

WAC 462-32-010 through 462-32-060 Repealed.
See Disposition Table at beginning of this chapter.

Chapter 462-36 WAC
SURVIVOR BENEFITS

WAC
462-36-010 Repealed.
462-36-020 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

462-36-010 Determining dependency under RCW 41.32.520. [Order 1, § 462-36-010, filed 7/17/68; Regulation F-1, filed 3/22/60.] Repealed by 78-03-023 (Order IV), filed 2/15/78. Statutory Authority: RCW 41.50.050(6) and 41.50.090. Later promulgation, see WAC 415-112-700.

462-36-020 Accrual date of survivor benefits under RCW 41.32.520. [Order 1, § 462-36-020, filed 7/17/68.] Repealed by 78-03-023 (Order IV), filed 2/15/78. Statutory Authority: RCW 41.50.050(6) and 41.50.090. Later promulgation, see WAC 415-112-710.

WAC 462-36-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 462-36-020 Repealed. See Disposition Table at beginning of this chapter.

Title 463 WAC

ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: Thermal Power Plant Evaluation Council)

Chapters

463-06 **General--Organization--Public records.**
463-14 **Policy and interpretation.**
463-18 **Procedure--Regular and special council meetings.**
463-22 **Procedure and guidelines--Potential site studies.**
463-26 **Procedure--Initial public hearing and public information meeting.**
463-28 **Procedure--State preemption.**
463-30 **Procedure--Contested case hearings.**
463-39 **General regulations for air pollution sources.**
463-43 **Procedure--Applications for expedited processing.**
463-50 **Independent consultants--Guidelines.**
463-54 **Certification compliance determination and enforcement.**
463-58 **Fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study.**

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 463-08
RULES OF PRACTICE

463-08-010 Uniform procedural rules. [Order 1-70, § 463-08-010, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-011 Effect of certification. [Order 2-72, § 463-08-011, filed 12/27/72.] Repealed by Order 104, filed 11/4/76.

463-08-015 Council organization. [Order 2-72, § 463-08-015, filed 12/27/72; Order 1-70, § 463-08-015, filed 5/7/70.] Repealed by Order 103, filed 11/4/76.

463-08-020 Official application. [Order 2-72, § 463-08-020, filed 12/27/72; Order 1-70, § 463-08-020, and Form A, filed 5/7/70.] Repealed by Order 113, filed 2/4/77.

463-08-021 Hearing examiners. [Order 2-72, § 463-08-021, filed 12/27/72.] Repealed by Order 109, filed 11/16/76.

463-08-022 Proposed orders by examiners. [Order 2-72, § 463-08-022, filed 12/27/72.] Repealed by Order 109, filed 11/16/76.

463-08-023 Notice of intent. [Order 1-74, § 463-08-023, filed 5/29/74; Order 2-72, § 463-08-023, filed 12/27/72.] Repealed by Order 113, filed 2/4/77.

463-08-024 Compliance procedures for State Environmental Policy Act of 1971. [Order 2-72, § 463-08-024, filed 12/27/72.] Repealed by Order 112, filed 12/5/76.

463-08-025 Intervention. [Order 1-70, § 463-08-025, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-030 Participation by intervenor. [Order 1-70, § 463-08-030, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-035 Informational hearing. [Order 1-70, § 463-08-035, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-040 Formal public hearing. [Order 1-70, § 463-08-040, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-045 Additional public hearings. [Order 4-74, § 463-08-045, filed 12/13/74; Order 1-70, § 463-08-045, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-050 Disposition after formal hearing. [Order 1-70, § 463-08-050, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-055 Petition for rehearing. [Order 1-70, § 463-08-055, filed 5/7/70.] Repealed by Order 109, filed 11/16/76.

463-08-060 Potential site study. [Order 1-74, § 463-08-060, filed 5/29/74.] Repealed by Order 106, filed 11/4/76. Later promulgation, see chapter 463-22 WAC.

Chapter 463-12

GUIDELINES FOR APPLICANTS SEEKING THERMAL POWER PLANT CERTIFICATION

463-12-010, 463-12-015, 463-12-020, 463-12-025, 463-12-030, 463-12-035, 463-12-040, 463-12-045 and 463-12-050. [Order 1-70, filed 5/7/70.] Repealed by Order 2-72, filed 12/27/72. Later promulgations, see WAC 463-12-100 through 463-12-150, and chapter 463-42 WAC.

463-12-100 Project description. [Order 2-72, § 463-12-100, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

463-12-105 Site characteristics. [Order 2-72, § 463-12-105, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

463-12-110 Transmission lines. [Order 2-72, § 463-12-110, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

463-12-115 Health and safety. [Order 2-72, § 463-12-115, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

463-12-120 Environmental impact--Land. [Order 2-72, § 463-12-120, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

Title 463 WAC

Title 463 WAC: Energy Facility Site Evaluation Council

- 463-12-125 Environmental impact—Water. [Order 2-72, § 463-12-125, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-130 Environmental impact—Air. [Order 2-72, § 463-12-130, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-135 Environmental impact—Vegetation, fish and animal life. [Order 2-72, § 463-12-135, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-140 Environmental impact—Aesthetics. [Order 2-72, § 463-12-140, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-145 Environmental impact—Recreation and heritage. [Order 2-72, § 463-12-145, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-150 Monitoring and future studies. [Order 2-72, § 463-12-150, filed 12/27/72.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.
- 463-12-155 Environmental impact—Social and economic. [Order 2-74, § 463-12-155, filed 6/12/74.] Repealed by Order 113, filed 2/4/77. Later promulgation, see chapter 463-42 WAC.

Chapter 463-16

REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

- 463-16-010 Definitions. [Order 3-74, § 463-16-010, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-010.
- 463-16-020 Scope and purpose. [Order 3-74, § 463-16-020, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-020.
- 463-16-030 NPDES application and tentative determination. [Caption only] [Order 3-74, § 463-16-030, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-030.
- 463-16-031 Application filing with the council. [Order 3-74, § 463-16-031, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-031.
- 463-16-032 Signature form. [Order 3-74, § 463-16-032, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-032.
- 463-16-033 Tentative determination on NPDES permits. [Order 3-74, § 463-16-033, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-033.
- 463-16-034 Fact sheet. [Order 3-74, § 463-16-034, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-034.
- 463-16-040 Notice, hearings and information accessibility. [Caption only] [Order 3-74, § 463-16-040, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-040.
- 463-16-041 Notice, provisions. [Order 3-74, § 463-16-041, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-041.
- 463-16-042 Public hearings. [Order 3-74, § 463-16-042, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-042.
- 463-16-043 Public access to information. [Order 3-74, § 463-16-043, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-043.
- 463-16-050 NPDES permit contents. [Order 3-74, § 463-16-050, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-050.
- 463-16-051 General conditions. [Order 3-74, § 463-16-051, filed 8/27/74.] Repealed by order 114, filed 2/4/77. Later promulgation, see WAC 463-38-051.

- 463-16-052 Prohibited discharges. [Order 3-74, § 463-16-052, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-052.
- 463-16-053 Effluent limitations, water quality standards and other requirements for NPDES permits. [Order 3-74, § 463-16-053, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-053.
- 463-16-054 Schedules of compliance. [Order 3-74, § 463-16-054, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-054.
- 463-16-055 Other terms and conditions. [Order 1-75, § 463-16-055, filed 4/7/75; Order 3-74, § 463-16-055, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-055.
- 463-16-060 NPDES permits review and appeal. [Order 3-74, § 463-16-060, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-060.
- 463-16-061 Reissuance of NPDES permits. [Order 3-74, § 463-16-061, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-061.
- 463-16-062 Modifications of NPDES permits. [Order 3-74, § 463-16-062, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-062.
- 463-16-063 Appeal. [Order 3-74, § 463-16-063, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-063.
- 463-16-064 Transmission to regional administrator of proposed NPDES permit. [Order 3-74, § 463-16-064, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-064.
- 463-16-065 Monitoring and enforcement. [Order 1-75, § 463-16-065, filed 4/7/75; Order 3-74, § 463-16-065, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-060.
- 463-16-080 Transmittal of data to regional administrator. [Order 3-74, § 463-16-080, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-080.
- 463-16-090 Conflict of interest. [Order 3-74, § 463-16-090, filed 8/27/74.] Repealed by Order 114, filed 2/4/77. Later promulgation, see WAC 463-38-090.

Chapter 463-20

PUBLIC DISCLOSURE

- 463-20-010 Purpose. [Order 1-74, § 463-20-010, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-020 Definitions. [Order 1-74, § 463-20-020, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-030 Operations and procedures. [Order 1-74, § 463-20-030, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-040 Public records available. [Order 1-74, § 463-20-040, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-060.
- 463-20-050 Public records officer. [Order 1-74, § 463-20-050, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-070.
- 463-20-060 Office hours. [Order 1-74, § 463-20-060, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-030.
- 463-20-070 Requests for public records. [Order 1-74, § 463-20-070, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-080.
- 463-20-080 Copying. [Order 1-74, § 463-20-080, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-110.
- 463-20-090 Exemptions. [Order 1-74, § 463-20-090, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see chapter 463-06 WAC.
- 463-20-100 Review of denials of public records requests. [Order 1-74, § 463-20-100, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see chapter 463-06 WAC.

- 463-20-110 Protection of public records. [Order 1-74, § 463-20-110, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-111 Records index. [Order 1-74, § 463-20-111, filed 5/29/74.] Repealed by Order 103, filed 11/4/76. Later promulgation, see WAC 463-06-170.
- 463-20-120 Address for communications. [Order 1-74, § 463-20-120, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.
- 463-20-130 Adoption of form—Appendix A—"Request for public record." [Order 1-74, § 463-20-130, filed 5/29/74.] Repealed by Order 103, filed 11/4/76.

Chapter 463-06 WAC

GENERAL--ORGANIZATION--PUBLIC RECORDS

WAC

- 463-06-020 Description of organization.

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, a voting city 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 person appointed by the governor with the advice and consent of the senate to a term coextensive with that of the governor pursuant to RCW 80.50.030. The chairman serves full-time, has a vote on all matters before the council and is officed at the council office. The chairman may appoint a confidential secretary to the chairman.

(3) The council has an executive secretary who is appointed by and serves at the pleasure of the council. The executive secretary is responsible for the appointment and supervision of council staff. All members of the council staff are officed at the council office. [Statutory Authority: RCW 80.50.040(1). 78-09-077 (Order 78-4), § 463-06-020, filed 8/28/78; Order 103, § 463-06-020, filed 11/4/76.]

Chapter 463-14 WAC

POLICY AND INTERPRETATION

WAC

- 463-14-040 County, city and port district representatives—Segmentation of hearings and issues.

WAC 463-14-040 County, city and port district representatives—Segmentation of hearings and issues. RCW 80.50.030(4), (5) and (6) necessitate segmentation of hearings and issues in instances where proposed energy facilities would extend beyond the boundaries of a single county, city and/or port district. [Statutory Authority: RCW 80.50.040(1). 78-09-078 (Order 78-5), § 463-14-040, filed 8/28/78; Order 104, § 463-14-040, filed 11/4/76.]

Chapter 463-18 WAC

PROCEDURE--REGULAR AND SPECIAL COUNCIL MEETINGS

WAC

- 463-18-060 Procedure in the absence of the chairman.
- 463-18-070 Council duties of acting chairman.
- 463-18-080 County, city and port district representatives—Participation.

WAC 463-18-060 Procedure in the absence of the chairman. Pursuant to RCW 80.50.030 the chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. [Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-060, filed 8/28/78; Order 105, § 463-18-060, filed 11/4/76.]

WAC 463-18-070 Council duties of acting chairman. Any council member designated by the council chairman as acting chairman shall remain entitled to vote on any proposed council action and shall continue to fulfill his responsibilities to the agency which he represents. [Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-070, filed 8/28/78; Order 105, § 463-18-070, filed 11/4/76.]

WAC 463-18-080 County, city and port district representatives—Participation. To the extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port representatives to participate in discussion; however, voting on issues shall be as permitted by WAC 463-06-020. [Statutory Authority: RCW 80.50.040(1). 78-09-079 (Order 78-6), § 463-18-080, filed 8/28/78; Order 105, § 463-18-080, filed 11/4/76.]

Chapter 463-22 WAC

PROCEDURE AND GUIDELINES--POTENTIAL SITE STUDIES

WAC

- 463-22-060 Notification of local authorities.

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 legislative authority in each county, city and port district within whose boundaries the site of the proposed energy facility is located. [Statutory Authority: RCW 80.50.040(1). 78-09-080 (Order 78-7), § 463-22-060, filed 8/28/78; Order 106, § 463-22-060, filed 11/4/76.]

Chapter 463-26 WAC

PROCEDURE--INITIAL PUBLIC HEARING AND PUBLIC INFORMATION MEETING

WAC

463-26-020	Notification of local authorities.
463-26-050	Purpose for hearing.

WAC 463-26-020 Notification of local authorities. Before scheduling the initial public hearing, the council will notify the legislative authority in each county, city and port district within whose boundaries the site of the proposed energy facility is located. [Statutory Authority: RCW 80.50.040(1). 78-09-081 (Order 78-8), § 463-26-020, filed 8/28/78; Order 109, § 463-26-020, filed 11/16/76.]

WAC 463-26-050 Purpose for hearing. At the commencement of the initial public hearing, the council shall explain that the 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. Pursuant to RCW 80.50.020(15) "land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government under chapters 35.63, 35A.63, or 36.70 RCW. Pursuant to RCW 80.50.020(16) "zoning ordinance" means an ordinance of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution. [Statutory Authority: RCW 80.50.040(1). 78-09-081 (Order 78-8), § 463-26-050, filed 8/28/78; Order 109, § 463-26-050, filed 11/16/76.]

Chapter 463-28 WAC

PROCEDURE--STATE PREEMPTION

WAC

463-28-010	Purpose and scope.
463-28-020	Authority of council--Preemption by state.
463-28-030	Determination of noncompliance--Procedures.
463-28-040	Inability to resolve noncompliance.
463-28-050	Failure to request preemption.
463-28-060	Request for preemption--Contested case.
463-28-070	Certification--Conditions--State/local interests.
463-28-080	Preemption--Failure to justify.
463-28-090	Governing rules.

WAC 463-28-010 Purpose and scope. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt local land use plans or zoning ordinances for a site or portions of a site for an energy facility. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-010, filed 6/23/78.]

WAC 463-28-020 Authority of council--Preemption by state. The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification

of the location, construction, and operational conditions of certification of energy facilities. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-020, filed 6/23/78.]

WAC 463-28-030 Determination of noncompliance--Procedures. If the council determines during the hearing required by RCW 80.50.090 that the site of a proposed energy facility or any portion of a site is not consistent and in compliance with existing land use plans or zoning ordinances in effect at the date of the application, the following procedures shall be observed:

(1) As a condition necessary to continue processing the application, it shall be the responsibility of the applicant to make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance.

(2) All council proceedings on the application for certification may be stayed at the request of the applicant during the period when the plea for resolution of noncompliance is being processed by local authorities.

(3) The applicant shall submit regular reports to the council regarding the status of negotiations with local authorities on noncompliance issues. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-030, filed 6/23/78.]

WAC 463-28-040 Inability to resolve noncompliance. Should the applicant report that efforts to resolve noncompliance issues with local authorities have not been successful, then, if applicant elects to continue processing the application, the applicant shall file a written request for state preemption as authorized in WAC 463-28-020 within ninety days after completion of the public hearing required by RCW 80.50.090, or later if mutually agreed by the applicant and the council. The request shall address the following:

(1) That the applicant has demonstrated a good faith effort to resolve the noncompliance issues.

(2) That the applicant and the local authorities are unable to reach an agreement which will resolve the issues.

(3) That alternate locations which are within the same county and city have been reviewed and have been found unacceptable.

(4) Interests of the state as delineated in RCW 80.50.010. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-040, filed 6/23/78.]

WAC 463-28-050 Failure to request preemption. Where noncompliance is at issue, failure of the applicant to file the written request as required in WAC 463-28-040 within the time permitted shall be sufficient grounds for the council to recommend to the governor denial of certification. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-050, filed 6/23/78.]

WAC 463-28-060 Request for preemption--Contested case. Should applicant elect to continue processing the application and file a request with the council for

state preemption, the council will schedule a contested case hearing on the application as specified under chapter 463-30 WAC. As the first order of business in the contested case, the council shall determine whether to recommend to the governor that the state should preempt the local land use plans or zoning ordinances for a site or portions of a site for the energy facility proposed by the applicant. The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100. The council shall determine this issue on the record before proceeding further in the contested case; thereafter, the remainder of the contested case shall proceed only if preemption is ordered by the council. Otherwise, the procedure shall follow WAC 463-28-080. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-060, filed 6/23/78.]

WAC 463-28-070 Certification--Conditions--State/local interests. If the council approves the request for preemption it shall include conditions in the draft certification agreement which give due consideration to state or local governmental or community interests affected by the construction or operation of the energy facility and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted or superseded pursuant to RCW 80.50.110(2). [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]

WAC 463-28-080 Preemption--Failure to justify. During the contested case hearing, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]

WAC 463-28-090 Governing rules. Applications for certification of the energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable rules in effect on the day immediately preceding July 15, 1977. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-090, filed 6/23/78.]

**Chapter 463-30 WAC
PROCEDURE--CONTESTED CASE HEARINGS**

WAC 463-30-420 Participation by county, city and port district representatives.

WAC 463-30-420 Participation by county, city and port district representatives. In any contested case to the

extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port district representatives to participate in discussion and county and city representatives shall vote only with regard to matters specifically affecting the concerned county or city. Port districts are nonvoting members of the council. [Statutory Authority: RCW 80.50.040(1). 78-09-082 (Order 78-9), § 463-30-420, filed 8/28/78; Order 109, § 463-30-420, filed 11/16/76.]

**Chapter 463-39 WAC
GENERAL REGULATIONS FOR AIR POLLUTION SOURCES**

WAC	
463-39-010	Purpose.
463-39-020	Applicability.
463-39-030	Definitions.
463-39-040	General standards for maximum permissible emissions.
463-39-050	Minimum emission standards for combustion and incineration sources.
463-39-060	Minimum emission standards for general process sources.
463-39-080	Compliance schedules.
463-39-100	Registration.
463-39-110	New source review.
463-39-115	Standards of performance for new stationary sources.
463-39-120	Monitoring and special report.
463-39-130	Regulatory actions.
463-39-135	Criminal penalties.
463-39-150	Variance.
463-39-170	Conflict of interest.

WAC 463-39-010 Purpose. The energy facility site evaluation council, under the authority vested in it by chapter 80.50 RCW is charged with responsibilities for the conduct of a state-wide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-010, filed 8/6/79.]

WAC 463-39-020 Applicability. The provisions of this chapter shall apply state-wide for those sources under the jurisdiction of the Energy Facility Site Evaluation Council. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-020, filed 8/6/79.]

WAC 463-39-030 Definitions. Unless a different meaning is plainly required by context, the following

words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Abnormal operation" means a process operation other than a normal operation which may result in emissions that exceed the standards. An abnormal operation can be anticipated and planned.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(4) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

(a) Applicable standards as set forth in 40 CFR Part 60 and Part 61,

(b) The applicable state implementation plan emission limitation, or

(c) The emission rate specified as a permit condition.

(5) "Ambient air" means the surrounding outside air.

(6) "Ambient air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the air which shall not be exceeded.

(7) "Best available control technology" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to this regulation which would be emitted from any proposed stationary source or major modification which the council on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of the best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the council determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results. The requirement of RCW 70.94.152 that a

new source should provide "all known available and reasonable methods of emission control" is assumed to mean the same as best available control technology.

(8) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.

(9) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

(10) "Commenced construction" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(11) "Compliance schedule" means a schedule of steps to be taken to comply with emission requirements including a description of the specific steps and the date when each step will be completed.

(12) "Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharge.

(13) "Council" means the energy facility site evaluation council.

(14) "Chairman" means the chairman of the energy facility site evaluation council or his duly authorized representative.

(15) "Emission" means a release of contaminants into the ambient air.

(16) "Emission standard" means a regulation (or portion thereof) setting forth an allowable rate of emissions, level of opacity, or prescribing equipment or fuel specifications that result in control of air pollution emission.

(17) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

(18) "Facility" means an identifiable process or activity that emits contaminants to the ambient air.

(19) "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(20) "Fugitive dust" means a type of particulate emission made airborne by forces of wind, man's activity, or both, such as unpaved roads, construction sites, or tilled land. Two major categories are anthropogenic sources (those which result directly from and during human activities) and wind erosion sources (those resulting from erosion of soil by wind). Fugitive dust is distinguished from fugitive emissions.

(21) "Fugitive emissions" means contaminants which are generated by industrial or other activities not covered by the fugitive dust definition and which are released to the atmosphere through openings such as windows, vents, doors, or ill-fitting oven closures rather than through primary exhaust systems or are reentrained from unenclosed material handling operations. Aggregate storage operations and active tailing piles are included in this category of sources.

(22) "General process sources" means sources using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means excluding combustion.

(23) "Incinerator" means a furnace used for primarily the destruction of waste.

(24) "Lowest achievable emission rate" means for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(25) "Major source" means any stationary source which is subject to the jurisdiction of the energy facility site evaluation council under chapter 80.50 RCW and which is included in section 169(a)(i) of the Federal Clean Air Act.

(26) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor, usually to a less offensive odor.

(27) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant alteration of the chemical or physical properties of the material.

(28) "New source" means a source constructed, installed or established after the effective date of this chapter. Addition to or enlargement or replacement of a source or any major alteration or any change in a source which has the potential to increase emissions shall be construed as construction or installation or establishment of a new source.

(29) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60.

(30) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a National Ambient Air Quality Standard for one or more of the criteria pollutants.

(31) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

(32) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion.

(33) "Particulate matter" means small discrete masses of liquid or solid, exclusive of uncombined water.

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

(35) "Potential emissions" means the emissions of a pollutant from a source operated at maximum capacity in the absence of air pollution control equipment. Air pollution control equipment includes control equipment which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation. Annual potential shall be based on the maximum annual rated capacity of the source, unless the source is subject to enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of materials combusted or processed may be used in determining the potential emission rate of a source.

(36) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category, taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality and the capital and operating costs of the additional controls. RACT requirements for any source or source category may be adopted as an order or regulation after public hearing.

(37) "Source" means one or more processes or operations which emit or may emit any contaminants to the ambient air. A stationary source is composed of one or more pollutant emitting facilities.

(38) "Source category" means all sources of the same type or classification.

(39) "Standard conditions" means a temperature of 60°F (15.6°C) and a pressure of 29.92 inches (760mm) of mercury.

(40) "Upset" means an unexpected sudden occurrence which may result in emissions in excess of the emission requirements. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-030, filed 8/6/79.]

WAC 463-39-040 General standards for maximum permissible emissions. All sources are required to use reasonably available control technology to control emissions from point sources. In cases where current controls are determined to be less than reasonably available control technology (RACT), the council shall, on a case-by-case basis, define RACT for each source and issue a regulatory order to the source for installation of RACT. The order will contain a schedule for installation, with intermediate benchmark dates and a final completion date. All sources in nonattainment areas shall be in compliance by December 31, 1982 with RACT requirements for nonattainment pollutants which have been defined by July 1, 1981. For RACT requirements defined after July 1, 1981 sources will be placed on a compliance schedule which will be completed as soon as practicable.

(1) Visible emissions. No person shall cause or permit the emissions for more than three minutes, in any one hour, of an air contaminant from any source which at

the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except as follows:

When the owner or operator of a source supplies valid data to show that the opacity is in excess of twenty percent as the result of the presence of condensed water droplets.

(2) Preventing particulate matter from being deposited. No person shall cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) Fugitive emissions. The owner or operator of any source involving materials handling, construction, demolition or any other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the source has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use reasonably available control technology to control emissions. Significance will be determined by an EPA interpretive ruling for PSD and offsets on file with the council.

(4) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedure to reduce these odors to a reasonable minimum.

(5) Emission of air contaminants detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any source, including any air contaminant whose emission is not otherwise prohibited by this regulation, if the air contaminant causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

(6) Sulfur dioxide.

(a) No person shall cause or permit the emission of a gas containing sulfur dioxide from any source in excess of 1,000 parts per million (ppm) of sulfur dioxide.

(b) All concentrations of sulfur dioxide referred to above are by volume, dry, and, for combustion emissions the exhaust gas volume shall be corrected to seven percent oxygen.

(7) Concealment and masking. No person shall cause or permit the installation or use of any means which, conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(8) Fugitive dust sources.

(a) The owner or operator of a source shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to properly minimize emissions.

(b) The council may issue a regulatory order to the person responsible for a fugitive dust source and require measures to be used for control.

(9) The owner or operator of any existing fugitive dust source that has been identified as a significant contributor to the nonattainment status of a designated nonattainment area shall be required to use reasonably available control technology to control emissions. Significance will be determined by an EPA interpretive ruling for PSD and offsets on file with the council.

(10) All sources of fugitive dust required to use reasonably available control technology shall be in compliance by July 1, 1981 or on a compliance schedule which will be completed by December 31, 1982. Sources required to use RACT after July 1, 1981 shall be placed on a compliance schedule which will be completed as soon as practicable.

(11) The development of specific requirements for a nonattainment area shall include consultation with local government in the area and an opportunity shall be provided for public comment on the measures.

(12) Whenever reasonably available control technology has been defined for a source or category of sources in any area, the council shall issue a regulatory order to the source or sources requiring that the defined measures be implemented and establishing a date when the implementation will be completed. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-040, filed 8/6/79.]

WAC 463-39-050 Minimum emission standards for combustion and incineration sources. (1) Combustion and incineration sources must meet all requirements of WAC 463-39-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.10 grain per standard dry cubic foot.

(2) For all incinerator sources, no person shall cause or permit emissions in excess of 100 ppm of total carbonyls as measured by procedures on file at the department of ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the council.

(3) Measured concentrations for combustion and incineration sources shall be adjusted for volumes corrected to seven percent oxygen.

If other sources are added to the effluent from the combustion source, the seven percent correction shall be made for the combined effluent unless the volume and concentration of the combustion effluent can be determined separately.

(4) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 463-39-040.

(b) Such wood waste burners shall utilize equipment, facilities and practices which represent practical current state of technology. All facilities shall be operated and maintained to minimize emissions.

(c) The council may establish additional requirements for such wood waste burners located in or proposed for

location in sensitive areas. These requirements may include but shall not be limited to a requirement to eliminate all visible emissions. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-050, filed 8/6/79.]

WAC 463-39-060 Minimum emission standards for general process sources. General process sources shall be required to meet all applicable provisions of WAC 463-39-040 and, in addition, no person shall cause or permit the emission of particulate material from any general process operation in excess of one-tenth (0.10) grain per standard cubic foot of dry exhaust gas. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-060, filed 8/6/79.]

WAC 463-39-080 Compliance schedules. (1) Whenever a source is found to be in violation of the provisions of this chapter, the council may issue a regulatory order which will include a schedule of compliance to bring the source into compliance with this chapter. Opportunity for a public hearing on each proposed compliance schedule shall be provided by prominent advertisement of a notice identifying the proposal and announcing its availability for public inspection in at least one location in the county in which the source is located. No public hearing on a proposed compliance schedule shall be held before thirty days after the publication of the above notice.

(2) A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included within a regulatory order issued hereunder are being met. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-080, filed 8/6/79.]

WAC 463-39-100 Registration. The owner or operator of each stationary source subject to chapter 80.50 RCW shall register the source with the council.

Registration shall be on forms to be supplied by the council within the time specified thereon.

A report of closure shall be filed with the council whenever operations producing emissions are permanently ceased at any source within the above categories. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-100, filed 8/6/79.]

WAC 463-39-110 New source review. Whenever the construction of a new stationary source subject to chapter 80.50 RCW is contemplated the owner or operator thereof is required to file a notice of construction with the council including a description of the source, the control equipment to be used and the estimated emissions from the proposed source. For purposes of simplicity and elimination of duplication, the "Notice of Construction" may be incorporated into the application required to be filed pursuant to chapter 80.50 RCW.

(1) (a) The addition to or enlargement or replacement of or alteration in any energy facility source already existing which is undertaken pursuant to any approved variance which includes a compliance schedule for the

reduction of emissions therefrom shall be exempt from the requirements of this section provided the specific variance is an approved part of the SIP.

(b) The enlargement, modification, replacement, or alteration of any process or source which will increase potential emissions or ambient concentrations of any contaminant for which a federal or state standard has been set, will require the filing of a notice of construction.

(c) The replacement or modification of air pollution control equipment which will not increase emissions or ambient concentrations will not require the filing of a notice of construction.

(2) Following the initial review of a notice of construction the council may require plans, specifications and such other information as deemed necessary for the review of the proposed project shall be submitted for review and approval prior to construction.

(3) The council shall review notices of construction and plans, specifications and other information associated therewith in order to determine that:

(a) The proposed project will be in accord with applicable rules and regulations in force pursuant to chapter 70.94 RCW, including a determination that the operation of the new stationary source at the location proposed will not result in any applicable federal or state ambient air quality standard being exceeded.

(b) The proposed project will utilize best available control technology (BACT) for emission control. If the source is a major source and is located in a nonattainment area it will comply with the lowest achievable emission rate (LAER) for emissions of the contaminants for which nonattainment has been designated. Compliance with department of ecology emission standards for hazardous air pollutants, sources of volatile organic compounds in nonattainment areas, and new source performance standards (NSPS) when applicable to the source will be required.

(c) The proposed project meets all requirements of prevention of significant deterioration regulations if applicable.

(d) The proposed project will not violate the requirements for reasonable further progress established by the implementation plan. If the new source is a major source and is located in a nonattainment area, the total allowable emissions from existing sources and the new source, of the contaminants for which nonattainment has been designated, must be less than allowable emissions from existing sources at the time the application for approval was filed.

(e) The emissions from the proposed source will not delay the attainment date for any nonattainment area.

(4) After receipt of all information required by it, the council shall:

(a) Make preliminary determinations on the matters set forth in WAC 463-39-110(3);

(b) Make available in at least one location in the county or counties in which the proposed project is located, a copy of the preliminary determination and copies of or a summary of the information considered in making such preliminary determinations; and

(c) Publish notice to the public of the opportunity for written comment on the preliminary determinations. The period for taking public comments shall be thirty days from the date such notice is made.

(5) If, after review of all information received including public comment with respect to any proposed project, the council makes the determination of subdivisions (3) (a), (b), (c), (d) or (e) in the negative, an order approving the construction, installation or establishment of the new stationary source shall not be issued.

(6) If, after review of all information received, including public comment with respect to any proposed project, the council makes the determinations of subdivisions (3) (a), (b), and where applicable, (c), (d) and (e) in the affirmative, it shall issue an order of approval of the construction, installation or establishment of the new stationary source. The order of approval may provide such conditions of operation as are reasonably necessary to assure the continuous compliance with chapter 70.94 RCW and the applicable rules and regulations in force pursuant thereto.

(7) For sources which locate temporarily (one year or less) at particular sites, the owner or operator shall be permitted to operate at a temporary location without filing a notice of construction, providing that the owner or operator notifies the council of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable the council to determine that the operation will comply with the emission standards for a new source and with the applicable ambient air standards. The permission to operate shall be for a limited period of time and the council may set specific conditions for operation during said period. A temporary source shall be required to comply with all applicable emission standards.

(8) The owner or operator of a proposed new source shall not construct, install, establish or commence operations until written permission to proceed has been granted by the council and a valid energy facility site certification agreement is extant. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-110, filed 8/6/79.]

WAC 463-39-115 Standards of performance for new stationary sources. Subparts A, D, J, K and Y of Title 40, code of federal regulations, part 60 (standards of performance for new stationary sources), as promulgated prior to June 12, 1979 are by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council.

Sections 60.5 and 60.6 of Title 40, code of federal regulations, are not incorporated herein because they provide for preconstruction review of new stationary sources only on request. By virtue of WAC 463-39-110, such review under the state program is mandatory and an order of approval is required before the construction,

installation or establishment of a new stationary source may commence. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-115, filed 8/6/79.]

WAC 463-39-120 Monitoring and special report.

(1) Monitoring. The department of ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants.

As a part of this program, the director of the department of ecology or his authorized representative may recommend that any source under the jurisdiction of the council conduct stack and/or ambient air monitoring, and to report the results to the council and department of ecology.

(2) Investigation of conditions. For the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the council, or its authorized representative, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families. No person shall refuse entry or access to the council, or its authorized representative when entry is requested for the purpose of inspection, and when appropriate credentials are presented; nor shall any person obstruct, hamper, or interfere with any such inspection.

(3) Source testing. In order to demonstrate compliance with this regulation the council may require that a test be made of the source using a method on file with the department of ecology. The operator of a source may be required by the council to provide the necessary platform and sampling ports for the department of ecology personnel to perform a test of the source. The department of ecology shall be allowed to obtain a sample from any source. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(4) Abnormal operations or upset conditions.

(a) Upset conditions which may result in emissions in excess of the standards set by this chapter must be reported to the council within one working day. Abnormal operations can be anticipated and must be reported in advance of the occurrence of the abnormal operation if it may result in emissions in excess of standards.

(b) Any period of excess emissions is presumed to be a violation unless and until the owner or operator demonstrates and the council finds that:

- (i) The incident was reported as required, and
- (ii) Complete details were furnished the council, and
- (iii) Appropriate remedial steps have been taken, and
- (iv) The incident was unavoidable.

(c) If the conditions of subdivision (b) of this subsection are met, the incident is excusable and a notice of violation will not be issued.

(d) If any of the conditions of subdivision (b) of this subsection are not met, the incident is not excusable and a notice of violation will be issued and a penalty may be assessed.

(e) For the council to find that an incident of excess emissions is unavoidable, the following conditions must be met:

(i) The process equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with minimizing emissions.

(ii) Repairs or corrections were made in an expeditious manner when the operator knew or should have known that emission limitations were being or would be exceeded. Expeditious repairs or corrections require off-shift or overtime labor if such utilization will reduce the extent of excess emission.

(iii) The incident is not one in a recurring pattern which is indicative of inadequate design, operation or maintenance.

(iv) The amount and duration of the excess emissions as well as the impact of the emissions on ambient air quality were minimized by taking all reasonable steps.

(5) Continuous monitoring and recording. Owners and operators of the following categories of stationary sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than 250 million BTU per hour heat input, or

(B) Only gaseous fuel is burned, or

(C) Only oil or a mixture of oil and gas is burned and opacity and particulate regulations can be met without using particulate collection equipment; and, the source has never, through any administrative or judicial procedure, been found in violation of any visible emission standard.

(ii) Sulfur dioxide, except where:

(A) Steam generator capacity is less than 250 million BTU per hour heat input; or

(B) Sulfur dioxide control equipment has not been installed.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the council by the owner or operator.

(b) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than 20,000 barrels per day.

(c) Owners and operators of those sources required to install continuous monitoring equipment under this regulation shall demonstrate to the council compliance with the equipment and performance specifications, and observe the reporting requirements, contained in Title 40, code of federal regulations, part 51, appendix P, sections 3, 4 and 5, promulgated on October 6, 1975, which is by this reference adopted and incorporated herein.

(d) All sources subject to this regulation shall procure and install equipment and commence monitoring and recording activities no later than eighteen months after adoption of this regulation by the council. Any extension to this time requirement shall be negotiated through the variance procedure of WAC 463-39-150.

(e) Special considerations. If for reason of physical plant limitations or extreme economic situations, the council determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(f) Exemptions. This subsection (5) does not apply to any source which is:

(i) Subject to a new source performance standard.

(ii) Not subject to an applicable emission standard.

(iii) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this regulation during periods of monitoring system malfunctions provided that the source owner or operator shows to the satisfaction of the council that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Emission inventory. The owner or operator of any air contaminant source shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the council. The inventory shall include stack and fugitive emissions of particulates, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, volatile organic compounds, and other contaminants, and shall be submitted when required no later than forty-five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the maximum design emission rate for a one hour period and a twenty-four hour period during the year. The report shall include the average sulfur content of any fuel or raw material used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.

(7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of fifty tons per year or more over that stated in the initial inventory required by WAC 463-39-120(6) shall require the submittal of sufficient information to the council to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The council may require controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average sulfur content over the initial inventory shall not require such notice. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-120, filed 8/6/79.]

WAC 463-39-130 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter:

(1) Notice of violation. Whenever the council has reason to believe that any provision of this chapter has been violated, it may cause written notice to be served on the alleged violator or violators. The notice shall specify the provision of this chapter alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time.

(2) Civil penalty. Whenever any person violates any of the provisions of this chapter, he shall be subject to a penalty in the form of a fine in an amount not to exceed two hundred fifty dollars per day for each violation. Each such violation shall be separate and distinct and, in case of a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty shall be imposed by a notice in writing from the chairman, or his authorized representative, describing the violation with reasonable particularity.

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

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

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode is forecast. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-130, filed 8/6/79.]

WAC 463-39-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-135, filed 8/6/79.]

WAC 463-39-150 Variance. (1) Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the council for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the council may require. The council may grant such variance,

but only after public hearing or due notice if it finds that:

(a) The emissions occurring or proposed do not endanger public health or safety; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the council has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available to the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the council may prescribe.

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

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

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the council on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the council finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the council shall give public notice of such application in accordance with its rules and regulations.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the council. However, any applicant adversely affected by the denial or terms and conditions of the granting of an application for a variance or renewal of a variance by the council may obtain judicial review thereof under the provisions of chapter 34.04 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or

limit the application of the emergency provisions and procedures of RCW 70.94.415 to any person or his property.

(7) An application for a variance, or for the renewal thereof, submitted to the council pursuant to this section shall be approved or disapproved by the council within sixty-five days of receipt unless the applicant and the council agree to a continuance.

(8) No variance or renewal shall be construed to set aside or delay any requirements of the federal clean air act except with the approval and written concurrence of the federal environmental protection agency. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-150, filed 8/6/79.]

WAC 463-39-170 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 a 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 sixty 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. [Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-170, filed 8/6/79.]

Chapter 463-43 WAC

PROCEDURE--APPLICATIONS FOR EXPEDITED PROCESSING

WAC	
463-43-010	Purpose and scope.
463-43-020	Standard application required.
463-43-030	Eligible proposals.
463-43-040	Prior to making a determination of eligibility for expedited processing.
463-43-050	Expedited processing determination.
463-43-060	Effect of expedited processing.
463-43-070	Expedited application processing.
463-43-080	Recommendation--Transmittal to governor.

WAC 463-43-010 Purpose and scope. This chapter sets forth requirements for preparation of applications for energy facility site certification which qualify for expedited processing and delineates certain abbreviated procedures for processing eligible applications pursuant to RCW 80.50.075. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-010, filed 4/26/78.]

WAC 463-43-020 Standard application required. An applicant seeking expedited processing shall:

(1) Make application pursuant to chapter 463-42 WAC. The application must address all sections of chapter 463-42 WAC in sufficient detail so the council can determine the impacts under WAC 463-43-030,

(2) Submit those fees for independent consultant review and application processing pursuant to RCW 80.50.071(1)(a) and (b) and chapter 463-58 WAC with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing, and

(3) Submit a request for expedited processing to the council at the time of application which shall be accompanied by a completed environmental checklist as delineated in WAC 463-46-365. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-020, filed 4/26/78.]

WAC 463-43-030 Eligible proposals. An application may be expedited when the council finds that the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

(1) The environmental impact of the proposed energy facility,

(2) The area potentially affected,

(3) The cost and magnitude of the proposed energy facility, and

(4) The degree to which the proposed energy facility represents a change in use of the proposed site. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-030, filed 4/26/78.]

WAC 463-43-040 Prior to making a determination of eligibility for expedited processing. The council prior to making a determination of eligibility for expedited processing shall:

(1) Conduct a public informational meeting in the county of the proposed site within 60 days of receipt of an application to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views,

(2) Determine at a public hearing within 60 days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans or zoning ordinances,

(3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071(1)(a) an independent consultant

to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council, and

(4) Initiate processing of the applicant's NPDES application, if required, in accordance with chapter 463-38 WAC. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-040, filed 4/26/78.]

WAC 463-43-050 Expedited processing determination. Following the review of an application and land use hearing and within 120 days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council at a regular or special meeting and by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county or regional land use plans or zoning ordinances, and

(2) The environmental impact, area potentially affected, cost and magnitude, and degree of change in use caused by the proposed energy facility are not significant enough to warrant a full review of an application for certification under the provisions of chapter 80.50 RCW. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-050, filed 4/26/78.]

WAC 463-43-060 Effect of expedited processing. For an application granted expedited processing under WAC 463-43-050 the council shall not:

(1) Conduct any further review of an application by an independent consultant, and

(2) Hold a contested case hearing under chapter 34.04 RCW. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-060, filed 4/26/78.]

WAC 463-43-070 Expedited application processing. The council will prescribe the form, content and necessary supporting documentation for site certification during regular or special meetings of the council. All interested persons and the Counsel for the Environment shall be afforded an opportunity to make presentations on the matters herein. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-070, filed 4/26/78.]

WAC 463-43-080 Recommendation--Transmittal to governor. Within 60 days following the granting of expedited processing or such later time as is mutually agreed by the applicant and the council, the council shall forward its recommendation for approval with a copy of the draft site certification agreement to the governor. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-43-080, filed 4/26/78.]

Chapter 463-50 WAC

INDEPENDENT CONSULTANTS--GUIDELINES

WAC

463-50-020 Solicitation of proposals to perform work.

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 Financial 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 Proposal" may be provided by appropriate commercial advertising. [Statutory Authority: RCW 80.50.040(1). 78-09-083 (Order 78-10), § 463-50-020, filed 8/28/78; Order 110, § 463-50-020, filed 11/16/76.]

Chapter 463-54 WAC

CERTIFICATION COMPLIANCE DETERMINATION AND ENFORCEMENT

WAC

463-54-010	Intent and purpose of this chapter.
463-54-020	Compliance to be determined.
463-54-030	Compliance inspections and reports.
463-54-040	Compliance reports and determinations.
463-54-050	Noncompliance determinations and enforcement.
463-54-060	DOE monitoring and enforcement role.
463-54-070	Emergency action by chairman.

WAC 463-54-010 Intent and purpose of this chapter. This chapter sets forth rules relating to effects and compliance determination of energy facility construction and operation pursuant to RCW 80.50.040(11). [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-010, filed 6/23/78; Order 108, § 463-54-010, filed 11/4/76.]

WAC 463-54-020 Compliance to be determined. Compliance determination procedures shall be implemented by the council as necessary to keep it and the public properly informed as to the status of compliance with the terms of certification agreements and NPDES permits. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-020, filed 6/23/78; Order 108, § 463-54-020, filed 11/4/76.]

WAC 463-54-030 Compliance inspections and reports. Compliance determinations shall include consideration of on-site inspections, data analyses and/or reporting activities as prescribed by the council and performed by other state agencies pursuant to annual interagency agreements. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-030, filed 6/23/78; Order 108, § 463-54-030, filed 11/4/76.]

WAC 463-54-040 Compliance reports and determinations. Written reports by state agencies reporting to the council under interagency agreements shall be submitted regularly and contain certifications as to the certificate holders satisfactory compliance or noncompliance with the appropriate terms of the site certification agreement. Certifications of satisfactory

compliance in the absence of compelling evidence to the contrary shall be deemed by the council as bona fide compliance by the certificate holder. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-040, filed 6/23/78; Order 108, § 463-54-040, filed 11/4/76.]

WAC 463-54-050 Noncompliance determinations and enforcement. The council shall make the determination of noncompliance with the terms of a certification agreement or NPDES permit where circumstances so warrant and on such finding of noncompliance will institute appropriate enforcement action. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-050, filed 6/23/78; Order 108, § 463-54-050, filed 11/4/76.]

WAC 463-54-060 DOE monitoring and enforcement role. The DOE is delegated the monitoring activities pertaining to water discharges and when it reports to the council that appropriate enforcement activities are required relative thereto the council shall take or initiate action to enforce the terms of the appropriate certification agreement and the incorporated NPDES permit. Immediate enforcement action as needed may be undertaken by DOE subject to subsequent confirmation or modification by the council. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-060, filed 6/23/78.]

WAC 463-54-070 Emergency action by chairman. (1) The chairman of the council is authorized and shall take action to immediately and effectively halt or eliminate any imminent or substantial endangerments to the health or welfare of persons resulting from the discharge of pollutants from facilities sited under chapter 80.50 RCW including as appropriate:

(a) The issuance of a stop work order to immediately terminate an endangering discharge and suspend the NPDES permit.

(b) The requesting of the departments of emergency services and social and health services and other appropriate agencies, as necessary, to immediately take protective measures to safeguard the health or welfare of persons resulting from the discharge of pollutants.

(c) The reference of matters to the attorney general for appropriate enforcement action for violations of site certification agreements and NPDES permits.

(2) The chairman's action will be confirmed or modified by the council within seventy-two hours of execution at a special or regular meeting of the council, whichever will occur the earliest. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-54-070, filed 6/23/78.]

Chapter 463-58 WAC

FEES OR CHARGES FOR INDEPENDENT CONSULTANT STUDY, REGULAR AND EXPEDITED APPLICATION PROCESSING, DETERMINING COMPLIANCE AND POTENTIAL SITE STUDY

WAC

463-58-010	Intent and purpose of this chapter.
463-58-020	Fees for the independent consultant study.
463-58-030	Fees for regular application processing.
463-58-040	Fees for expedited application processing.
463-58-050	Fees for determining compliance.
463-58-060	Fees for potential site study.
463-58-070	Failure to provide necessary fees.
463-58-080	Payment, reporting and auditing procedures.

WAC 463-58-010 Intent and purpose of this chapter. This chapter sets forth rules relating to fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-010, filed 4/26/78.]

WAC 463-58-020 Fees for the independent consultant study. Pursuant to RCW 80.50.071, a fee of twenty-five thousand dollars for each proposed site shall accompany the application. This fee shall be applied toward the cost of the independent consultant study authorized by RCW 80.50.070. The determination of the total fees required for the independent consultant shall generally be as follows:

(1) The consultant selected to perform independent consulting services shall be required to provide the council with an estimate of costs required to complete the study. Upon approval of the estimate by the council, the applicant shall be advised of the costs, totally or by phase, required to complete the study,

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs,

(3) If the estimate of the costs, as stated in (1) or (2) above, totally or by phase, exceeds twenty-five thousand dollars, the applicant shall provide prior approval for the expenditure of such excess amounts, and

(4) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has provided agreement to pay the required costs, and the council has provided the applicant with a statement of amount due. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-020, filed 4/26/78.]

WAC 463-58-030 Fees for regular application processing. Pursuant to RCW 80.50.071 each applicant for energy facility site certification shall at the time of application submission deposit twenty thousand dollars for

costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) A hearing examiner(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary,

(2) A court reporter(s) for the recording and preparation of transcripts of the contested case hearing, council meetings or public sessions which the council shall consider necessary,

(3) Additional staff salaries consisting of at least one application processing officer placed on the council staff for the duration of the application processing period—provided that the council may in the interest of efficiency and effectiveness assign one application processing officer to more than one application, and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-030, filed 4/26/78.]

WAC 463-58-040 Fees for expedited application processing. Applicants filing applications for expedited processing shall provide fees in accordance with WAC 463-58-020 and 463-58-030 above with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-040, filed 4/26/78.]

WAC 463-58-050 Fees for determining compliance. Pursuant to RCW 80.50.071 each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms and conditions of the certificate. The amount of funds required to be placed on deposit by the certificate holder shall be determined as follows:

(1) For the period subsequent to the date of execution of the site certification agreement until the beginning of construction or until the beginning of any work covered by an NPDES permit, five hundred dollars, and

(2) For the period subsequent to beginning of construction or beginning of any work covered by an NPDES permit, twenty thousand dollars. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-050, filed 4/26/78.]

WAC 463-58-060 Fees for potential site study. A fee of ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars 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. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-060, filed 4/26/78.]

WAC 463-58-070 Failure to provide necessary fees. Failure to provide the initial deposit or subsequently required payments within thirty days following receipt of a statement from the council may result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in suspension of the certification agreement. At the conclusion of the thirty-day period allowed for making necessary payments, the council will notify any delinquent applicant or certificate holder to appear at the next regularly scheduled meeting or a subsequent meeting to show cause why the council should not suspend application processing of the certificate. In the event of suspension, action to reinstate application processing or the certificate will be taken by the council at the next regularly scheduled meeting following deposit of all required fees. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-070, filed 4/26/78.]

WAC 463-58-080 Payment, reporting and auditing procedures. (1) Following payment of initial deposits for application processing and determination of compliance, the council will provide each applicant or certificate holder a statement of expenditures actually made during the preceding calendar quarter; the statement will be in sufficient detail to explain reasonable and necessary expenditures made against the deposited funds. Within thirty days of the receipt of the council's statement the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the originally established level provided that:

(a) An applicant may be requested by the council to increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. The council will provide to the applicant written justification for an increased deposit,

(b) Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant or, at the applicant's option, credited against required deposits of certificate holders, and

(c) If actual reasonable and necessary expenditures for inspection and determination of compliance in a calendar quarter have exceeded the amount of funds on deposit, such excess costs, pursuant to RCW 80.50.071, will be paid by the certificate holder. A statement will be provided to the certificate holder by the council in sufficient detail to provide an adequate explanation of these expenditures.

(2) All payments shall be made by a cashier's check payable to the state treasurer and delivered to the council office. The council will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The council will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor. [Statutory Authority: RCW 80.50.071. 78-05-054 (Order 78-2), § 463-58-080, filed 4/26/78.]