order 114, § 463-38-080, filed 2/4/77. Formerly WAC 463-16-080.]

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

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

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

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

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

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund

payments or from other diversified investments over which the recipient does not know the identity of the primary source of income. [Order 114, § 463-38-090, filed 2/4/77. Formerly WAC 463-16-090.]

Chapter 463-42 WAC
PROCEDURE—GUIDELINES—
APPLICATIONS FOR SITE CERTIFICATION

WAC

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WAC 463-42-010 Purpose and scope. This chapter sets forth guidelines for preparation of applications for energy facility site certification pursuant to chapter 80-.50 RCW in addition to delineating certain initial-stage procedures. [Order 113, § 463-42-010, filed 2/4/77. Formerly chapter 463-12 WAC.]

WAC 463-42-020 Basic requirement—Full disclosure by applicants. It is recognized that these guidelines can only be comprehensive in a relative sense. Therefore, and in addition to the other guidelines contained herein, the Council adopts the basic guideline that an applicant for site certification must identify in the application all information known to the applicant which has a bearing on site certification. [Order 113, § 463-42-020, filed 2/4/77.]

WAC 463-42-030 Application—Where filed. Applications for site certification shall be filed with the Council at the Council office. [Order 113, § 463-42-030, filed 2/4/77.]

WAC 463-42-040 Application—Form and number of copies. Applications shall be on 8-1/2 by 11" sheets, in loose-leaf form with a hard cover binder. Thirty-five (35) copies of the application shall be supplied to the Council, and two (2) copies to each county, and one (1) copy to each port district in which the site is located at the time that the original is filed. In addition, one (1) copy shall be supplied to each intervenor on admission to the proceedings. Information later submitted shall be by page-for-page substitutions suitable for insertion in the application binder. [Order 113, § 463-42-040, filed 2/4/77.]

WAC 463-42-050 Application—Organization—Index. The contents of the application may be organized in any reasonable and logical manner, including the substitution of an environmental report prepared for the Nuclear Regulatory Commission or other federal agencies provided that it is supplemented as necessary to comply with this chapter. Applicants are encouraged to organize and present information in a manner which avoids repetition and internal cross-referencing. The contents of the application shall be indexed so that specific reference is made to each applicable guideline contained in this title. [Order 113, § 463-42-050, filed 2/4/77.]

WAC 463-42-060 Application—Specific contents and applicability. It is recognized that not all sections of these guidelines apply equally to all proposed energy facilities. If the applicant deems a particular section to be

totally inapplicable the applicant must justify such conclusion in response to said section. The applicant must address all sections of this chapter and must substantially comply with each section, show it does not apply or secure a waiver from the Council. Information submitted by the applicant shall be accompanied by a certification by applicant that all EFSEC application requirements have been reviewed, the data have been prepared by qualified professional personnel, and the application is substantially complete. [Order 113, § 463-42-060, filed 2/4/77.]

WAC 462-42-070 Application—Optional application form and content. The applicant has two options for submitting an application:

(1) The applicant may submit an application initially satisfying WAC 463-42-060 or;

(2) The applicant on agreement to extend the Council review period by 90 days, may complete an initial application form provided by the Council and requiring descriptions of the applicant, the project, the site and an application completion schedule. The completed initial application form together with compliance with WAC 463-42-080 (1), (2), shall be deemed sufficient only for the purpose of the land use and zoning ordinance consistency determination provided for in RCW 80.50.090 (1), (2). Further Council consideration of the proposed site requires compliance with the remainder of this chapter. [Order 113, § 463-42-070, filed 2/4/77.]

WAC 463-42-080 Application—Option (2) procedural schedule. The following schedule shall be followed by an applicant utilizing option (2) of WAC 463-42-070:

(1) Application form filed with fee,

(2) Within 30 days of filing, the applicant shall provide copies of all county or regional land use plans and zoning ordinances pertaining to the site, and comply with WAC 463-42-200,

(3) Within 90 days of filing, the applicant shall comply with WAC 463-42-060

(4) Generally, the commencement of prehearing procedures or conferences will not be scheduled until at least 60 days after the applicant complies with WAC 463-42-060. However, upon a showing that a prehearing conference is needed or would be useful in advance of the scheduled time period, the Council may schedule such conference. [Order 113, § 463-42-080, filed 2/4/77.]

WAC 463-42-090 Application—Designation of agent. The applicant shall designate an agent to receive communications on behalf of the applicant. [Order 113, § 463-42-090, filed 2/4/77.]

WAC 463-42-100 Application—Fee. The statutory fee shall accompany an application and shall be a condition precedent to any action by the Council. Payment shall be by a cashier's check payable to the State Treasurer. [Order 113, § 463-42-100, filed 2/4/77.]

WAC 463-42-110 Content—Graphic material. It is the intent that material submitted pursuant to these guidelines shall be descriptive and shall include illustrative graphics in addition to narration. This requirement shall particularly apply to subject matter that deals with systems, processes, and spacial relationship. The material so submitted shall be prepared in a professional manner and in such form and scale as to be understood by those who may review it. [Order 113, § 463-42-110, filed 2/4/77.]

WAC 463-42-120 Content—Sources of information. The applicant shall disclose sources of all information and data and shall identify all pre-application studies bearing on the site and other sources of information. [Order 113, § 463-42-120, filed 2/4/77.]

WAC 463-42-130 Content—Construction and study schedules. The applicant shall furnish a brief description of all present or projected construction schedules and schedules for environmental studies which are necessary to complete the application. The studies descriptions should outline their scope and indicate projected completion dates. [Order 113, § 463-42-130, filed 2/4/77.]

WAC 463-42-140 Content—Potential for future activities at site. The applicant shall describe the potential for any future additions, expansions, or further activities which might be undertaken by the applicant on or contiguous to the proposed site. [Order 113, § 463-42-140, filed 2/4/77.]

WAC 463-42-150 Content—Analysis of alternatives. The applicant shall provide an analysis of alternatives for site, route, and other major elements of the proposal. [Order 113, § 463-42-150, filed 2/4/77.]

WAC 463-42-160 Content—Safety standards compliance. The applicant shall identify all federal, state, and local health and safety standards which would normally be applicable to a project of this nature and shall describe methods of compliance therewith. [Order 113, § 463-42-160, filed 2/4/77.]

WAC 463-42-170 Content—Description of applicant. The applicant shall provide an appropriate description of the applicant's organization and affiliations for this proposal. [Order 113, § 463-42-170, filed 2/4/77.]

WAC 463-42-180 Content—Site description. The application shall contain a description of the proposed site indicating its location, prominent geographic features, typical geological and climatological characteristics, and other information necessary to provide a general understanding of all sites involved, including county or regional land use plans and zoning ordinances. [Order 113, § 463-42-180, filed 2/4/77.]

WAC 463-42-190 Content—Legal descriptions and ownership interests. The application shall contain a legal description of the site to be certified and shall

identify all nonprivate ownership interests in such land. [Order 113, § 463-42-190, filed 2/4/77.]

WAC 463-42-200 Content—Land use plans and zoning ordinances. As part of the application, the applicant shall furnish copies of adopted land use plans and zoning ordinances, including the latest land use regulation and a survey of present land uses within the following distances of the immediate site area:

(1) In the case of thermal power plants, 25 miles radius;

(2) In the case of petroleum refineries 10 miles radius;

(3) In the case of petroleum or LNG storage areas or underground natural gas storage, 10 miles radius from center of storage area or well heads;

(4) In the case of pipe lines and electrical transmission routes, 1 mile either side of center line. [Order 113, § 463-42-200, filed 2/4/77.]

WAC 463-42-210 Content—Construction on site. The applicant shall describe the characteristics of the construction to occur at the proposed site including the type, size, and cost of the facility; description of major components and such information as will acquaint the Council with the significant features of the proposed project. [Order 113, § 463-42-210, filed 2/4/77.]

WAC 463-42-220 Content—Contour maps. The applicant shall include contour maps showing the original topography and any changes likely to occur as a result of energy facility construction and related activities. Contour maps showing proposed shoreline or channel changes shall also be furnished. [Order 113, § 463-42-220, filed 2/4/77.]

WAC 463-42-230 Content—Access. The applicant shall describe existing roads, railroads, and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. [Order 113, § 463-42-230, filed 2/4/77.]

WAC 463-42-240 Content—Energy transmission systems. The applicant shall describe the routing, conceptual design, and construction schedule of all proposed associated facilities to be constructed. [Order 113, § 463-42-240, filed 2/4/77.]

WAC 463-42-250 Content—Criteria, standards, and factors utilized to develop transmission route. The applicant shall indicate the federal, state, and industry criteria used in the energy transmission route selection and construction factors considered in developing the proposed design and shall indicate how such criteria are satisfied. [Order 113, § 463-42-250, filed 2/4/77.]

WAC 463-42-260 Content—Multipurpose use of transmission routes. The applicant shall indicate consideration of multipurpose utilization of rights of way and describe the measures to be employed to utilize, restore, or rehabilitate disturbed areas. [Order 113, § 463-42-260, filed 2/4/77.]

WAC 463-42-270 Content—Safety where public access allowed. The applicant shall describe the means proposed to insure safe utilization of those areas under applicant's control to which public access will be granted. [Order 113, § 463-42-270, filed 2/4/77.]

WAC 463-42-280 Content—Radiation levels. For facilities which propose to release any radioactive materials, the applicant shall set forth information relating to radioactivity. Such information shall include background radiation levels of appropriate receptor media pertinent to the site. The applicant shall also describe the proposed radioactive waste treatment process, the anticipated release of radionuclides, their expected distribution and retention in the environment, the pathways which may become sources of radiation exposure, and projected resulting radiation doses to human populations. Other sources of radiation which may be associated with the project shall be described in all applications. [Order 113, § 463-42-280, filed 2/4/77.]

WAC 463-42-290 Content—Protection from natural hazards. The applicant shall describe the means employed for protection of the facility from earthquakes, flood, tsunami, storms, avalanche or landslides, and other major natural disruptive occurrences. [Order 113, § 463-42-290, filed 2/4/77.]

WAC 463-42-300 Content—Security concerns. The applicant shall describe the means employed for protection of the facility from sabotage, vandalism and other security threats. [Order 113, § 463-42-300, filed 2/4/77.]

WAC 463-42-310 Content—Emergency plans. The applicant shall describe emergency plans to assure the public safety and environmental protection on and off the site in the event of a natural disaster or other major incident and further, will identify the specific responsibilities which will be assumed by the applicant. [Order 113, § 463-42-310, filed 2/4/77.]

WAC 463-42-320 Content—Earth removal. The applicant shall describe all procedures to be utilized to minimize erosion and other adverse consequences during the removal of vegetation, excavation of borrow pits, foundations and trenches, disposal of surplus materials, and construction of earth fills. The location of such activities shall be described and the quantities of material shall be indicated. [Order 113, § 463-42-320, filed 2/4/77.]

WAC 463-42-330 Content—Surface-water runoff. The applicant shall describe how surface-water runoff and erosion are to be controlled during construction and operation to assure compliance with state water quality standards. [Order 113, § 463-42-330, filed 2/4/77.]

WAC 463-42-340 Content—Landscape restoration. The applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed

during construction (to include temporary roads). [Order 113, § 463-42-340, filed 2/4/77.]

WAC 463-42-350 Content—Transportation impact. The applicant shall identify all permanent transportation facilities impacted by the construction and operation of the energy facilities, the nature of the impacts and the methods to mitigate impacts. Such impact identification, description and mitigation shall, at least, take into account:

- (1) Expected traffic volumes during construction, based on where the work force is expected to reside;
- (2) Access routes for moving heavy materials and equipment;
- (3) Expected traffic volumes during normal operation of the facility;
- (4) For transmission facilities, anticipated maintenance access; and
- (5) Consistency with local comprehensive transportation plans. [Order 113, § 463-42-350, filed 2/4/77.]

WAC 463-42-360 Content—Transportation facility construction. The applicant shall indicate the applicable standards to be utilized in improving existing transportation facilities and in constructing new permanent or temporary access facilities, and shall indicate the final disposition of new access facilities and identify who will maintain them. [Order 113, § 463-42-360, filed 2/4/77.]

WAC 463-42-370 Content—Transportation of fuels and waste products. Except where security restrictions are imposed by the federal government, the applicant shall indicate the manner in which fuels and waste products are to be transported to and from the facility, including a designation of the specific routes to be utilized. [Order 113, § 463-42-370, filed 2/4/77.]

WAC 463-42-380 Content—Environmental safeguards—Geologic and hydrologic survey. The applicant shall include the results of a comprehensive hydrologic and geologic survey showing conditions at the site, the nature of foundation materials, and potential seismic activities. [Order 113, § 463-42-380, filed 2/4/77.]

WAC 463-42-390 Content—Water source and usage. The applicant shall indicate the source and the amount of water required during construction and operation of the plant and show that it is available for this use and describe all existing water rights, withdrawal authorizations or restrictions which relate to the proposed source. [Order 113, § 463-42-390, filed 2/4/77.]

WAC 463-42-400 Content—Water supply. The applicant shall describe the location and type of water intakes and their impact on ground and surface waters. [Order 113, § 463-42-400, filed 2/4/77.]

WAC 463-42-410 Content—Compatibility with water quality standards. The applicant shall demonstrate that facility construction and/or operational discharges

will be compatible with and meet state water quality standards. [Order 113, § 463-42-410, filed 2/4/77.]

WAC 463-42-420 Content—Spillage prevention and control. The applicant shall describe all spillage prevention and control measures to be employed regarding accidental and/or unauthorized discharges or emissions, relating such information to specific facilities, including but not limited to locations, amounts, storage duration, mode of handling, and transport. [Order 113, § 463-42-420, filed 2/4/77.]

WAC 463-42-430 Content—System of heat dissipation. The applicant shall describe both the proposed and alternative systems for heat dissipation from the proposed facilities. [Order 113, § 463-42-430, filed 2/4/77.]

WAC 463-42-440 Content—Characteristics of aquatic discharge systems. Where discharges into water are involved, the applicant shall identify outfall configurations and show proposed locations. The applicant shall also describe fully the effluent distribution characteristics and the extent of dilution, showing plume characteristics under all discharge conditions. [Order 113, § 463-42-440, filed 2/4/77.]

WAC 463-42-450 Content—Hydrographic study of waters. The application shall set forth all background water quality data pertinent to the site, and hydrographic study data and analysis of the receiving waters within one-half mile of any proposed discharge location with regard to: bottom configuration; minimum, average and maximum water depths and velocities; water temperature and salinity profiles; and other relevant characteristics which could influence the impact of any wastes discharged thereto. [Order 113, § 463-42-450, filed 2/4/77.]

WAC 463-42-460 Content—Ground-water activity. The applicant shall describe any changes in ground-water activity or quality which might result from project construction or operation. [Order 113, § 463-42-460, filed 2/4/77.]

WAC 463-42-470 Content—Wastewater treatment. The applicant shall describe each wastewater source associated with the facility and for each source, the applicability of all known, available, and reasonable methods of wastewater control and treatment. Where wastewater control involves collection and retention for recycling and/or resource recovery, the applicant shall show in detail the methods selected, including at least the following information: waste source(s), average and maximum daily amounts and composition of wastes, storage capacity and duration, and any bypass or overflow facilities to the wastewater treatment system(s) or the receiving waters. Where wastewaters are discharged into receiving waters, the applicant shall provide a detailed description of the proposed treatment system(s), including appropriate flow diagrams and tables showing the sources of all tributary waste streams, their average

and maximum daily amounts and composition, individual treatment units and their design criteria, major piping (including all bypasses), and average and maximum daily amounts and composition of effluent(s). [Order 113, § 463-42-470, filed 2/4/77.]

WAC 463-42-480 Content—NPDES application. The applicant shall include a completed National Pollutant Discharge Elimination System application. [Order 113, § 463-42-480, filed 2/4/77.]

WAC 463-42-490 Content—Solid wastes disposal. The applicant shall describe the disposition of all solid or semisolid construction and operation wastes including spent fuel, ash, sludge, and bottoms, and show compliance with applicable state and local comprehensive solid waste disposal plans. [Order 113, § 463-42-490, filed 2/4/77.]

WAC 463-42-500 Content—Air pollution control. The applicant shall identify all pertinent air pollution control standards. The application shall contain adequate data showing air quality and meteorological conditions at the site. Meteorological data shall include, at least, adequate information about wind direction patterns, air stability, wind velocity patterns, precipitation, humidity, and temperature. The applicant shall describe the means to be utilized to assure compliance with air quality and emission standards. [Order 113, § 463-42-500, filed 2/4/77.]

WAC 463-42-510 Content—Air Pollution impact. The applicant shall describe the extent to which facility operations cause visible plumes, fogging, misting, icing, or impairment of visibility, and changes in ambient levels caused by all emitted pollutants. [Order 113, § 463-42-510, filed 2/4/77.]

WAC 463-42-520 Content—Emission control. The applicant shall demonstrate that the highest and best practicable treatment for control of emissions will be utilized in facility construction and operation. In the case of fossil fuel power plants and petroleum refineries, the applicant should deal with products containing sulphur and particulates. In the case of a nuclear-fueled plant, the applicant should deal with optional plant designs as these may relate to gaseous emissions. [Order 113, § 463-42-520, filed 2/4/77.]

WAC 463-42-530 Content—Dust control. The applicant shall describe for the area affected, all dust caused by construction or operation of the facility and shall describe how these are to be minimized or eliminated. [Order 113, § 463-42-530, filed 2/4/77.]

WAC 463-42-540 Content—Odor control. The applicant shall describe for the area affected, all odors caused by construction or operation of the facility and shall describe how these are to be minimized or eliminated. [Order 113, § 463-42-540, filed 2/4/77.]

WAC 463-42-550 Content—Inventory of potentially affected vegetation, animal life, and aquatic life described. The applicant shall describe all vegetation, animal life, and aquatic life which might reasonably be affected by construction and/or operation of the energy facility and any associated facilities. Any endangered species or noteworthy species or habitat shall receive special attention. Assessment of these factors shall include density and distribution information. [Order 113, § 463-42-550, filed 2/4/77.]

WAC 463-42-560 Content—Impact of construction and operation on vegetation, animal life, and aquatic life. The applicant shall describe the projected effect of facility construction and/or operation upon vegetation, animal life, and aquatic life. [Order 113, § 463-42-560, filed 2/4/77.]

WAC 463-42-570 Content—Description of measures taken to protect vegetation, animal life, and aquatic life. The application shall contain a full description of each measure to be taken by the applicant to protect vegetation, animal life, and aquatic life from the effects of facility operation and construction. Specifically, the application shall set forth insurance, bonding or other arrangements made in order to replace or compensate for damage or loss to vegetation, animal life, or aquatic life. [Order 113, § 463-42-570, filed 2/4/77.]

WAC 463-42-580 Content—Aesthetics. The applicant shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how the installation will appear relative to its surroundings. [Order 113, § 463-42-580, filed 2/4/77.]

WAC 463-42-590 Content—Noise and glare. The applicant shall describe the impact of lights, noise, and glare from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact. [Order 113, § 463-42-590, filed 2/4/77.]

WAC 463-42-600 Content—Energy consumption. The applicant shall generally describe the energy consumption during both construction and operation of the proposed facilities as to sources of supply, locations of use, types, amounts, and new delivery facilities. [Order 113, § 463-42-600, filed 2/4/77.]

WAC 463-42-610 Content—Historical, archaeological, and recreational site preservation/creation. The applicant shall list all historical, archaeological, and recreational sites within the area affected by construction and operation of the facility and shall then describe how each will be impacted by construction and operation. [Order 113, § 463-42-610, filed 2/4/77.]

WAC 463-42-620 Content—Socioeconomic impact. At least 90 days prior to the final contested hearing the applicant shall submit a detailed socioeconomic impact study which identifies primary and secondary

and positive as well as negative impacts on the socioeconomic environment with particular attention and analysis of impact on population, work forces, property values, housing, traffic, health and safety facilities and services, education facilities and services, and local economy. The applicant shall then describe the means utilized to minimize or mitigate possible adverse impacts. [Order 113, § 463-42-620, filed 2/4/77.]

Chapter 463-46 WAC
GUIDELINES INTERPRETING AND
IMPLEMENTING THE STATE ENVIRONMENTAL
POLICY ACT

WAC

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- 463-46-910 Severability.

WAC 463-46-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 43.21C.120. [Order 112, § 463-46-010, filed 12/15/76.]

WAC 463-46-020 Purpose. (1) The purpose of this chapter is to establish statewide guidelines interpreting and implementing the state environmental policy act of 1971 (SEPA).

(2) These guidelines were developed to establish methods and means of implementing SEPA "in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages

public involvement, and promotes certainty with respect to the requirements of the act".

(3) These guidelines are not intended to govern compliance by state or local agencies with respect to the national environmental policy act of 1969 (NEPA). In those situations where state or local agencies are required by federal law or regulations to perform some element of compliance with NEPA, such agency compliance will be governed by the applicable federal statute and regulations and not by these guidelines. [Order 112, § 463-46-020, filed 12/15/76.]

WAC 463-46-025 Scope and coverage of this chapter. (1) It is the intent of the council that compliance with the guidelines of this chapter shall constitute complete procedural compliance with SEPA for any "action" as defined in WAC 463-46-040(2).

(2) The guidelines of this chapter do not address the issue of the substantive effect that the enactment of SEPA has upon agency decision-making.

(3) The guidelines of this chapter contain no sections relating to the notice/statute of limitations provisions of RCW 43.21C.080, 43.21C.085 and 43.21C.087. Persons and agencies wishing to utilize these provisions shall follow the statutory language and any applicable regulations of the department of ecology. [Order 112, § 463-46-025, filed 12/15/76.]

WAC 463-46-040 Definitions. The following words and terms have the following meanings for the purposes of this chapter, unless the context indicates otherwise:

(1) Acting Agency. Acting agency means an agency with jurisdiction which has received an application for a license, or which is the initiator of a proposed action.

(2) Action. Action means an activity potentially subject to the environmental impact statement requirements of RCW 43.21C.030(2)(c) and (2)(d). [See the provisions of WAC 463-46-170, 463-46-175 and 463-46-180 for activities that are exempted from the threshold determination and environmental impact statement requirements of SEPA and these guidelines, due to the determination that such activities are minor, not "major", actions, even though such activities are within one of the subcategories below.] All actions fall within one of the following subcategories:

(a) Governmental licensing.

(b) Governmental action of a project nature. This includes and is limited to:

(i) the decision by an agency to undertake any activity which will directly modify the physical environment, whether such activity will be undertaken directly by the agency or through contract with another, and

(ii) the decision to purchase, sell, lease, transfer or exchange natural resources, including publicly owned land, whether or not it directly modifies the environment.

(c) Governmental action of a non-project nature. This includes and is limited to:

(i) the adoption or amendment of legislation, ordinances, rules or regulations which contain standards controlling use or modification of the physical environment;

(ii) the adoption or amendment of comprehensive land use plans or zoning ordinances;

(iii) the adoption of any policy, plan or program which will govern the development of a series of functionally related major actions, but not including any policy, plan or program for which approval must be obtained from any federal agency prior to implementation;

(iv) creation of, or annexations to, any city, town or district;

(v) adoptions or approvals of utility, transportation and solid waste disposal rates;

(vi) capital budgets; and

(vii) road, street and highway plans.

(3) Agencies with Expertise. Agencies with expertise means those agencies to which a draft environmental impact statement shall be sent pursuant to WAC 463-46-465, unless they are also agencies with jurisdiction.

(4) Agencies with Jurisdiction. Agencies with jurisdiction means those agencies from which a non-exempt license is required for a proposal or any part thereof, or which will act upon an application for a grant or loan for a proposal, or agencies which are proposing or initiating any governmental action of a project or non-project nature. The term does not include those agencies authorized to adopt rules or standards of general applicability which govern the proposal in question, when no license or approval is required for specific proposals; nor does the term include agencies, involved in approving grants or loans, which serve only as conduits between the primary administering agency and the recipient of the grant or loan. Federal agencies with jurisdiction are instrumentalities of the federal government from which a license is required, or which will receive an application for a grant or loan for a proposal.

(5) Agency or Agencies. Agency or agencies mean all state agencies and local agencies as defined in this section. The term does not include any agency or division of the federal government. Whenever a specific agency has been named in these guidelines and the functions of that agency have been transferred to another agency, then the term shall mean such successor agency.

(6) Council. Council means the energy facility site evaluation council.

(7) Consulted Agency. Consulted agency means any agency with jurisdiction or with expertise which is consulted, or from which information is requested by a lead agency during the threshold determination, pre-draft consultation, or consultation on a draft environmental impact statement.

(8) County/City. County/city means a county, city or town. For the purposes of this chapter, duties and powers are assigned to a county, city or town as a unit, with the delegation of responsibilities among the various departments of a county, city or town being left to the legislative or charter authority of the individual counties, cities or towns.

(9) Declaration of Non-Significance. Declaration of non-significance means the written decision by the responsible official of the lead agency that a proposal will not have a significant adverse environmental impact and

that therefore no environmental impact statement is required. A form substantially consistent with that in WAC 463-46-355 shall be used for this declaration.

(10) Declaration of Significance. Declaration of significance means the written decision by the responsible official of the lead agency that a proposal will or could have a significant adverse environmental impact and that therefore an environmental impact statement is required. A form substantially consistent with that in WAC 463-46-355 shall be used for this declaration.

(11) DOE. DOE means the department of ecology.

(12) Draft EIS. Draft EIS means an environmental impact statement prepared prior to the final detailed statement.

(13) EIS. EIS means the detailed statement required by RCW 43.21C.030(2)(c). It may refer to either a draft or final environmental impact statement, or both, depending upon context.

(14) Environment. Environment means, and is limited to, those areas listed in WAC 463-46-444.

(15) Environmental Checklist. Environmental checklist means the form contained in WAC 463-46-365.

(16) Environmental Document. Environmental document means every written public document prepared or utilized as a result of the requirements of this chapter.

(17) Environmentally Sensitive Area. Environmentally sensitive area means an area designated and mapped by a county/city pursuant to WAC 463-46-177, and within which certain categorical exemptions do not apply.

(18) Final EIS. Final EIS means an environmental impact statement prepared to reflect comments to the draft EIS. It may consist of a new document, or of the draft EIS together with supplementary material prepared pursuant to WAC 463-46-570, 463-46-580 or 463-46-695.

(19) Lands Covered by Water. Lands covered by water means lands underlying the water areas of the state, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes and swamps. Certain categorical exemptions do not apply to lands covered by water.

(20) Lead Agency. Lead agency means the agency designated by the provisions of WAC 463-46-200 through 463-46-270 or 463-46-345, which is responsible for making the threshold determination and preparing or supervising preparation of the draft and final environmental impact statements.

(21) License. License means any form of written permission given to any person, organization or agency to engage in any activity, as required by law or agency rule. A license thus includes the whole or part of any agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular project; a license required solely for revenue purposes is not included.

(22) Licensing. Licensing means the agency process in granting, renewing or modifying a license.

(23) List of Elements of the Environment. List of elements of the environment means the list contained in WAC 463-46-444 which must be attached to every environmental impact statement.

(24) Local Agency. Local agency means any political subdivision, regional governmental unit, district, municipal or public corporation including cities, towns and counties. The term does not include the departments of a city or county.

(25) Major Action. Major action means any "action" as defined in this section which is not exempted by WAC 463-46-170, 463-46-175 and 463-46-180.

(26) Non-Project EIS. Non-project EIS means an environmental impact statement prepared for a proposal for any governmental action of a non-project nature as defined under "action" in this section.

(27) Physical Environment. Physical environment means and is limited to those elements of the environment listed under "physical environment" in WAC 463-46-444(2).

(28) Private Applicant. Private applicant means any person or entity, other than an agency as defined in this section, applying for a license from an agency.

(29) Private Project. Private project means any proposal for which the primary initiator or sponsor is an individual or entity other than an "agency" as defined in this section.

(30) Proposal. Proposal means a specific request to undertake any activity submitted to, and which is seriously considered by, the council or a decision-maker within an agency, as well as any action or activity which may result from approval of any such request. Further definition of the scope of a proposal for the purposes of lead agency determination, the threshold determination, and impact statement preparation is contained in WAC 463-46-060.

(31) Responsible Official. Responsible official means the executive secretary of the energy facility site evaluation council.

(32) SEPA. SEPA means the state environmental policy act of 1971, chapter 43.21C RCW, as amended.

(33) State Agency. State Agency means any state board, commission or department except those in the legislative or judicial branches. The term includes the office of the governor and the various divisions thereof, state universities, colleges and community colleges.

(34) Threshold Determination. Threshold determination means the decision by a lead agency whether or not an environmental impact statement is required for a proposal. [Order 112, § 463-46-040, filed 12/15/76.]

WAC 463-46-050 Use of the environmental checklist form. A form is provided in WAC 463-46-365 for an environmental checklist to be initially completed by an action proponent, whether public or private, either alone or together with the lead agency, usually in conjunction with a license application. This form must be used in the threshold determination; it will also be helpful in making the lead agency designation and in pre-draft consultation. However, where there is an agreement between the proponent of a non-exempt action (whether a private applicant or an agency which is not the lead agency) and the lead agency that an EIS is required, the completion of the environmental checklist is unnecessary. Where the action proponent and the lead agency are the same entity, and a decision to prepare an

EIS has been made, then no checklist is required. [Order 112, § 463-46-050, filed 12/15/76.]

WAC 463-46-055 Timing of the EIS process. (1) The primary purpose of the EIS process is to provide environmental information to governmental decision-makers to be considered prior to making their decision. The process should thus be completed before the decisions of the council commit it to a particular course of action. The actual decision to proceed with many actions may involve a series of individual approvals or decisions. The threshold determination and the EIS, if required, should ideally be completed at the beginning of this process. In many cases, however, preliminary decisions must be made upon a proposal before the proposal is sufficiently definite to permit meaningful environmental analysis. The council shall identify the times at which the EIS process must be completed. The lead agency should require completion of the threshold determination and EIS, if required, at the earliest point in the planning and decision-making process when the principal features of a proposal and its impacts upon the environment can be reliably identified.

(2) At a minimum, the threshold determination and any required EIS shall be completed prior to undertaking any proposed major action.

(3) When a proposed major action is a proposal for either a governmental action of a project nature or a governmental action of a non-project nature, and the proponent of the major action is also the lead agency, then the maximum time limits contained in these guidelines for the threshold determination and EIS process need not apply to the proposal. [Order 112, § 463-46-055, filed 12/15/76.]

WAC 463-46-060 Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation. (1) The proposal considered by the council during the lead agency determination procedure, and by the lead agency during the threshold determination and EIS preparation, shall be the total proposal including its direct and indirect impacts. Whenever the word "proposal" or the term "proposed action" is used in this chapter, the discussion in subsection (2) hereof is applicable. In considering the environmental impacts of a proposal during the threshold determination and EIS preparation, the discussion in subsection (3) hereof is applicable.

(2) The total proposal is the proposed action, together with all proposed activity which is functionally related to it. Future activities are functionally related to the present proposal if:

(a) The future activity is an expansion of the present proposal, facilitates operation of the present proposal or is necessary thereto; or

(b) The present proposal facilitates or is a necessary prerequisite to future activities.

The scope of the proposal is not limited by the jurisdiction of the lead agency. The fact that future impacts of a proposal will require future governmental approvals shall not be a bar to their present consideration, so long as the plans for those future elements are sufficiently

specific to allow some evaluation of their potential environmental impacts. The council and lead agencies should be alert to the possibility that a proposal may involve other agencies with jurisdiction which may not be taking any action until sometime in the future. (For example, in a proposal for a plat approval, another agency with jurisdiction may be the appropriate sewer district, even though installation of sewers may not occur until several years later.)

(3) The impacts of a proposal include its direct impacts as well as its reasonably anticipated indirect impacts. Indirect impacts are those which result from any activity which is induced by a proposal. These include, but are not limited to, consideration of impacts resulting from growth induced by the proposal, or the likelihood that the present action will serve as a precedent for future actions. (For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects.) Contemporaneous or subsequent development of a similar nature, however, need not be considered in the threshold determination unless there will be some causal connection between such development and one or more of the governmental decisions necessary for the proposal in question.

(4) Proposals involving extensive future actions may be divided, at the option of the lead agency, into segments with an EIS prepared for each segment. In such event, the earlier EIS shall describe the later segments of the proposal and note that future environmental analysis will be required for these future segments. The segmentation allowed by this subsection shall not be applied at the threshold determination to determine that any segment of a more extensive significant proposal is insignificant; nor shall segmentation be applied so as to require significant duplication of analysis contained in an earlier EIS.

(5) For proposed projects, such as highways, streets, pipelines or utility lines or systems where the proposed action is related to a large existing or planned network, the lead agency may at its option treat the present proposal as the total proposal, or select only some of the future elements for present consideration in the threshold determination and EIS. These categorizations shall be logical with relation to the design of the total system or network itself, and shall not be made merely to divide a larger system into exempted fragments. [Order 112, § 463-46-060, filed 12/15/76.]

WAC 463-46-100 Summary of information which may be required of a private applicant. (1) There are three areas of these guidelines where an agency is allowed to require information from a private applicant. These are:

- (a) Environmental checklist;
- (b) Threshold determination; and,
- (c) Draft and final EIS.

The responsible official may determine that any information supplied by a private applicant is insufficient and require further information, if in the judgment of the responsible official the information initially supplied was not reasonably adequate to fulfill the purpose for

which it was required. An applicant may choose to voluntarily submit, at any time, information beyond that which may be required under these guidelines.

(2) **Environmental Checklist.** A private applicant is required to complete an environmental checklist as set forth in WAC 463-46-365 either concurrently with or after filing the application. Explanations for each "yes" and "maybe" answer indicated thereon are required. Agencies may not require a complete assessment or "mini-EIS" at this stage. [See WAC 463-46-310].

(3) **Threshold Determination.** The lead agency shall make an initial review of a completed checklist without requiring more information from a private applicant. If, and only if, the lead agency determines as a result of its initial review that the information available to it is not reasonably sufficient to determine the environmental impacts of the proposal, the lead agency may require further information from the applicant, including explanation of "no" answers on the checklist. This information shall be limited to those elements on the environmental checklist for which, as determined by the lead agency, information accessible to the lead agency is not reasonably sufficient to evaluate the environmental impacts of the proposal. Field investigations or research by the applicant reasonably related to determining the environmental impacts of the proposal may be required. [See WAC 463-46-330.]

(4) **Draft and Final EIS Preparation.** An EIS may be prepared by the applicant under the direction of the responsible official. [See WAC 463-46-420.] Alternatively, the responsible official may require a private applicant to provide data and information which is not in the possession of the lead agency relevant to any or all areas to be covered by an EIS. A private applicant shall not be required to provide information which is the subject of a pre-draft consultation request until the consulted agency has responded, or the forty-five days allowed for response by the consulted agency has expired, whichever is earlier. [Order 112, § 463-46-100, filed 12/15/76.]

WAC 463-46-150 Exemptions exclusive—DOE approval of changes in exemptions. (1) The only actions exempt from the threshold determination requirements of this chapter are those which are categorically exempted in WAC 463-46-170, 463-46-175 and 463-46-180. Except to specify emergencies as allowed in WAC 463-46-180, the council shall add additional exemptions in their guidelines only after obtaining approval of DOE in accordance with either subsection (2) or (3) of this section.

(2) An agency may petition DOE, pursuant to RCW 34.04.060, for adoption of additional exemptions or for deletion of existing exemptions through amendments to these guidelines. Such petition shall set forth the language of the amendment requested, the reasons for the requested amendment, the council's views on the impacts to the environment resulting from the activities covered by the proposed amendment, and the approximate number of actions within any stated time period of the class proposed for exemption or deletion which come before

the agency. DOE shall consider and make a determination upon any such petition within thirty days of receipt, and if the determination is favorable, shall initiate the rule-making procedures of chapter 34.04 RCW, to amend these guidelines. Amendments to these guidelines will apply either generally or to specified classes of agencies. Affected agencies shall amend their guidelines accordingly after the amendments to the DOE guidelines become effective.

(3) An agency may also petition DOE for an immediate ruling upon any request to add or delete an exemption. If such a petition is granted, DOE will so notify the council, which may immediately thereafter include the modification approved by DOE in its own guidelines. DOE may thereafter initiate procedures to amend their guidelines to incorporate the approved modification. Until the DOE guidelines are amended, any modification granted under this subsection shall apply only to the petitioning agency or agencies.

(4) DOE will provide public notice of all proposed amendments to these guidelines in the manner required by the Washington Administrative Procedures Act (chapter 34.04. RCW). A copy of all DOE approvals under subsection (3) of this section will be given to all persons who have made request to DOE for advance notice of its rule-making proceedings.

(5) This section shall not be construed to limit the right of any interested person to petition DOE for the promulgation, amendment or repeal of any rule, including rules establishing categorical exemptions, in accordance with RCW 34.04.060. [Order 112, § 463-46-150, filed 12/15/76.]

WAC 463-46-160 No presumption of significance for nonexempt actions. No presumption as to the significance of the impacts upon the environment shall be given to any proposed action merely because it was not exempted. [Order 112, § 463-46-160, filed 12/15/76.]

WAC 463-46-170 Categorical exemptions. Governmental activities or approvals of activities of the types listed herein are not major actions, and proposals for such activities are exempted from the threshold determination and EIS requirements of SEPA and these guidelines:

(1) **Minor new construction.** The following types of construction shall be exempt except when undertaken wholly or in part on lands covered by water; the exemptions provided by this subsection apply to all governmental licenses required to undertake the construction in question, except rezones or any license governing emissions to the air or water:

(a) The construction of any residential structure of four dwelling units or less.

(b) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering less than 10,000 square feet and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feedlots.

(c) The construction of an office, school, commercial, recreational, service or storage building with less than 4,000 square feet of floor area, and with associated parking facilities designed for twenty automobiles or less.

(d) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

(e) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(f) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade separated crossings), grooving, glare screen, safety barriers, energy attenuators, highway landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right-of-way weed control), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights-of-way, channelization and elimination of sight restrictions at intersections, street lighting, guard-rail and barricade installation, installation of catch basins and culverts, and reconstruction of existing road bed (existing curb to curb in urban locations), including minor widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

(g) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(h) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(i) The construction of a parking lot designed for twenty automobiles or less.

(j) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, III and IV forest practice under chapter 200, Laws of 1975 ex. sess., or regulations promulgated thereunder, except those forest practices designated by the forest practices board as being subject to SEPA evaluation.

(k) The repair, maintenance or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing.

(l) Grading, excavating, filling, septic tank installation, and landscaping necessary for any building or facility exempted by this subsection, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(m) Additions or modifications to or replacement of any building or facility exempted by this subsection when such addition, modification or replacement will not change the character of the building or facility in a way which would remove it from an exempt class.

(n) The demolition of any structure or facility, the construction of which would be exempted by this subsection, except for structures or facilities with recognized historical significance.

(2) **Water rights.** The following appropriations of water shall be exempt, the exemption covering not only the

permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pump-house reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:

(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.

(b) Appropriations of one cubic foot per second or less of surface water, or of ten cubic feet per second or less of ground water, for any purpose.

(3) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal, or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(4) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) Fire department, police patrol and traffic law enforcement except where such involves any physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety: *Provided*, That no open burning shall be exempted under this subsection, nor shall the application of any pesticide or chemical. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(5) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating and safety codes, but not including building permits.

(c) Licenses to operate amusement devices and entertainment carnivals, circuses and other traveling shows, dances, music machines and theaters, including approval of use of public facilities for temporary civic celebrations, but not including licenses required for permanent construction of any of the above.

(d) Licenses for solicitation or door to door sales, private security and detective services, and taxicabs and

other vehicles for hire: *Provided*, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(e) Licenses for close-out sales.

(f) Licenses for food or drink services, sales and distribution.

(g) Licenses for the sale or display of fireworks.

(h) Animal control licenses.

(i) The renewal or reissuance of a license regulating any present activity or structure that was either exempted under this chapter, or the subject of a declaration of non-significance or an EIS, so long as no material changes have occurred since the determination of exemption, or completion of the prior declaration or EIS.

(6) **Activities of the legislature.** All actions of the state legislature are hereby exempted: *Provided*, That this subsection shall not be construed to exempt the proposing of legislation by any agency.

(7) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services previously authorized, or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: *Provided*, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(8) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(9) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property by an agency.

(b) The sale, transfer or exchange of any publicly owned real property by an agency to or with a private individual or governmental entity, but only if the property is not subject to an authorized public use.

(c) The lease of real property by an agency to a private individual or entity, or to an agency or federal agency, only when the use of the property for the term

of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

(10) **Minor land use decisions.** The following land use decisions shall be exempt:

(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivision or short platting within a plat or subdivision previously exempted under this subsection.

(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, slope, topography, location or surroundings and not resulting in any change in land use or density.

(c) Classification of land for current use taxation pursuant to chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(11) **Procedural actions.** The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt.

(12) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(13) **Variances under Clean Air Act.** The granting of variances pursuant to RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(14) **Burning permits.** The issuance, revocation or suspension of permits for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting the issuance of burning permits shall not be exempt.

(15) **Water quality certifications.** The granting or denial of water quality certifications pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 USC § 1341) shall be exempt.

(16) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project.

(17) **Information collection and research.** Proposals for basic data collection, research, resource evaluation and the conceptual planning of proposed actions shall be exempt. These may be for strictly information-gathering purposes, or as part of a study leading to a proposal which has not yet been approved, adopted or funded. This exemption does not include any agency action which commits the agency to proceed with the proposal.

(18) **Utilities.** The utility-related actions listed below shall be exempt: *Provided*, That installation, construction or alteration on lands covered by water shall not be exempt for actions listed below. The exemption includes installation and construction, relocation when required

by other governmental bodies, together with repair, replacement, maintenance, operation or alteration by an agency or private entity which does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including microwave towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: *Provided*, That additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or highway right-of-way in its design condition: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel.

(g) All grants of franchises by agencies to utilities.

(h) All disposals of rights-of-way by utilities.

(i) All grants of rights-of-way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(19) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) All class I, II, III and IV forest practices as defined by chapter 200, Laws of 1975 ex. sess., or regulations promulgated thereunder, except those forest practices designated by the forest practices board as being subject to SEPA evaluation.

(b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land which had been subject to a grazing lease within the previous ten years.

(c) Licenses or approvals to remove firewood.

(d) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(e) Issuance of leases for Christmas tree harvesting or brush picking.

(f) Issuance of leases for school sites.

(g) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(h) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(i) Periodic use of chemical or mechanical means to maintain public park and recreational land: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel.

(j) Issuance of rights-of-way, easements and use permits to use existing public roads in nonresidential areas.

(20) **Local improvement districts.** The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 463-46-170 and 463-46-180.

(21) **Non-actions.** Proposals for activities which are not "actions" as defined in WAC 463-46-040(2) are not subject to the threshold determination and EIS requirements of this chapter. [Order 112, § 463-46-170, filed 12/15/76.]

WAC 463-46-175 Exemptions and non-exemptions applicable to specific state agencies. (1) In performing its functions under this chapter, the council shall recognize and give effect to WAC 197-10-175 and to environmentally sensitive areas established pursuant to WAC 197-10-177(1, 2). [Order 112, § 463-46-175, filed 12/15/76.]

WAC 463-46-177 Environmentally sensitive areas. (1) Major actions which will be located within environmentally sensitive areas are to be treated no differently than other major actions under this chapter. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in an environmentally sensitive area.

(2) Certain categorical exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. [Order 112, § 463-46-177, filed 12/15/76.]

WAC 463-46-180 Exemption for emergency actions. Any action which in the opinion of the council's responsible official must be undertaken immediately, or within a time too short to allow full compliance with this chapter, to avoid or prevent an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter. [Order 112, § 463-46-180, filed 12/15/76.]

WAC 463-46-190 Use and effect of categorical exemptions. (1) Those activities excluded from the definition of "action" in WAC 463-46-040(2), or categorically exempted by WAC 463-46-170, 463-46-175, and 463-46-180, are exempt from the threshold determination (including completion of the environmental checklist) and EIS requirements of these guidelines and RCW 43.21C.030(2)(c) and (2)(d). No exemption is allowed for the sole reason that actions are considered to be of a "ministerial" nature or of an environmentally regulatory or beneficial nature.

(2) If a proposal includes a series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not, the proposal is not exempt.

(3) For proposals in (2) above, exempt activities or actions may be undertaken prior to the threshold determination, subject to the timing considerations in WAC 463-46-055. For each such proposal a lead agency shall be determined, and a threshold determination shall be made prior to any major action with respect to the proposal, and prior to any decision by the lead agency irreversibly committing itself to adopt or approve the proposal.

(4) If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have a significant environmental impact, the proposal is not exempt. [Order 112, § 463-46-190, filed 12/15/76.]

WAC 463-46-200 Lead agency—Responsibilities. The lead agency shall be the only agency responsible for complying with the threshold determination procedures of WAC 463-46-300 through 463-46-390; and the lead agency shall be responsible for the supervision, or actual preparation, of draft EISs pursuant to WAC 463-46-400 through 463-46-495, including the circulation of such statements, and the conduct of any public hearings required by this chapter. The lead agency shall also prepare or supervise preparation of any required final EIS pursuant to WAC 463-46-550 through 463-46-695. [Order 112, § 463-46-200, filed 12/15/76.]

WAC 463-46-203 Determination of lead agency—Procedures. (1) The first agency receiving or initiating a proposal for a major action, or for any part of a proposal when the total proposal involves a major action, shall determine the lead agency for that proposal. To ensure that the lead agency is determined early, the council shall determine the lead agency for all proposals for a major action it receives, unless the lead agency has been previously determined or the council when receiving the proposal is aware that another agency is in the process of determining the lead agency. The lead agency shall be determined by using the criteria in WAC 463-46-205 through 463-46-245.

(2) If the council determines that another agency is the lead agency, it shall mail to such lead agency a copy of the application it received, together with its determination of lead agency and explanation thereof. If the agency receiving this determination agrees that it is the lead agency, it shall so notify the other agencies with jurisdiction. If it does not agree, and the dispute cannot be resolved by agreement, the agencies shall immediately petition DOE for a lead agency determination pursuant to WAC 463-46-260.

(3) If the council determines that it is the lead agency, it shall immediately mail a copy of its determination and explanation thereof to all other agencies with jurisdiction over the proposal. The council shall then proceed, as the lead agency, to the threshold determination procedure of WAC 463-46-300 through 463-46-390. If another agency with jurisdiction objects to the lead agency determination, and the dispute cannot be resolved by agreement, the agencies shall immediately petition DOE for a lead agency determination pursuant to WAC 463-46-260.

(4) Any agency receiving a lead agency determination to which it objects shall either resolve the dispute, withdraw its objection, or petition to DOE for a lead agency determination within fifteen days of receiving the determination.

(5) To make the lead agency determination, an acting agency must determine to the best of its ability the other agencies with jurisdiction over the proposal. This can be done by requesting the information from a private applicant, or through consultation with the information centers established pursuant to RCW 90.62.120, within the Environmental Coordination Procedures Act of 1973 (ECPA). [Order 112, § 463-46-203, filed 12/15/76.]

WAC 463-46-205 Lead agency designation—Governmental proposals. The lead agency for all proposals initiated by the council shall be the agency making the proposal. In the event that two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will assume the status of lead agency. For the purposes of this section, a proposal by an agency does not include proposals to license private activity. [Order 112, § 463-46-205, filed 12/15/76.]

WAC 463-46-210 Lead agency designation—Proposals involving both private and public construction activity. When the total proposal will involve both private and public construction activity, it shall be characterized as either a private or a public project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is an agency or from the private sector. Any project in which agency and private interests are too intertwined to make this characterization shall be considered a public project. The lead agency for all public projects shall be determined pursuant to WAC 463-46-205. [Order 112, § 463-46-210, filed 12/15/76.]

WAC 463-46-215 Lead agency designation—Private projects for which there is only one agency with jurisdiction. For proposed private projects for which there is only one agency with jurisdiction, the lead agency shall be the agency with jurisdiction. [Order 112, § 463-46-215, filed 12/15/76.]

WAC 463-46-220 Lead agency designation—Private projects requiring licenses from more than one agency, when one of the agencies is a county/city. For proposals for private projects which require licenses from more than one agency when at least one of the agencies requiring a license is a county/city, the lead agency shall be the county/city within whose jurisdiction is located the greatest portion of the proposed project area, as measured in square feet. For the purposes of this section, the jurisdiction of a county shall not include the areas within the limits of cities or towns within such county. [Order 112, § 463-46-220, filed 12/15/76.]

WAC 463-46-225 Lead agency designation—Private projects requiring licenses from more than one

state agency. (1) For private projects which require licenses from more than one state agency, but require no license from a county/city, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

- (a) Department of ecology.
- (b) Department of social and health services.
- (c) Department of natural resources.
- (d) Department of fisheries.
- (e) Department of game.
- (f) Utilities and transportation commission.
- (g) Department of motor vehicles.
- (h) Department of labor and industries.

(2) For private projects requiring a license from more than one state agency, but requiring no license from a county/city, and when none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency which has the largest biennial appropriation.

(3) When, due to the provision of subsection (1) of this section, an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program. [Order 112, § 463-46-225, filed 12/15/76.]

WAC 463-46-230 Lead agency designation—Specific proposals. Notwithstanding the lead agency designation criteria contained in WAC 463-46-205 through 463-46-225, the lead agency for proposals within the areas listed below shall be as follows:

(1) For all governmental actions relating to energy facilities for which certification is required under chapter 80.50 RCW, the lead agency shall be the council: *Provided*, That for any public project requiring such certification and for which the study authorized by RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.

(2) For all private projects relating to the utilization of geothermal resources subject to chapter 79.76 RCW, the lead agency shall be the department of natural resources.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee pursuant to chapter 78.52 RCW, the lead agency shall be the department of natural resources, except that for projects subject to RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For all private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.04 RCW, the lead agency shall be the department of natural resources: *Provided*, That for any proposal which will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the lead agency shall be the county/city requiring the license.

(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question: *Provided*, That this subsection shall not apply to the sale or lease

of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

(6) For all proposals which are being processed under the Environmental Coordination Procedures Act of 1973 (ECPA), chapter 90.62 RCW, the lead agency shall be determined by the department of ecology; except that when county/city licenses are applied for prior to filing the ECPA application, a lead agency shall be determined pursuant to the standards of these guidelines prior to granting such county/city licenses.

(7) For private projects which require the issuance of a National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the Federal Water Pollution Control Act (33 U.S.C. section 1251, *et seq.*), for a pulp or paper mill or oil refinery, the lead agency shall be the department of ecology excepting those energy facilities defined in RCW 80.50.020.

(8) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure, the lead agency shall be the department of ecology excepting those energy facilities defined in RCW 80.50.020.

(9) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology excepting those energy facilities defined in RCW 80.50.020.

(10) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or more gallons of any liquid fuel, the lead agency shall be the department of ecology excepting those energy facilities defined in RCW 80.50.020.

(11) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more, the lead agency shall be the department of ecology excepting those energy facilities defined in RCW 80.50.020.

(12) For proposals to construct any new metallic mineral processing plant, or to expand any such existing plant by ten percent or more of design capacity, the lead agency shall be the department of ecology. [Order 112, § 463-46-230, filed 12/15/76.]

WAC 463-46-240 Agreements as to lead agency status. Nothing herein shall prohibit an agency from assuming the role of lead agency as a result of an agreement among all agencies with jurisdiction. [Order 112, § 463-46-240, filed 12/15/76.]

WAC 463-46-245 Agreements between agencies as to division of lead agency duties. Two or more agencies may by agreement share or divide the responsibilities of lead agency through any arrangement agreed upon. In such event, however, the agencies involved shall designate one of them as the nominal lead agency, which shall be responsible for complying with the duties of the lead agency under these guidelines. Other agencies with

jurisdiction shall be notified of the agreement and determination of the nominal lead agency. [Order 112, § 463-46-245, filed 12/15/76.]

WAC 463-46-260 Dispute as to lead agency determination—Resolution by DOE. (1) In the event that the agencies with jurisdiction are unable to determine which agency is the lead agency under these guidelines, any agency with jurisdiction may petition DOE for such determination. Such petition shall clearly describe the proposal in question, and include a list of all licenses and approvals required for the proposal. Any such petition shall be filed with DOE within fifteen days after receipt by the petitioning agency of the determination to which it objects. Copies of the petition shall be mailed to any private applicant involved, as well as to all other agencies with jurisdiction over the proposal. The applicant and agencies with jurisdiction may file with DOE a written response to the petition within ten days of the date of the initial filing.

(2) Within fifteen days of receipt of a petition, DOE shall make a written determination of the lead agency, which shall be mailed to the applicant and all agencies with jurisdiction. DOE shall make its determination in accordance with these guidelines; or in the event the guidelines do not control, the lead agency shall be the agency whose action, license, or licenses will have the greatest effect on the environment. [Order 112, § 463-46-260, filed 12/15/76.]

WAC 463-46-270 Assumption of lead agency status by another agency with jurisdiction. When there has been an assumption of lead agency status by another agency with jurisdiction over a proposal, pursuant to WAC 463-46-345, the lead agency responsibilities regarding threshold determination procedures (WAC 463-46-300 through 463-46-390) transfer to the new lead agency. [Order 112, § 463-46-270, filed 12/15/76.]

WAC 463-46-300 Threshold determination requirement. (1) Except as provided in subsection (2) hereof, a threshold determination shall be made for every proposal for a major action. The responsible official designated by the lead agency shall be responsible for making the threshold determination. Only the lead agency shall make a threshold determination, except when lead agency duties are shared or assumed pursuant to WAC 463-46-245 and 463-46-345, respectively.

(2) The threshold determination requirement of completion of an environmental checklist may be omitted, unless pre-draft consultation occurs, when:

(a) Both the responsible official and the sponsor (public or private) of a proposal agree that an EIS is required, or

(b) The sponsor of the proposal and the lead agency are the same entity and decides that an EIS is required.

(3) When the provisions of subsection (2) above have been utilized, compliance with requirements for use of the environmental checklist contained in WAC 463-46-305 through 463-46-390 may be disregarded. [Order 112, § 463-46-300, filed 12/15/76.]

WAC 463-46-305 Recommended timing for threshold determination. In most cases the time required to complete a threshold determination should not exceed fifteen days. The initial review of a completed environmental checklist can usually be completed in a matter of hours. If further information is required to make the threshold determination, the time required will vary, depending upon the nature of the proposal and the information required. When a threshold determination is expected to require more than fifteen days to complete and a private applicant requests notification of the date when a threshold determination will be made, the lead agency shall transmit to the private applicant a written statement as to the expected date of decision. [Order 112, § 463-46-305, filed 12/15/76.]

WAC 463-46-310 Threshold determination procedures—Environmental checklist. (1) An environmental checklist substantially in the form provided in WAC 463-46-365 shall be completed for any proposed major action before making the threshold determination. The proposal's proponent shall complete the checklist either alone or together with the lead agency. Explanations of every "yes" and "maybe" answer on the checklist shall be provided, and persons completing the checklist may provide explanations of "no" answers. Persons filling out an environmental checklist may make reference to studies or reports which are available to the agency to which the checklist is being submitted.

(2) An environmental checklist may be required by an acting agency receiving an application for a major action, or (if one has not been previously completed) shall be required by the lead agency prior to making the threshold determination.

(3) No environmental checklist or threshold determination is required for proposals that are exempted by WAC 463-46-170, 463-46-175 and 463-46-180. [Order 112, § 463-46-310, filed 12/15/76.]

WAC 463-46-320 Threshold determination procedures—Initial review of environmental checklist. (1) The lead agency shall conduct an initial review of the environmental checklist for the proposal together with any supporting documentation. This initial review shall be made without requiring further information from the applicant. In making this initial review, the lead agency shall independently evaluate each item on the checklist and indicate thereon the results of this evaluation.

(2) After completing the initial review of the environmental checklist, the lead agency shall apply the criteria of WAC 463-46-060 and 463-46-360 to the checklist as evaluated by the lead agency. This process will lead to one of three determinations:

(a) The proposal will not have a significant adverse impact upon the quality of the environment; in which case, the lead agency shall initiate the negative threshold determination procedures of WAC 463-46-340; or,

(b) The proposal will have a significant adverse impact upon the quality of the environment; in which case the lead agency shall initiate the EIS preparation procedures of WAC 463-46-350 and 463-46-400 through 463-46-695; or,

(c) There is not sufficient information available to the lead agency to enable it to reasonably make a determination of the environmental significance of the proposal; in which case the lead agency shall implement one or more of the information gathering mechanisms in WAC 463-46-330. [Order 112, § 463-46-320, filed 12/15/76.]

WAC 463-46-330 Threshold determination procedures—Information in addition to checklist. (1) The threshold determination by the lead agency must be based upon information reasonably sufficient to determine the environmental impact of a proposal. In the event that the lead agency determines the information available to it is not reasonably sufficient to make this determination, one or more of the following may be initiated:

(a) The applicant may be required to furnish further information. This additional information shall be limited to those categories on the environmental checklist. An applicant may be required to provide explanations of any "no" answers to questions on the checklist.

(b) The lead agency may initiate further studies, including physical investigations on the subject property, directed toward providing additional information on the environmental impacts of the proposal.

(c) The lead agency may consult with other agencies with jurisdiction over the proposal, requesting substantive information as to potential environmental impacts of the proposal which lie within the area of expertise of the particular agency so consulted. Agencies so consulted shall respond in accordance with the requirements of WAC 463-46-500 through 463-46-540.

(2) When, during the course of collecting further information on a proposal, the lead agency obtains information reasonably sufficient to assess the adverse environmental impacts of the proposal, it shall immediately make the threshold determination utilizing the criteria of WAC 463-46-360 and 463-46-365. In the event that the further investigations authorized by this section do not provide information reasonably sufficient to assess any potential adverse environmental impacts of the proposal, an EIS shall be prepared. [Order 112, § 463-46-330, filed 12/15/76.]

WAC 463-46-340 Threshold determination procedures—Negative declarations. (1) In the event the lead agency determines a proposal will not have a significant adverse impact on the quality of the environment, it shall prepare a proposed or final declaration of non-significance, as appropriate, substantially in the form provided in WAC 463-46-355.

(2) The lead agency shall prepare a final declaration of non-significance for all proposals except for those listed in subsection (3) below.

(3) A lead agency making a threshold determination of non-significance for any of the following proposals shall prepare a proposed declaration of non-significance, and comply with the requirements of subsection (4) through (6) below prior to taking any further action on the proposal:

(a) Proposals for which there is another agency with jurisdiction.

(b) Proposals involving demolition of any structure or facility not exempted by WAC 463-46-170(1)(n) or 463-46-180.

(c) Proposals involving issuance of clearing or grading permits not exempted by WAC 463-46-170, 463-46-175 or 463-46-180.

(4) The lead agency shall list all proposed declarations of non-significance in the "Proposed Declaration of Non-Significance Register" at its SEPA public information center. All such declarations shall be attached to the environmental checklist as evaluated by the lead agency and transmitted to any other agencies with jurisdiction and to the SEPA public information center of the lead agency.

(5) Any person or agency may submit written comments on the proposed declaration of non-significance to the lead agency within fifteen days from the date of its listing in the register. The lead agency shall take no further action on the proposal which is the subject of the proposed declaration of non-significance for fifteen days from the date of its listing in the register. If comments are received, the lead agency shall reconsider its proposed declaration in light thereof; however, the lead agency is not required to modify its proposed declaration of non-significance to reflect the comments received thereon.

(6) After the fifteen day time period has elapsed, and after considering any comments, the lead agency shall either adopt its proposed declaration as a "Final Declaration of Non-Significance," or determine that the proposal is significant, or utilize the additional information gathering mechanisms of WAC 463-46-330(1).

(7) Issuance of proposed and final declarations of non-significance completes the procedural requirements of these guidelines unless another agency with jurisdiction assumes lead agency duties and responsibilities pursuant to WAC 463-46-345. [Order 112, § 463-46-340, filed 12/15/76.]

WAC 463-46-345 Assumption of lead agency status by another agency with jurisdiction over a proposal—Pre-requisites, effect and form of notice. (1) Notwithstanding the lead agency determination criteria of WAC 463-46-200 through 463-46-260, an agency with jurisdiction over a proposal, upon review of a proposed declaration of non-significance, may transmit to the initial lead agency a completed "Notice of Assumption of Lead Agency Status." Such form of notice shall be substantially similar to that described in subsection (4) below. Assumption of lead agency status, if it is to occur, shall take place within fifteen days of the listing of the proposal in the "Proposed Declaration of Non-Significance Register" as provided for in WAC 463-46-340.

(2) An agency with jurisdiction over a proposal, prior to transmittal of the notice described in subsection (4) below and an attached declaration of significance, shall make a finding that an EIS is required for the proposal. This finding shall be based only upon information contained in the environmental checklist attached to the proposed declaration of non-significance transmitted by

the lead agency and any other information possessed by the agency with jurisdiction relative to the matters contained in the environmental checklist.

(3) As a result of the transmittal of a completed form of the notice contained in subsection (4) below and attached declaration of significance, the consulted agency with jurisdiction shall become the "new" lead agency and shall begin preparation of a draft EIS. In addition, all other responsibilities and authority of a lead agency under this chapter shall be transferred to the new lead agency.

(4) The form of "Notice of Assumption of Lead Agency Status" is as follows:

FORM OF NOTICE OF ASSUMPTION OF LEAD AGENCY STATUS

Description of Proposal
Proponent
Location of Proposal
Initial Lead Agency
New Lead Agency

This proposal was determined by the initial lead agency to have no significant adverse impact upon the environment, according to the proposed declaration of non-significance dated A review of the information relative to the environmental checklist has been made by the new lead agency and in its opinion an EIS is required for the proposal. Consequently, notice is hereby given that the former consulted agency with jurisdiction assumes the responsibility of lead agency status from the initial lead agency, including, but not limited to, the duty to prepare a draft and final EIS on the proposal.

Responsible Official
Position/Title
Address/Phone
Date Signature

(5) A completed form of notice, together with a declaration of significance, shall be transmitted to the initial lead agency, any other agencies with jurisdiction and the proponent of the proposal. A copy of the notice shall be retained in the new lead agency's SEPA public information center.

(6) Agencies with jurisdiction may still comment critically upon a proposed declaration of non-significance without assuming lead agency status. No agency shall be deemed to have assumed lead agency status pursuant to this section unless a notice substantially in the form of subsection (4) hereof is completed and transmitted by that agency. The decision of any agency with jurisdiction to not assume lead agency status pursuant to this section shall create no new legal obligation upon that agency. [Order 112, § 463-46-345, filed 12/15/76.]

WAC 463-46-350 Affirmative threshold determination. (1) In the event the lead agency determines that the proposal will have a significant adverse effect upon

the quality of the environment, it shall prepare a declaration of significance using the form in WAC 463-46-355 which shall be retained in the files of the lead agency. The lead agency shall then list the proposal in the "EIS in Preparation Register" maintained at the SEPA public information center of the lead agency, and then begin the EIS preparation procedures of WAC 463-46-400 through 463-46-695.

(2) After the additional information gathering mechanisms of WAC 463-46-330 have been utilized, and when there exists a reasonable belief by the lead agency that the proposal could have a significant adverse impact, the procedure contained in subsection (1) above shall also be followed. [Order 112, § 463-46-350, filed 12/15/76.]

WAC 463-46-355 Form of declaration of significance/non-significance. (1) A declaration substantially in the form set forth in subsection (2) of this section shall be used for all declarations of significance and proposed and final declarations of non-significance. This form shall be attached to the environmental checklist together with any other information obtained pursuant to WAC 463-46-330, and maintained in the files of the lead agency. The form without the attachments shall also be retained in the SEPA public information center of the lead agency for one year after issuance.

(2) The form is as follows:

FORM FOR [PROPOSED/FINAL] DECLARATION OF [SIGNIFICANCE/NON-SIGNIFICANCE]

Description of Proposal
Proponent
Location of Proposal
Lead Agency

This proposal has been determined to [have/not have] a significant adverse impact upon the environment. An EIS [is/is not] required under RCW 43.21C.030(2)(c). This decision was made after review by the lead agency of a completed environmental checklist and other information on file with the lead agency.

Responsible Official
Position/Title
Date Signature

(3) If the form is for a declaration of environmental significance, the lead agency may add to the information contained in subsection (2) of this section a listing of those environmental impacts which led to the declaration, together with a brief explanation of what measures, if any, could be taken to prevent or mitigate the environmental impacts of the proposal to such an extent that the lead agency would withdraw its declaration and issue a [proposed/final] declaration of non-significance. [Order 112, § 463-46-355, filed 12/15/76.]

WAC 463-46-360 Threshold determination criteria—Application of environmental checklist. (1) The

lead agency shall apply the questions in the environmental checklist to the total proposal, including its indirect effects [See WAC 463-46-060], to determine whether the proposal will result in a significant adverse impact upon the quality of the environment. The threshold decision shall be based solely upon this process. The questions contained in the environmental checklist are exclusive, and factors not listed therein shall not be considered in the threshold determination.

(2) The questions in the environmental checklist are not weighted. It is probable there will be affirmative answers to several of these questions while the proposal would still not necessarily have a significant adverse impact; however, a single affirmative answer could indicate a significant adverse impact, depending upon the nature of the impact and location of the proposal. The nature of the existing environment is an important factor. The same project may have a significant adverse impact in one location, but not in another location. The absolute quantitative effects of the proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment. The lead agency shall also be alert to the possibility that several marginal impacts when taken together will result in a significant adverse environmental impact. For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted. If, after the lead agency has utilized the additional information gathering mechanisms of WAC 463-46-330, the impacts of the proposal are still in doubt, and there exists a reasonable belief by the lead agency that the proposal could have a significant adverse impact, an EIS is required.

(3) It should also be remembered that proposals designed to improve the environment (such as sewage treatment plants or pollution control requirements) may also have adverse environmental impacts. The question at the threshold determination level is not whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather if the proposal involves any significant adverse impacts upon the quality of the environment. If it does, an EIS is required. No test of balance shall be applied at the threshold determination level.

(4) Additional research or field investigations by either the lead agency or by the private applicant is required when the information available to the lead agency is not sufficient for it to make a determination of the potential adverse environmental impacts [See WAC 463-46-330]. It is expected, however, that many proposals can be evaluated entirely through an office review [See WAC 463-46-320] of the environmental checklist, and that for other proposals, the majority of the questions in the environmental checklist may be answered in the same manner. [Order 112, § 463-46-360, filed 12/15/76.]

WAC 463-46-365 Environmental checklist. (1) The form in subsection (2) hereof is the environmental checklist. Agencies may at their option revise the format of this form; however, the language of the questions shall not be changed. The questions appearing in the environmental checklist are exclusive, and considerations

which do not appear in it or in WAC 463-46-360 shall not be used in making a threshold determination. This checklist does not supersede or void application forms required under any other federal or state statute or local ordinance, but rather is supplementary thereto.

(2) Environmental checklist form:

ENVIRONMENTAL CHECKLIST

Introduction: The State Environmental Policy Act of 1971, chapter 43.21C RCW, requires all state and local governmental agencies to consider environmental values both for their own actions and when licensing private proposals. The Act also requires that an EIS be prepared for all major actions significantly affecting the quality of the environment. The purpose of this checklist is to help the agencies involved determine whether or not a proposal is such a major action.

Please answer the following questions as completely as you can with the information presently available to you. Where explanations of your answers are required, or where you believe an explanation would be helpful to government decision makers, include your explanation in the space provided, or use additional pages if necessary. You should include references to any reports or studies of which you are aware and which are relevant to the answers you provide. Complete answers to these questions now will help all agencies involved with your proposal to undertake the required environmental review without unnecessary delay.

The following questions apply to your total proposal, not just to the license for which you are currently applying or the proposal for which approval is sought. Your answers should include the impacts which will be caused by your proposal when it is completed, even though completion may not occur until sometime in the future. This will allow all of the agencies which will be involved to complete their environmental review now, without duplicating paperwork in the future.

NOTE: This is a standard form being used by all state and local agencies in the State of Washington for various types of proposals. Many of the questions may not apply to your proposal. If a question does not apply, just answer it "no" and continue on to the next question.

ENVIRONMENTAL CHECKLIST FORM

I. BACKGROUND

1. Name of Proponent -----
2. Address and Phone Number of Proponent:

3. Date Checklist Submitted -----
4. Agency Requiring Checklist -----
5. Name of Proposal, if applicable:

6. Nature and Brief Description of the Proposal (including but not limited to its size, general design elements, and other factors that will give an accurate understanding of its scope and nature):

	Yes	Maybe	No
----- -----			
7. Location of Proposal (describe the physical setting of the proposal, as well as the extent of the land area affected by any environmental impacts, including any other information needed to give an accurate understanding of the environmental setting of the proposal): ----- -----			
8. Estimated Date for Completion of the Proposal: -----			
9. List of all Permits, Licenses or Government Approvals Required for the Proposal (federal, state and local—including rezones): ----- -----			
10. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain: ----- -----			
11. Do you know of any plans by others which may affect the property covered by your proposal? If yes, explain: ----- -----			
12. Attach any other application form that has been completed regarding the proposal; if none has been completed, but is expected to be filed at some future date, describe the nature of such application form: ----- -----			

physical features? --- --- ---

(e) Any increase in wind or water erosion of soils, either on or off the site? --- --- ---

(f) Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake? --- --- ---

Explanation: -----

(2) **Air.** Will the proposal result in:

(a) Air emissions or deterioration of ambient air quality? --- --- ---

(b) The creation of objectionable odors? --- --- ---

(c) Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally? --- --- ---

Explanation: -----

(3) **Water.** Will the proposal result in:

(a) Changes in currents, or the course or direction of water movements, in either marine or fresh waters? --- --- ---

(b) Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff? --- --- ---

(c) Alterations to the course or flow of flood waters? --- --- ---

(d) Change in the amount of surface water in any water body? --- --- ---

(e) Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required)

	Yes	Maybe	No
(1) Earth. Will the proposal result in:			
(a) Unstable earth conditions or in changes in geologic substructures?	---	---	---
(b) Disruptions, displacements, compaction or overcovering of the soil?	---	---	---
(c) Change in topography or ground surface relief features?	---	---	---
(d) The destruction, covering or modification of any unique geologic or			

	Yes	Maybe	No
turbidity?	---	---	---
(f) Alteration of the direction or rate of flow of ground waters?	---	---	---
(g) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	---	---	---
(h) Deterioration in ground water quality, either through direct injection, or through the seepage of leachate, phosphates, detergents, waterborne virus or bacteria, or other substances into the ground waters?	---	---	---
(i) Reduction in the amount of water otherwise available for public water supplies?	---	---	---
Explanation: ----- -----			

(4) **Flora.** Will the proposal result in:

(a) Change in the diversity of species, or numbers of any species of flora (including trees, shrubs, grass, crops, microflora and aquatic plants)?	---	---	---
(b) Reduction of the numbers of any unique, rare or endangered species of flora?	---	---	---
(c) Introduction of new species of flora into an area, or in a barrier to the normal replenishment of existing species?	---	---	---
(d) Reduction in acreage of any agricultural crop?	---	---	---
Explanation: ----- -----			

(5) **Fauna.** Will the proposal result in:

(a) Changes in the diversity of species, or numbers of any species			
--	--	--	--

	Yes	Maybe	No
of fauna (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects or microfauna)?	---	---	---
(b) Reduction of the numbers of any unique, rare or endangered species of fauna?	---	---	---
(c) Introduction of new species of fauna into an area, or result in a barrier to the migration or movement of fauna?	---	---	---
(d) Deterioration to existing fish or wildlife habitat?	---	---	---

Explanation: -----

(6) **Noise.** Will the proposal increase existing noise levels?

Explanation: -----

(7) **Light and Glare.** Will the proposal produce new light or glare?

Explanation: -----

(8) **Land Use.** Will the proposal result in the alteration of the present or planned land use of an area?

Explanation: -----

(9) **Natural Resources.** Will the proposal result in:

(a) Increase in the rate of use of any natural resources?	---	---	---
(b) Depletion of any nonrenewable natural resource?	---	---	---

Explanation: -----

(10) **Risk of Upset.** Does the proposal involve a risk of

	Yes	Maybe	No		Yes	Maybe	No
an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?	---	---	---	for new or altered governmental services in any of the following areas:			
Explanation: -----				(a) Fire protection?	---	---	---
				(b) Police protection?	---	---	---
(11) Population. Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?	---	---	---	(c) Schools?	---	---	---
Explanation: -----				(d) Parks or other recreational facilities?	---	---	---
				(e) Maintenance of public facilities, including roads?	---	---	---
(12) Housing. Will the proposal affect existing housing, or create a demand for additional housing?	---	---	---	(f) Other governmental services?	---	---	---
Explanation: -----				Explanation: -----			
(13) Transportation/Circulation. Will the proposal result in:				(15) Energy. Will the proposal result in:			
(a) Generation of additional vehicular movement?	---	---	---	(a) Use of substantial amounts of fuel or energy?	---	---	---
(b) Effects on existing parking facilities, or demand for new parking?	---	---	---	(b) Demand upon existing sources of energy, or require the development of new sources of energy?	---	---	---
(c) Impact upon existing transportation systems?	---	---	---	Explanation: -----			
(d) Alterations to present patterns of circulation or movement of people and/or goods?	---	---	---				
(e) Alterations to waterborne, rail or air traffic?	---	---	---	(16) Utilities. Will the proposal result in a need for new systems, or alterations to the following utilities:			
(f) Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?	---	---	---	(a) Power or natural gas?	---	---	---
Explanation: -----				(b) Communications systems?	---	---	---
				(c) Water?	---	---	---
(14) Public Services. Will the proposal have an effect upon, or result in a need				(d) Sewer or septic tanks?	---	---	---
				(e) Storm water drainage?	---	---	---
				(f) Solid waste and disposal?	---	---	---
				Explanation: -----			
				(17) Human Health. Will the proposal result in the creation of any health hazard or potential			

	Yes	Maybe	No
health hazard (excluding mental health)?	---	---	---

Explanation: -----

(18) **Aesthetics.** Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view? --- --- ---

Explanation: -----

(19) **Recreation.** Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? --- --- ---

Explanation: -----

(20) **Archeological/Historical.** Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building? --- --- ---

Explanation: -----

III. SIGNATURE

I, the undersigned, state that to the best of my knowledge the above information is true and complete. It is understood that the lead agency may withdraw any declaration of non-significance that it might issue in reliance upon this checklist should there be any willful misrepresentation or willful lack of full disclosure on my part.

Proponent: -----

[Order 112, § 463-46-365, filed 12/15/76.]

WAC 463-46-370 Withdrawal of affirmative threshold determination. If at any time after the entry of a declaration of significance, the proponent modifies the proposal so that, in the judgment of the lead agency, all significant adverse environmental impacts resulting therefrom are eliminated, the declaration of significance shall be withdrawn and a declaration of non-significance entered instead. The lead agency shall also revise the registers at its SEPA public information center accordingly. If the proponent of a proposal is a private applicant, the proposal shall not be considered modified until

all license applications for the proposal are revised to reflect the modification. [Order 112, § 463-46-370, filed 12/15/76.]

WAC 463-46-375 Withdrawal of negative threshold determination. (1) Except after a non-exempt license has been issued for a private project, the lead agency may withdraw any proposed or final declaration of non-significance when new information becomes available to it indicating that the proposal may have significant adverse environmental impacts.

(2) The lead agency may withdraw any proposed or final declaration of non-significance at any time when:

(a) The proposal has been modified after the threshold determination, and such modification may cause the proposed action to have significant adverse environmental impacts, or

(b) The negative threshold determination was procured by misrepresentation or lack of full disclosure by the proponent of the proposal.

(3) Whenever a negative threshold determination is withdrawn pursuant to this section, the lead agency shall immediately re-evaluate the proposal and make a revised threshold determination pursuant to WAC 463-46-300 through 463-46-360.

(4) Whenever a final declaration of non-significance has been withdrawn for one of the reasons in subsection (2) hereof, and the lead agency upon re-evaluation determines that the proposal will have significant adverse environmental impacts, agencies with jurisdiction shall initiate procedures to suspend, modify or revoke, as appropriate, any non-exempt licenses issued for the proposal until compliance with the procedures of these guidelines is met. [Order 112, § 463-46-375, filed 12/15/76.]

WAC 463-46-390 Effect of threshold determination by lead agency. (1) Except as provided in subsection (2) below, a threshold determination by the lead agency is binding upon all agencies, and no agency shall repeat the threshold determination procedures for substantially the same proposal. This section shall not be construed to permit or prohibit judicial review of a threshold determination by a court, or quasi-judicial review of a threshold determination by an agency during an administrative hearing.

(2) An agency with jurisdiction over a proposal, upon receipt of a proposed declaration of non-significance from the lead agency, may complete and transmit a notice of assumption of lead agency status after meeting the requirements of WAC 463-46-345. As a result of compliance with WAC 463-46-345, the agency with jurisdiction has in effect reversed the decision of the initial lead agency regarding environmental insignificance and as the new lead agency, will be required to prepare a draft EIS and exercise the other responsibilities of a lead agency under these guidelines. [Order 112, § 463-46-390, filed 12/15/76.]

WAC 463-46-400 Duty to begin preparation of a draft EIS. After compliance with WAC 463-46-350, relating to preparation of a declaration of significance

and the listing of the proposal in the "EIS in Preparation Register," the lead agency shall prepare the draft and final EIS in compliance with WAC 463-46-410 through 463-46-695. [Order 112, § 463-46-400, filed 12/15/76.]

WAC 463-46-405 Purpose and function of a draft EIS. (1) The principal purpose of the draft EIS document is to transmit information concerning a proposed governmental action and the alternatives to that action to public officials, project sponsors, and interested citizens. While the contents of a draft EIS may span a wide spectrum of issues, the focus of the document is upon the following:

(a) The assessment of the adverse impacts upon the environment which may result from the proposed action or its alternatives, and

(b) An analysis of measures which may be taken to mitigate or eliminate those adverse impacts.

(2) Another principal function to be served by the draft EIS process is to facilitate the transmittal to the lead agency from other governmental agencies and interested citizens substantive information concerning the adverse impacts upon the environment discussed inadequately or erroneously in the draft EIS. The draft EIS process also provides an opportunity for reviewers of the document to bring to the attention of the lead agency any issue of potential environmental concern which should be explored by the lead agency prior to the issuance of a final EIS. [Order 112, § 463-46-405, filed 12/15/76.]

WAC 463-46-410 Pre-draft consultation procedures. (1) Pre-draft consultation is consultation by the lead agency with another agency with jurisdiction or expertise prior to completion of the draft EIS. Pre-draft consultation with another agency on proposals for private projects shall only be initiated by the lead agency when requested by a private applicant participating in the preparation of the draft EIS. Pre-draft consultation with another agency on public proposals may be initiated at the option of the lead agency.

(2) Pre-draft consultation is commenced when the lead agency sends to the consulted agency a packet of the following material related to the proposal:

(a) Any application for licenses for the proposal in the possession of the lead agency.

(b) A copy of the environmental checklist required by WAC 463-46-310, as reviewed pursuant to WAC 463-46-320.

(c) Any information in addition to the checklist resulting from application of WAC 463-46-330.

(d) Any other information deemed relevant to the proposal by the lead agency such as:

(i) Prior EISs;

(ii) Portions of applicable plans or ordinances; or,

(iii) Prior scientific studies applicable to the site.

(3) Agencies so consulted will have forty-five days from receipt of the packet to respond in writing to the lead agency. The required contents of the consulted agency response are governed by WAC 463-46-500 through 463-46-540.

(4) The lead agency shall incorporate the relevant information received from other agencies during the pre-draft consultation stage into the draft EIS, by either summarizing the major findings which are contained in each of the consulted agency's responses or utilizing all of the data received. In the event the lead agency disagrees with any conclusion expressed in the information received from the consulted agency, the conclusion shall be set forth together with the position of the lead agency. The information required by this subsection may be placed wherever in the draft EIS the lead agency deems most appropriate. There is no requirement that either the draft or final EIS include responses to pre-draft consultation in a separate "response" section. [Order 112, § 463-46-410, filed 12/15/76.]

WAC 463-46-420 Preparation of EIS by persons outside the lead agency. (1) Preparation of the EIS is the responsibility of the lead agency, by or under the direction of its responsible official. No matter who participates in the preparation of the EIS, it is nevertheless the EIS of the responsible official of the lead agency. The responsible official, prior to distributing the draft EIS, shall be satisfied that it complies with the provisions of these guidelines and the guidelines of the lead agency.

(2) An EIS may be prepared by a private applicant or agent thereof, or by an outside consultant retained by either a private applicant or the lead agency. In such case, the responsible official within the lead agency shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document.

(3) If a person other than the lead agency is preparing the EIS, the responsible official will coordinate any pre-draft consultation procedures so that the individual preparing the EIS immediately receives all substantive information submitted by consulted agencies. The responsible official shall also attempt to obtain any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any private party preparing an EIS access to all public records of the lead agency which are relevant to the subject matter of the EIS, pursuant to chapter 42.17 RCW [Public Disclosure and Public Records Law; Initiative 276, 1973].

(4) The council shall specifically provide in its own guidelines those situations in which a private applicant may be required or authorized to participate in the preparation of an EIS. Such council guidelines may not require more information of a private applicant that allowed by this chapter, but may authorize a lesser degree of participation by a private applicant than allowed herein: *Provided*, That nothing herein shall be construed to prohibit the council from charging any fee of an applicant which the agency is otherwise authorized to charge.

(5) No private applicant shall be required to participate in the preparation of an EIS except when consistent with the guidelines of the lead agency. A private applicant may, however, volunteer to provide any information

or effort desired, so long as the contents and organization of the resulting EIS are supervised and approved by the responsible official as required by this section.

(6) The provisions of this section apply to both the draft and final EIS. [Order 112, § 463-46-420, filed 12/15/76.]

WAC 463-46-425 Organization and style of a draft EIS. (1) The required contents of a draft EIS for proposals of both a project and non-project nature are set forth in WAC 463-46-440. The contents of a draft EIS prepared pursuant to that section shall be organized as set forth in subsections (2) and (3) of this section.

(2) Each draft EIS shall begin with an introduction, table of contents, distribution list, summary, and a description of the proposed action. The information contained in each section shall conform to the applicable requirements set forth in WAC 463-46-440(1) through 463-46-440(6). Organization variation is not permitted for these portions of the draft EIS.

(3) The organization and style of the remaining content of the EIS may be varied, at the option of the lead agency, from the format set forth in WAC 463-46-440(7) through 463-46-440(14): *Provided*, That all of the subject matters required by WAC 463-46-440 shall be contained somewhere within the draft EIS.

(4) The lead agency that prepares a draft EIS should keep in mind that the purpose of a draft EIS is to aid decision-makers in considering the significant environmental impacts of their decisions. This purpose is not served by EISs which are excessively detailed and overly technical. Clarity and conciseness of presentation are of crucial importance in ensuring that EISs prepared under these guidelines are considered and actually utilized in decision-making processes. [Order 112, § 463-46-425, filed 12/15/76.]

WAC 463-46-440 Contents of a draft EIS. (1) The following subsections set forth the required contents of a draft EIS: *Provided*, That where an agency is preparing a draft EIS in order to satisfy the requirements of NEPA, as well as SEPA, and the regulations of the applicable federal agency require items in addition to that set forth below, then the contents of the draft EIS may be expanded as necessary to meet the requirements of that federal agency.

(2) **Introduction.** The following information shall be succinctly set forth at the beginning of the draft EIS:

(a) Action sponsor, and a brief (one or two sentence) description of the nature of the proposal and its location (street address, or nearest crossroads or cross-streets).

(b) Lead agency, responsible official, and the name and address of a contact person to whom comments, information and questions may be sent.

(c) Authors and principal contributors to the draft EIS and the nature or subject area of their contribution.

(d) List of all licenses which the proposal is known to require.

(e) Location of EIS background data.

(f) Cost to the public for a copy of the EIS pursuant to chapter 42.17 RCW.

(g) Date of issue of the draft EIS.

(h) Dates by which consulted agency and public comments must be received to be incorporated into the final EIS.

(3) **Table of contents.**

(4) **Distribution list.** The draft EIS shall include a list of the names of all agencies, federal agencies, organizations and persons to whom the draft EIS will be sent upon publication [See WAC 463-46-460].

(5) **Summary of the contents of the draft EIS.** Each draft EIS shall contain a summary of its contents as an aid to the agency decision-makers. The lead agency is to bear in mind that agencies other than the lead agency may be utilizing the EIS as an aid in decision-making. Therefore, care should be taken to ensure that the scope of the summary and the EIS is sufficiently broad to be useful to those other agencies being requested to license or approve a proposal. The summary shall contain only a short restatement of the main points discussed in the EIS for each of the various subject areas. In the event impacts cannot be predicted with certainty, the reason for uncertainty together with the more likely possibilities should be concisely stated. In most cases it is expected that the summary will run two to five pages, but it shall not be more than ten pages. The summary shall include a brief description of the following:

(a) The proposal, including the purpose or objectives which are sought to be achieved by the sponsor.

(b) The direct and indirect impacts upon the environment which may result from the proposal.

(c) The alternatives considered, together with any variation in impacts which may result from each alternative.

(d) Measures which may be effectuated by the applicant, lead agency, or other agency with jurisdiction to mitigate or eliminate adverse impacts which may result from the proposal.

(e) Any remaining adverse impacts which cannot or will not be mitigated.

(6) **Description of the proposal.** The draft EIS shall include a description of the total proposal, including, but not limited to, the following:

(a) The name of the proposal and sponsors.

(b) The location of the project, or area affected by a non-project action, including an address, if any, and a legal description: *Provided*, That where the legal description is by metes and bounds, or is excessively lengthy, a map, in lieu of a legal description, shall be included which enables a lay person to precisely understand the location of the proposal.

(c) Reference to the file numbers, if known, of any other agencies involved so the proposal's location may be identified with precision by the consulted agency.

(d) If the proposal involves phased construction over a period of time, the timing of each construction phase should be identified; and if it is anticipated that later phases of the proposal will require future environmental analyses, these should be identified.

(e) A description of the major physical and engineering aspects of the proposal. This description should be tailored to the environmental impacts later discussed, with those physical aspects of the proposal causing the

greater impacts being given the more detailed description. Inclusion of detailed engineering drawings and technical data should normally be avoided. Material of this nature should be retained in agency files and supplied to consulted agencies upon request.

(f) A brief description of existing comprehensive land use plans and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.

(g) Within the general guidelines of this subsection, the lead agency has discretion to determine the content and level of detail appropriate to adequately describe the proposal.

(7) **Existing environmental conditions.** This section shall include the following:

(a) A general assessment of the existing environment, covering those areas of the environment listed in WAC 463-46-444.

(i) The level of detail used in presenting the existing environment should be proportionate to the impacts the proposal will have if approved.

(ii) Areas of the environment which are not relevant to the identified impacts need only be mentioned generally, or not at all.

(iii) Inventories of the species of flora and fauna present on the site should be avoided; rather, emphasis should be placed upon those species and habitats which may be significantly affected.

(iv) This subsection shall be brief, non-technical, and easily understandable by lay persons, and provide the necessary background for understanding the proposal's impacts.

(b) Specific reference shall be made to those inventories and data studies which provided the informational source for part or all of the contents of this subsection.

(8) **The impact of the proposal on the environment.** The following items shall be included in this subsection:

(a) The known impacts resulting from the proposal within any element of the environment listed in WAC 463-46-444, the effects of which are either known to be, or which may be significant (whether beneficial or adverse), shall be discussed in detail; impacts which are potential, but not certain to occur, shall be discussed within reason.

(b) Elements of the environment which will not be significantly affected shall be marked "N/A" (not applicable) as set forth in WAC 463-46-444(1).

(c) Direct and indirect impacts of the total proposal, as described in subsection (8)(a) above shall be examined and discussed (for example, cumulative and growth-inducing impacts).

(d) The possibility that effects upon different elements of the environment will interrelate to form significant impacts shall be considered.

(9) **The relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity.** The following items shall be included in this subsection:

(a) An identification of the extent to which the proposal involves trade-offs between short-term gains at the expense of long-term environmental losses.

(i) The phrases "short-term" and "long-term" do not refer to any fixed time periods, but rather are to be viewed in terms of the significant environmental impacts of the proposal.

(ii) Impacts which will narrow the range and degree of beneficial uses of the environment or pose long-term risks to human health shall be given special attention.

(b) A discussion of the benefits and disadvantages of reserving for some future time the implementation of the proposal, as opposed to possible approval of the proposal at this time.

(i) The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations.

(ii) Particular attention should be given to the possibility of foreclosing future options or alternatives by implementation of the proposal.

(10) **Irreversible or irretrievable commitments of resources.** The following items shall be included in this subsection:

(a) An identification of all substantial quantities of natural resources, including sources of energy and non-renewable materials, which will be committed by the proposal on a permanent or long-term basis. Commitment of natural resources also includes the lost opportunities to make other uses of the resources in question.

(b) This subsection may be integrated with subsection (9) above in order to more usefully present the information required by both sections.

(11) **Adverse environmental impacts which may be mitigated.** The following items shall be included in this subsection:

(a) A description of reasonable alterations to the proposal which may result in avoiding, mitigating or reducing the risk of occurrence of any adverse impacts upon the environment.

(b) Energy conservation measures, including more efficient utilization of conventional techniques (e.g., insulation) as well as newer methods.

(c) Each alternative discussed in (a) and (b) above shall be evaluated in terms of its effect upon the environment, its technical feasibility, and its economic practicability.

(12) **Alternatives to the proposal.** This subsection shall include the following items:

(a) A description and objective evaluation of any reasonable alternative action which could feasibly attain the objective of the proposal.

(i) Reasonable alternatives shall include any action which might approximate the proposal's objective, but at a lower environmental cost or decreased level of environmental degradation.

(ii) Reasonable alternatives may be those which are capable of being effected by either the lead agency or other agency having jurisdiction.

(b) The "no-action" alternative shall be evaluated and compared to the other alternatives.

(c) The adverse environmental effects of each alternative shall be identified.

(d) The analysis of alternatives should be sufficiently detailed to permit a comparative evaluation of each alternative and the proposal as described in subsection (6) of this section.

(e) In those instances where the proposal is for a private project on a specific site, the alternatives considered shall be limited to the "no-action" alternative plus other reasonable alternative means of achieving the objective of the proposal on the same site or other sites owned or controlled by the same proponent (which may include only alterations for mitigation under subsection (11) of this section). This limitation shall not apply when the project proponent is applying for a rezone or contract rezone.

(f) Subsection (12) may be integrated with subsection (11) of this section in order to more usefully present the information required by both subsections.

(g) The use of the term "reasonable" is intended to limit both the number and range of alternatives that shall be described and evaluated in this subsection, as well as the amount or level of detail which the EIS shall employ for each alternative that is discussed and evaluated.

(13) **Unavoidable adverse impacts.** This subsection shall include the following items:

(a) A listing of those impacts included in subsection (8) of this section which are adverse but cannot, or will not, be mitigated or avoided by modifications to the project.

(b) For any impact discussed in subsection (8) of this section which is determined to be non-adverse, the rationale for such determination shall be clearly stated.

(c) [Optional] A discussion of the relationship between the costs of the unavoidable adverse environmental impacts and the expected beneficial environmental impacts which will result from the implementation of the proposed action.

(14) **Other issues.** A draft EIS may contain a section labeled "Other Issues" within which those other problems and issues not pertaining to any element listed in WAC 463-46-444, but which are relevant to the proposal, shall be identified. The section shall be limited to a brief identification of such problems or issues. The lead agency may adopt guidelines that delineate the problems or issues identified under this subsection. [Order 112, § 463-46-440, filed 12/15/76.]

WAC 463-46-442 Special considerations regarding contents of an EIS on a non-project action. (1) The requirements of WAC 463-46-440 apply to the contents of a draft EIS on a proposal for a non-project action. Lead agencies, however, have greater flexibility in their approach to achieving compliance with the requirements of WAC 463-46-440 in writing and EIS for non-project actions, because normally less specific details are known about the proposal and any implementing projects, as well as the anticipated impacts on the environment.

(2) The lead agency should be alert to the fact that it is in the development and review of proposals for non-project actions where the range of alternatives is typically more broad than that of a proposal for a project action (which is often narrowed to a specific location and

design). The proposal should be described in a manner which encourages consideration of a number of alternative methods of accomplishing its objective. For example, an objective of an agency's proposal should be stated as "the facilitation of the movement of people from point A to point B" rather than "the widening of an urban arterial in order to accommodate additional privately-owned passenger vehicles." [Order 112, § 463-46-442, filed 12/15/76.]

WAC 463-46-444 List of elements of the environment. (1) Every EIS shall have appended to it a list of the elements of the environment in subsection (2), (3) and (4) of this section. The lead agency shall place "N/A" ("not applicable") next to an item when the proposal, including its indirect impacts, will not significantly affect the area (or subarea) of the environment in question. Items marked "N/A" need not be mentioned in the body of the EIS. Subsections (2) and (3) of this section correspond in subject matter to the questions contained in the environmental checklist used for threshold determination, and the questions in the checklist may be used to interpret this outline listing.

(2) ELEMENTS OF THE PHYSICAL ENVIRONMENT.

(a) Earth.

- (i) Geology.
- (ii) Soils.
- (iii) Topography.
- (iv) Unique physical features.
- (v) Erosion.
- (vi) Accretion/avulsion.

(b) Air.

- (i) Air quality.
- (ii) Odor.
- (iii) Climate.

(c) Water.

- (i) Surface water movement.
- (ii) Runoff/absorption.
- (iii) Floods.
- (iv) Surface water quantity.
- (v) Surface water quality.
- (vi) Ground water movement.
- (vii) Ground water quantity.
- (viii) Ground water quality.
- (ix) Public water supplies.

(d) Flora.

- (i) Numbers or diversity of species.
- (ii) Unique species.
- (iii) Barriers and/or corridors.
- (iv) Agricultural crops.

(e) Fauna.

- (i) Numbers or diversity of species.
- (ii) Unique species.
- (iii) Barriers and/or corridors.
- (iv) Fish or wildlife habitat.

(f) Noise.

(g) Light and glare.

(h) Land use.

(i) Natural resources.

- (i) Rate of use.

- (ii) Nonrenewable resources.
- (j) Risk of explosion or hazardous emissions.

(3) ELEMENTS OF THE HUMAN ENVIRONMENT

- (a) Population.
- (b) Housing.
- (c) Transportation/circulation.
 - (i) Vehicular transportation generated.
 - (ii) Parking facilities.
 - (iii) Transportation systems.
 - (iv) Movement/circulation of people or goods.
 - (v) Waterborne, rail and air traffic.
 - (vi) Traffic hazards.
- (d) Public services.
 - (i) Fire.
 - (ii) Police.
 - (iii) Schools.
 - (iv) Parks or other recreational facilities.
 - (v) Maintenance.
 - (vi) Other governmental services.
- (e) Energy.
 - (i) Amount required.
 - (ii) Source/availability.
- (f) Utilities.
 - (i) Energy.
 - (ii) Communications.
 - (iii) Water.
 - (iv) Sewer.
 - (v) Storm water.
 - (vi) Solid waste.
- (g) Human health (including mental health).
- (h) Aesthetics.
 - (i) Recreation.
- (j) Archeological/historical.

(4) The following additional element shall be covered in all EISs, either by being discussed or marked "N/A," but shall not be considered part of the environment for other purposes:

- (a) Additional population characteristics.
 - (i) Distribution by age, sex and ethnic characteristics of the residents in the geographical area affected by the environmental impacts of the proposal.

[Order 112, § 463-46-444, filed 12/15/76.]

WAC 463-46-450 Public awareness of availability of draft EIS. (1) Upon publication by the council of the draft EIS, the responsible official shall list the proposal in the lead agency's "EIS Available Register" maintained at the agency's SEPA public information center.

(2) The lead agency is encouraged, but not required, to use any reasonable method calculated to inform the public of the availability of the draft EIS and of the procedures for requesting a public hearing. Examples of such methods are publication of notice in a newspaper of general circulation in the county, city or general geographic area where the proposal is located; notifying

private groups that are known to be interested in a certain proposal; contacting news media personnel and encouraging news coverage; and, placing notices in appropriate regional, neighborhood or ethnic periodicals. [Order 112, § 463-46-450, filed 12/15/76.]

WAC 463-46-455 Circulation of the draft EIS—Review period. (1) A consulted agency shall have a maximum of thirty-five days from the date of listing of the proposal in the "EIS Available Register" in which to review the draft and forward its comments and information with respect thereto to the lead agency. If a consulted agency with jurisdiction requires additional time to develop and complete new data on the proposal, a fifteen day extension may be granted by the lead agency. Extensions may not be granted for any other purpose.

(2) There shall be allowed a period of thirty-five days from the date of the listing of the proposal in the "EIS Available Register" for the public to forward to the lead agency any comments upon or substantive information related to the proposal and the draft EIS. [Order 112, § 463-46-455, filed 12/15/76.]

WAC 463-46-460 Specific agencies to which draft EIS shall be sent. (1) A copy of each draft EIS shall be mailed no later than the day that it is listed in the "EIS Available Register" to the following:

- (a) The department of ecology.
- (b) Each federal agency having jurisdiction by law over a proposed action.
- (c) Each agency having jurisdiction by law over, or environmental expertise pertaining to a proposed action, as defined by WAC 463-46-040 and 463-46-465 (required by RCW 43.21C.030(2)(d)).

(d) Each city/county in which adverse environmental effects identified in the draft EIS may occur if the proposed action is implemented. (This subsection does not apply to draft EISs for non-project actions.)

(e) Each local agency or political subdivision which will be required to furnish additional public services as a result of implementation of the proposed action.

(f) The applicable regional planning commission, regional clearinghouse, statewide clearinghouse, or area-wide council of government which has been designated to review and coordinate local governmental planning under the A-95 review process and other federal regulations and programs [See RCW 36.64.080, RCW 35.63.070 and RCW 36.70.070].

(g) The lead agency's SEPA public information center.

(h) [Optional] Any person, organization or governmental agency that has expressed an interest in the proposal, is known by the lead agency to have an interest in the type of proposal being considered, or receives governmental documents (e.g., local and regional libraries) may be sent a copy of the draft EIS.

(2) An agency that receives a copy of the draft EIS does not become a "consulted agency" under these guidelines due to that factor alone. [See WAC 463-46-040, 463-46-465, 463-46-510 and 463-46-520 for those provisions that define a consulted agency.] [Order 112, § 463-46-460, filed 12/15/76.]

WAC 463-46-465 Agencies possessing environmental expertise. The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

(1) Air quality.

- (a) Department of ecology.
- (b) Department of natural resources (only for burning in forest areas).
- (c) Department of social and health services.
- (d) Regional air pollution control authority or agency.

(2) Water resources and water quality.

- (a) Department of game.
- (b) Department of ecology.
- (c) Department of natural resources (state-owned tidelands, harbor areas or beds of navigable waters).
- (d) Department of social and health services (public water supplies, sewer systems, shellfish habitats).
- (e) Department of fisheries.
- (f) Oceanographic commission (marine waters).

(3) Fish and wildlife.

- (a) Department of game.
- (b) Department of fisheries.
- (c) Oceanographic commission (marine waters).

(4) Solid waste.

- (a) Department of ecology.
- (b) Department of fisheries (dredge spoils).
- (c) Department of social and health services.

(5) Noise.

- (a) Department of ecology.
- (b) Department of social and health services.

(6) Hazardous substances (including radiation).

- (a) Department of ecology.
- (b) Department of social and health services.
- (c) Department of agriculture (foods or pesticides).
- (d) Department of fisheries (introduction into waters).
- (e) Oceanographic commission (introduction into marine waters).

(7) Natural resources development.

- (a) Department of commerce and economic development.
- (b) Department of ecology.
- (c) Department of natural resources.
- (d) Department of fisheries.
- (e) Department of game.
- (f) Oceanographic commission (related to marine waters).

(8) Energy production, transmission and consumption.

- (a) Department of commerce and economic development (office of nuclear energy development—nuclear).

- (b) Department of ecology.
- (c) Department of natural resources (geothermal, coal, uranium).
- (d) State energy office.
- (e) Energy facility site evaluation council (energy facilities).
- (f) Utilities and transportation commission.

(9) Land use and management.

- (a) Department of commerce and economic development.
- (b) Department of ecology.
- (c) Department of fisheries (affecting surface or marine waters).
- (d) Department of natural resources (tidelands or state-owned or -managed lands).
- (e) Office of community development.

(10) Transportation.

- (a) Department of highways.
- (b) Utilities and transportation commission.
- (c) Oceanographic commission (water borne).

(11) Recreation.

- (a) Department of commerce and economic development.
- (b) Department of game.
- (c) Department of fisheries.
- (d) Parks and recreation commission.
- (e) Department of natural resources.

(12) Archaeological/historical.

- (a) Parks and recreation commission.
- (b) Washington state university at Pullman (Washington archaeological research council).

[Order 112, § 463-46-465, filed 12/15/76.]

WAC 463-46-470 Cost to the public for reproduction of environmental documents. The lead agency shall make available a copy of any environmental document, in the manner provided by chapter 42.17 RCW, charging only those costs allowed therein and mailing costs: *Provided*, That no charge shall be levied for circulation of documents to other agencies which is required by these guidelines. [Order 112, § 463-46-470, filed 12/15/76.]

WAC 463-46-480 Public hearing on a proposal—When required. (1) If a public hearing on the proposal is held pursuant to some other requirement of law, such hearing shall be open to consideration of the environmental impact of the proposal, together with any available environmental document.

(2) In all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:

- (a) The lead agency determines, in its sole discretion, that a public hearing would assist the lead agency in meeting its responsibility to implement the purposes and goals of SEPA and these guidelines; or,

(b) When fifty or more persons residing within the jurisdiction of the lead agency, or who would be adversely affected by the environmental impact of the proposal, make written request to the lead agency within thirty-five days of the listing of the proposal in the "EIS Available Register"; or,

(c) When two or more agencies with jurisdiction over a proposal make written request to the lead agency within thirty-five days of the listing of the proposal in the "EIS Available Register."

(3) Whenever a public hearing is held under subsection (2) of this section, it shall occur no later than fifty-one days from the listing of the proposal in the "EIS Available Register" and no earlier than fifteen days from such date of listing. [Order 112, § 463-46-480, filed 12/15/76.]

WAC 463-46-485 Notice of public hearing on environmental impact of the proposal. (1) Notice of all public hearings to be held pursuant to WAC 463-46-480(2) shall be published in a newspaper of general circulation in the area where the project will be implemented. For non-project actions the notice shall be published in the general area where the lead agency has its principal office. The notice shall be published no later than five days preceding the hearing. For non-project proposals having regional or statewide applicability, copies of the notice shall be transmitted to the Olympia bureaus of the associated press and united press international.

(2) A notation of the hearing date and location shall be entered in the "EIS Available Register" maintained at the lead agency's SEPA public information center. [Order 112, § 463-46-485, filed 12/15/76.]

WAC 463-46-490 Public hearing on the proposal—Use of environmental documents. Whenever a public hearing is held on the environmental impact of a proposal, it shall be open to discussion of all environmental documents and any written comments which have been received by the lead agency prior to the hearing. A copy of the draft EIS shall be made available for public inspection at the public hearing. [Order 112, § 463-46-490, filed 12/15/76.]

WAC 463-46-495 Preparation of amended or new draft EIS. (1) A lead agency shall prepare an amended or new draft EIS whenever it determines:

(a) That substantial changes have been made in the proposal, or significant new information concerning anticipated environmental impacts has become available subsequent to circulation of the initial draft EIS, and

(b) That circulation of a new draft EIS is necessary to provide further input and review on the proposal.

(2) In such event, the lead agency shall follow the provisions of WAC 463-46-450 through 463-46-490 for the amended or new draft EIS. [Order 112, § 463-46-495, filed 12/15/76.]

WAC 463-46-500 Responsibilities of consulted agencies—Local agencies. Each local agency, when responding to a consultation request prior to a threshold determination, participating in pre-draft consultation, or

reviewing a draft EIS, shall provide to the lead agency that substantive data, information, test results and other material which it possesses relevant to its area of jurisdiction, to the services it will provide, or to the impacts upon it associated with the proposal. Field investigations are not required of local consulted agencies. Local agencies are not required to transmit information which has been previously transmitted to the lead agency, or which is already reflected in the draft EIS. [Order 112, § 463-46-500, filed 12/15/76.]

WAC 463-46-510 Responsibilities of consulted agencies—State agencies with jurisdiction. Each state agency with jurisdiction, when responding to a consultation request prior to a threshold determination, participating in pre-draft consultation, or reviewing a draft EIS, shall immediately begin the research and, if necessary, field investigations which it would normally conduct in conjunction with whatever license it requires for a proposal; or, in the event no license is involved the agency with jurisdiction shall investigate the impacts of the activity it will undertake which gives it jurisdiction over a portion of the proposal. The end result of these investigations should be that each agency with jurisdiction will be able to transmit to the lead agency substantive information on those environmental impacts of the proposal which are within the scope of the license or activity of the agency with jurisdiction. An agency with jurisdiction, in its response to the lead agency, should also indicate which of the impacts it has discovered may be mitigated or avoided and how this might be accomplished, and describe those areas of environmental risks which remain after it has conducted the investigations that may have been required. [Order 112, § 463-46-510, filed 12/15/76.]

WAC 463-46-520 Responsibilities of consulted agencies—State agencies with environmental expertise. (1) Each state agency participating in pre-draft consultation, or reviewing a draft EIS, lacking jurisdiction, but possessing environmental expertise pertaining to the impacts associated with a proposal [see WAC 463-46-465], when requested by the lead agency, shall provide to the lead agency that substantive data, information, test results or other material relevant to the proposal which the consulted agency then possesses relating to its area of special expertise.

(2) The consulted agency may at its option investigate, develop and transmit whatever additional information is necessary for the lead agency to meet its responsibilities under WAC 463-46-440 or 463-46-442. [Order 112, § 463-46-520, filed 12/15/76.]

WAC 463-46-530 Responsibilities of consulted agencies—When pre-draft consultation has occurred. When a consulted agency has engaged in the pre-draft consultation procedures set forth in WAC 463-46-410, the scope and depth of its required review and comment upon the draft EIS is limited to those appropriate and relevant matters which were not contained in its previous response (such as when significant new information becomes available which was not available to the consulted

agency during the pre-draft consultation stage). [Order 112, § 463-46-530, filed 12/15/76.]

WAC 463-46-535 Cost of performance of consulted agency responsibilities. A consulted agency shall not charge the lead agency for any costs incurred in complying with WAC 463-46-500 through 463-46-540, including, but not limited to, such functions as providing relevant data to the lead agency and the reproduction of various documents that are transmitted to the lead agency. This section shall not prohibit a consulted agency from charging those costs allowed by chapter 42.17 RCW, for the reproduction of any environmental document when the request for a copy of the document is from an agency other than the lead agency, or from an individual or private organization. [Order 112, § 463-46-535, filed 12/15/76.]

WAC 463-46-540 Limitations on responses to consultation. In those instances where part or all of the relevant data possessed by any consulted agency is either voluminous in nature, extremely bulky or otherwise incapable of ready transmittal to the lead agency, or consists of a report or document published by another agency, or represents a standard text or other work obtainable at a public library, such data or information may be clearly identified or cited by the consulted agency in its comments to the lead agency and the data itself need not be transmitted. When the consulted agency identifies relevant data, files or other material pursuant to this section, it shall describe briefly the nature of such information and clearly indicate its relevance to the environmental analysis of the proposed action in question. If the details of the proposal supplied with the consultation request are not sufficient to allow a complete response, the consulted agency shall be required to transmit only that information it is capable of developing from the material sent to it with the consultation request. [Order 112, § 463-46-540, filed 12/15/76.]

WAC 463-46-545 Effect of no written comment. If a consulted agency does not respond with written comments within thirty-five days of the date of listing of the draft EIS in the "EIS Available Register," or fails to respond within the fifteen-day extension period which may have been granted by the lead agency, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal upon the subject area of the consulted agency's jurisdiction or special expertise. Any consulted agency which fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with WAC 463-46-400 through 463-46-495, or with the contents of the final EIS. [Order 112, § 463-46-545, filed 12/15/76.]

WAC 463-46-550 Preparation of the final EIS—Time period allowed. The lead agency shall prepare a final EIS within seventy-five days of the listing of the proposal in the "EIS Available Register." The lead

agency may extend the time period whenever the proposal is unusually large in scope, or the environmental impact associated with the proposal is unusually complex. [Order 112, § 463-46-550, filed 12/15/76.]

WAC 463-46-570 Preparation of the final EIS—Contents—When no critical comments received on the draft EIS. (1) If the lead agency does not receive any comments critical of the scope or content of the draft EIS, the lead agency may prepare a statement to the effect that no critical comments were received and circulate that statement in the manner prescribed in WAC 463-46-600.

(2) The statement prepared and circulated pursuant to subsection (1) above, together with the draft EIS (which is not recirculated with the statement), shall constitute the "final EIS" for the proposal: *Provided*, That when the draft EIS was not circulated to the office of the governor or the ecological commission, then the draft EIS shall be attached only to the statement sent to these agencies. [Order 112, § 463-46-570, filed 12/15/76.]

WAC 463-46-580 Preparation of the final EIS—Contents—When critical comments received on the draft EIS. (1) When the lead agency receives any comments critical of the scope or content of the draft EIS, whether made in writing or made orally at any public hearing on the environmental impact of the proposal, it shall comply with either subsection (2) or (3) below.

(2) The lead agency may determine that no changes are required in either the draft EIS or the proposal, despite the critical comments that were received during the commenting period. The lead agency must prepare a document containing a general response to the comments that were received, the text or summary of written comments, and a summary of the oral comments made by the public at any hearing held on the proposal or its environmental impacts. The lead agency shall then circulate the document in the manner prescribed in WAC 463-46-600: *Provided*, That when the draft EIS was not circulated to the office of the governor or the ecological commission, then the draft EIS shall be attached only to the statement sent to these agencies.

(3) The lead agency may determine that it is necessary and appropriate to rewrite the contents of the draft EIS in order to respond to critical comments received during the commenting period. In such instances, the lead agency shall circulate the re-written EIS in the manner specified in WAC 463-46-600. The lead agency shall ensure that the re-written EIS evidences an affirmative response by the lead agency to the critical comments, or alternatively, contains a summary of those critical comments with which it does not agree.

(4) A document prepared and circulated pursuant to subsection (2) or (3) above shall constitute the "final EIS" for the proposal. [Order 112, § 463-46-580, filed 12/15/76.]

WAC 463-46-600 Circulation of the final EIS. The final EIS shall be circulated to the department of ecology, office of the governor or the governor's designee, the

ecological commission, the lead agency's SEPA public information center, agencies with jurisdiction, and federal agencies with jurisdiction which received the draft EIS. It shall be made available to the public in the same manner and cost as the draft EIS. [Order 112, § 463-46-600, filed 12/15/76.]

WAC 463-46-650 Effect of an adequate final EIS prepared pursuant to NEPA. (1) The requirements of this chapter relating to the preparation of an EIS shall not apply when an adequate final EIS has been prepared pursuant to the national environmental policy act of 1969 (NEPA), in which event such EIS may be utilized in lieu of a final EIS separately prepared under SEPA.

(2) The final EIS of a federal agency shall be adequate unless:

(a) A court rules that it is inadequate; or,

(b) The administrator of the United States Environmental Protection Agency issues a written comment pursuant to the Federal Clean Air Act, 42 U.S.C. § 1857, which determines it to be inadequate; or,

(c) The environmental elements of WAC 463-46-444, when applied locally, are not adequately treated in it.

(3) If, after review thereof, the lead agency determines that the federal EIS is adequate, it shall be listed in the "EIS Available Register" in the SEPA public information center.

(4) A public hearing on the sole issue of the adequacy of the content of a federal EIS shall be held if, within thirty-five days of its listing in the register, at least fifty persons who reside within the jurisdiction of the lead agency, or are adversely affected by the environmental impact of the proposal, make written request therefor. The lead agency shall reconsider its determination of adequacy in view of comments received at any such public hearing. [Order 112, § 463-46-650, filed 12/15/76.]

WAC 463-46-652 Supplementation by a lead agency of an inadequate final NEPA EIS. When a final EIS prepared pursuant to NEPA is inadequate under the criteria set forth in WAC 463-46-650(2), then the lead agency shall either:

(1) Prepare a draft EIS independent of the final NEPA EIS or

(2) Modify or supplement the final NEPA EIS as necessary to prepare an adequate draft EIS. [Order 112, § 463-46-652, filed 12/15/76.]

WAC 463-46-660 Use of previously prepared EIS for a different proposed action. (1) An agency may adopt and utilize a previously prepared EIS, or portion thereof, to satisfy certain of the EIS requirements applicable to a different proposed action, as set forth in (2) and (3) below. In such event, two requirements shall be met:

(a) The previous EIS or portion thereof, together with any supplement to it, shall meet the requirements of these guidelines applicable to an EIS for the new proposed action, and

(b) A previous EIS shall not be used without an explanatory supplement where any intervening change in

conditions would make the previous EIS misleading when applied to the new proposed action.

(2) When the new proposed action will have an impact on the environment that was not adequately analyzed in the previously prepared EIS, the lead agency shall prepare a draft supplemental EIS and comply with the provisions of WAC 463-46-400 through 463-46-695. The contents of the draft and final supplemental EIS shall be limited to those impacts of the proposed action which were not adequately analyzed in the earlier EIS.

(3) When the new proposed action will not have an impact on the environment that is substantially different than the impacts of the earlier proposed action, the lead agency may prepare a written statement setting forth its determination under this subsection and list the proposal in the "EIS Available Register". The lead agency shall not be required to prepare a new or supplemental draft or final EIS on the new proposed action when this subsection is determined to apply. The provisions of WAC 463-46-480 through 463-46-490, relating to a public hearing on the environmental impact of a proposal shall apply, however, to proposed actions determined to be under the provisions of this subsection. [Order 112, § 463-46-660, filed 12/15/76.]

WAC 463-46-690 Use of lead agency's EIS by other acting agencies for the same proposal. (1) When an agency is considering an action which is identified as part of a proposal covered by a final EIS of a lead agency, and the agency now considering the action was consulted as an agency with jurisdiction during the consultation process on the previous EIS because of the action it is now considering, such agency must utilize the previous EIS unchanged when it is considering its present action except under the conditions of subsection (2) hereof.

(2) An agency with jurisdiction shall review and consider supplementing an EIS prepared by the lead agency only if:

(a) The proposal has been significantly modified since the lead agency prepared the EIS; or,

(b) The action now being considered was identified in the lead agency's EIS as one which would require further environmental evaluation; or,

(c) The level of design or planning for the proposal has become more detailed, revealing inadequately analyzed impacts; or,

(d) Technical data has become available which indicates the presence of a significant adverse environmental impact.

In such cases, the acting agency shall prepare a supplement to the lead agency's EIS if, and only if, it determines that significant adverse environmental impacts have been inadequately analyzed in the lead agency's EIS.

(3) If an agency is not listed as a licensing agency in the draft EIS pursuant to WAC 463-46-440(2)(d) and did not receive a copy of the draft EIS, such agency shall not be limited by the contents of the earlier EIS in preparing its statement. [Order 112, § 463-46-690, filed 12/15/76.]

WAC 463-46-695 Draft and final supplements to a revised EIS. (1) In any case where the lead agency is preparing a supplement to an earlier EIS or to an EIS prepared pursuant to NEPA, it shall prepare a draft supplemental EIS and comply with WAC 463-46-450. Copies of both the prior and supplemental EIS shall be maintained at the SEPA public information center, and copies of the prior EIS, as well as the supplement, shall be transmitted to the consulted agencies which had not previously received it.

(2) Upon preparation of the draft supplemental EIS, the lead agency shall comply with WAC 463-46-550 through 463-46-580 and the final supplemental EIS, together with the earlier EIS, shall be regarded as a final EIS for all purposes of these guidelines. [Order 112, § 463-46-695, filed 12/15/76.]

WAC 463-46-700 No action for seven days after publication of the final EIS. The council shall not take any major action (as defined in WAC 463-46-040(24)) on a proposal for which an EIS has been required, prior to seven days from the publication of the final EIS and its listing in the "EIS Available Register" maintained at the agency's SEPA public information center. [Order 112, § 463-46-700, filed 12/15/76.]

WAC 463-46-830 Responsibility of agencies—SEPA public information center. (1) The SEPA information center shall be the energy facility site evaluation council office.

(2) The following documents shall be maintained at the council's SEPA public information center:

(a) Copies of all declarations of non-significance filed by the agency, for a period of one year.

(b) Copies of all EISs prepared by the council, for a period of three years. Draft EISs which have been superseded by a final EIS need not be maintained at the center.

(3) In addition, the council shall maintain the following registers at its information center, each register including for each proposal its location, a brief (one sentence or phrase) description of the nature of the proposal, the date first listed on the register, and a contact person or office from which further information may be obtained:

(a) A "Proposed Declaration of Non-Significance Register" which shall contain a listing of all current proposed declarations of non-significance.

(b) An "EIS in Preparation Register" which shall contain a listing of all proposals for which the council is currently preparing an EIS, and the date by which the EIS is expected to be available.

(c) An "EIS Available Register" which shall contain a listing of all draft and final EISs prepared by the council during the previous six months, including thereon the date by which comments must be received on draft EISs, and the date for any public hearing scheduled for the proposal.

(4) Each of the registers required by subsection (3) hereof shall be kept current and maintained at the information center for public inspection. In addition, the

registers, or updates thereof containing new entries added since the last mailing, shall be mailed once every two weeks to those organizations and individuals who make written request therefor, unless no new proposals are placed on the register, in which event a copy of the register or update shall be mailed when a new proposal is added. The council may charge a periodic fee for the service of mailing the registers or updates, which shall be reasonably related to the costs of reproduction and mailing.

(5) The documents required to be maintained at the information center shall be available for public inspection, and copies thereof shall be provided upon written request. The council may charge for copies in the manner provided by chapter 42.17 RCW, and for the cost of mailing. [Order 112, § 463-46-830, filed 12/15/76.]

WAC 463-46-840 Application of agency guidelines to ongoing actions. (1) Agency guidelines shall apply to any proposed action when initiated subsequent to the effective date of the guidelines of the lead agency or the agency proposing the action.

(2) For proposals made prior to the effective date of the guidelines of the lead agency or the agency proposing the action, agency guidelines shall apply to those elements of SEPA compliance remaining to be undertaken subsequent to the effective date of such guidelines. Agency guidelines adopted pursuant to RCW 43.21C-.120 and the requirements of this chapter shall not be applied to invalidate or require modification of any threshold determination, EIS or other element of SEPA compliance undertaken or completed prior to the effective date of the guidelines of the lead agency or agency proposing the action. [Order 112, § 463-46-840, filed 12/15/76.]

WAC 463-46-910 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. [Order 112, § 463-46-910, filed 12/15/76.]

Chapter 463-50 WAC

INDEPENDENT CONSULTANTS—GUIDELINES

WAC

463-50-010	Purpose and scope of this chapter.
463-50-020	Solicitation of proposals to perform work.
463-50-030	Principles governing selection of independent consultants.
463-50-040	Duties to be performed.
463-50-050	Basis for compensation.

WAC 463-50-010 Purpose and scope of this chapter. It is the purpose of this chapter to publish guidelines regarding Council use of independent consultants. [Order 110, § 463-50-010, filed 11/16/76.]

WAC 463-50-020 Solicitation of proposals to perform work. Each proposal to contract with an independent consultant shall be the subject of a formal, written "Request for Proposal." The "Request for Proposal"

shall generally follow the outline and address the provisions of the "Guidelines for using outside consultants" published by the Office of Program Planning and Fiscal Management. A copy of the "Request for Proposal" shall be distributed to any requesting consulting firm. Further notice of the availability of the "Request for Proposals" may be provided by appropriate commercial advertising. [Order 110, § 463-50-020, filed 11/16/76.]

WAC 463-50-030 Principles governing selection of independent consultants. Each consultant selected to perform independent consulting services shall have demonstrated its qualifications on the basis of experience and competence in specific, or closely associated, areas for which consulting services are desired. A consultant shall not be hired or retained by the Council if upon examination by the Council, a significant conflict of interest is found with regard to the applicant or other parties involved or potentially involved in the contested case proceedings. [Order 110, § 463-50-030, filed 11/16/76.]

WAC 463-50-040 Duties to be performed. The independent consultant shall be primarily responsible for the review and evaluation of information provided by the applicant to determine areas of possible omissions or assignments or studies as may be specified or provided for by the contract with the Council. The independent consultant may be contracted to:

- (1) Review and analyze the site certification application and supporting documents for compliance with the topical guidelines and for technical veracity,
- (2) identify areas of critical environmental sensitivity,
- (3) develop and provide such information as the Council may deem essential to an adequate site appraisal and
- (4) provide technical advice to the Council during the site certification process. [Order 110, § 463-50-040, filed 11/16/76.]

WAC 463-50-050 Basis for compensation. The basis for compensation to be specified in contracts with independent consultants shall generally be as follows:

- (1) For applications for site certification, where the total scope and/or volume of work is variable and acts to prevent advance determination of total project cost, the consultant shall be compensated on the basis of actual cost plus a net fee for profit,
- (2) for potential site studies, where the total scope and/or volume of work to be performed can be specified in advance, the consultant shall be compensated on the basis of a lump sum payment.

All payments to independent consultants shall be subject to audit. [Order 110, § 463-50-050, filed 11/16/76.]

- 463-54-030 Annual pre-payment system.
- 463-54-040 Payments, a condition of continued construction and operation.
- 463-54-050 Amount payable to state treasurer.

WAC 463-54-010 Intent and purpose of this chapter. This chapter sets forth rules relating to effects and compliance auditing of the energy facility construction and operation pursuant to RCW 80.50.040(11). [Order 108, § 463-54-010, filed 11/4/76.]

WAC 463-54-020 Auditing to be performed. Auditing may be performed by personnel from interested state agencies pursuant to interagency contracts with the Council. In the event any state agency declines or is not qualified, the Council may obtain auditing services from other sources. [Order 108, § 463-54-020, filed 11/4/76.]

WAC 463-54-030 Annual pre-payment system. At the beginning of each fiscal year, the Council shall determine the total reasonable cost necessary to perform the auditing function during the next twelve months. Operators of certificated facilities will then be charged an amount based on the maximum expected auditing activity attributable to certificated facilities maintained by that operator. [Order 108, § 463-54-030, filed 11/4/76.]

WAC 463-54-040 Payments, a condition of continued construction and operation. Payment of the annual charges established by this chapter shall be a condition of continued construction and operation of the energy facility. [Order 108, § 463-54-040, filed 11/4/76.]

WAC 463-54-050 Amount payable to state treasurer. Payments shall be sent to the Council office in the form of a check made payable to the state treasurer. Any unexpended amounts shall be credited or refunded to the certificated operator. [Order 108, § 463-54-050, filed 11/4/76.]

Chapter 463-54 WAC

AUDITING TO DETERMINE CERTIFICATION COMPLIANCE

- WAC 463-54-010 Intent and purpose of this chapter.
- 463-54-020 Auditing to be performed.