

## (3) Definitions:

(a) "Predecessor," for the purposes of the disclosure required by item 1 in the body of the offering circular, is defined as follows: A "predecessor" of a franchisor is (i) a person the major portion of whose assets have been acquired directly or indirectly by the franchisor, or (ii) a person from whom the franchisor acquired directly or indirectly the major portion of its assets;

(b) "Franchise broker," for the purposes of the disclosure required by the cover page and item 2 in the body of the offering circular, is defined as follows: A "franchise broker" is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience is otherwise required to be disclosed at item 2 in the body of the offering circular.

(4) Disclosure: Each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.

(5) Subfranchisors: When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor; the franchisor, as well as the subfranchisor, shall execute a signature page.

(6) Signing of application: The application shall be signed by an officer or general partner of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

(7) Manually signed consent of accountant: All applications shall be accompanied by a manually signed consent of the independent public accountants for the use of their audited financial statements as such statements appear in the offering circular.

(8) Application to amend the registration: An amendment to an application filed either before or after the effective date of registration shall contain only the information being amended identified by item number and shall be verified by means of the prescribed signature page. Each amendment shall be accompanied by a facing page in the form prescribed on which the applicant shall indicate the filing is an amendment and the number of the amendment, if more than one.

(9) Underscoring of changes: If the registration renewal statement or any amendment to an application for registration alters the text of the offering circular, or of any item, or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

[Statutory Authority: RCW 19.100.250. 92-02-054, § 460-80-125, filed 12/30/91, effective 1/30/92; 80-04-036 (Order SDO-38-80), § 460-80-125, filed 3/19/80.]

[1991 WAC Supp.—page 2740]

**WAC 460-80-315 Washington uniform franchise offering circular.** To implement the disclosure requirements of RCW 19.100.030 (4)(a) and 19.100.040, the director adopts the Uniform Franchise Offering Circular (UFOC) as amended by the North American Securities Administrators Association (NASAA) on October 9, 1988.

[Statutory Authority: RCW 19.100.250. 92-02-054, § 460-80-315, filed 12/30/91, effective 1/30/92; 88-01-060 (Order SDO 112B-87), § 460-80-315, filed 12/17/87. Statutory Authority: RCW 19.100.040 (4), (7), and (20), and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-315, filed 3/19/80.]

## Chapter 460-82 WAC BROKER

### WAC

460-82-200 Franchise broker record requirements.

**WAC 460-82-200 Franchise broker record requirements.** Every franchise broker shall make and keep current the following books and records relating to his business:

(1) Records of original entry containing the sale of franchise, to whom sold, the aggregate price, the amount paid down, the installment payments, if any, the commission paid to the broker, the amount dispersed for advertising and other amounts to be funded to the franchisor.

(2) An individual registration card for each franchisee, his name and address, aggregate amount to be paid, terms of the payment, a copy of the receipt signed by the purchaser that he had received a copy of the offering circular and that it had been received ten business days before the sale.

(3) Every franchise broker shall keep a copy of all advertising used in the sale of said franchise, including but not limited to the radio, newspaper, T.V. media, letters, brochures, etc.

(4) Every franchise broker shall preserve for a period of not less than six years from the closing of any franchise account, all records, books and memorandums that relate to the franchisee.

[Statutory Authority: RCW 19.100.250. 92-02-054, § 460-82-200, filed 12/30/91, effective 1/30/92; Order 11, § 460-82-200, filed 3/3/72.]

## Title 463 WAC

### ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: Thermal Power Plant Evaluation Council)

#### Chapters

**463-06 General—Organization—Public records.**  
**463-10 Definitions.**  
**463-14 Policy and interpretation.**  
**463-18 Procedure—Regular and special council meetings.**

- 463-26 Procedure--Initial public hearing and public information meeting.
- 463-28 Procedure--State preemption.
- 463-38 Regulations for compliance with NPDES permit program.
- 463-39 General regulations for air pollution sources.
- 463-42 Procedure--Guidelines--Applications for site certification.
- 463-43 Procedure--Applications for expedited processing.
- 463-47 SEPA rules.
- 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.

#### Chapter 463-06 WAC

#### GENERAL--ORGANIZATION--PUBLIC RECORDS

##### WAC

463-06-010 Organization of this title.

**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 adjudicative proceedings held pursuant to RCW 80.50.090(3).

Chapter 463-34 WAC outlines procedures for rule making and for obtaining declaratory orders 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 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).

[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-06-010, filed 1/18/91, effective 2/18/91; Order 103, § 463-06-010, filed 11/4/76.]

#### 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) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act.

[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-10-010, filed 1/18/91, effective 2/18/91; Order 104, § 463-10-010, filed 11/4/76.]

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

##### WAC

463-14-030 Public hearings policy.  
463-14-080 EFSEC deliberative process.

**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 an adjudicative proceeding under chapter 34.05 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 "adjudicative proceeding" variety.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-14-030, filed 1/18/91, effective 2/18/91; Order 104, § 463-14-030, filed 11/4/76.]

**WAC 463-14-080 EFSEC deliberative process.** RCW 80.50.100 requires the council to report to the governor its recommendation as to the approval or rejection of an application for certification. In order for the council to develop such a recommendation it shall utilize a deliberative process for analysis and evaluation of an application to determine compliance with the intent and purpose of chapter 463-42 WAC. The council will contract for an independent consultant study of the application. An environmental impact statement also will be adopted.

The council during the deliberative process will conduct an extensive public hearing as an adjudicative proceeding for the presentation of evidence on the application. The council will conduct sessions for the taking of public testimony concerning the proposed project. The council will evaluate public comments received as part of the environmental review. The council throughout all of the deliberative process will consider any laws or ordinances, rules or regulations which may be preempted by certification. The council in open session, when fully satisfied that all issues have been adequately discussed will consider and by majority decision will act on the question of approval or rejection of an application.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-14-080, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1), 81-20-028 (Order 81-4), § 463-14-080, filed 9/30/81.]

### Chapter 463-18 WAC

#### PROCEDURE--REGULAR AND SPECIAL COUNCIL MEETINGS

WAC

463-18-020 Governing procedure.

**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 adjudicative 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 and 463-38 WAC.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-18-020, filed 1/18/91, effective 2/18/91; Order 105, § 463-18-020, filed 11/4/76.]

[1991 WAC Supp—page 2742]

### Chapter 463-26 WAC

#### PROCEDURE--INITIAL PUBLIC HEARING AND PUBLIC INFORMATION MEETING

WAC

463-26-120 Initial determination subject to review.  
463-26-130 Public information meeting.

**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 the adjudicative proceeding by the parties to that proceeding when good cause is shown.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-26-120, filed 1/18/91, effective 2/18/91; 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 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 adjudicative proceeding 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.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-26-130, filed 1/18/91, effective 2/18/91; Order 109, § 463-26-130, filed 11/16/76.]

### Chapter 463-28 WAC

#### PROCEDURE--STATE PREEMPTION

WAC

463-28-060 Request for preemption—Adjudicative proceeding.  
463-28-080 Preemption—Failure to justify.

**WAC 463-28-060 Request for preemption—Adjudicative proceeding.** Should an applicant elect to continue processing the application and file a request with the council for state preemption, the council will schedule an adjudicative proceeding hearing on the application as specified under chapter 463-30 WAC. The council shall determine during the adjudicative proceeding 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.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-28-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1), 83-08-031 (Order 83-2), § 463-28-060, filed 3/31/83; 78-07-036 (Order 78-3), § 463-28-060, filed 6/23/78.]

**WAC 463-28-080 Preemption--Failure to justify.** During the adjudicative proceeding, 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, 91-03-090, § 463-28-080, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1), 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]

## Chapter 463-38 WAC

### REGULATIONS FOR COMPLIANCE WITH NPDES PERMIT PROGRAM

#### WAC

463-38-041	Notice, provisions.
463-38-042	Public hearings.
463-38-063	Appeal.

**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 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 34.05 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.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-38-041, filed 1/18/91, effective 2/18/91; 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 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 34.05 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] 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.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-38-042, filed 1/18/91, effective 2/18/91; Order 114, § 463-38-042, filed 2/4/77. Formerly WAC 463-16-042.]

**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 34.05 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).

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-38-063, filed 1/18/91, effective 2/18/91; Order 114, § 463-38-063, filed 2/4/77. Formerly WAC 463-16-063.]

## Chapter 463-39 WAC

### GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

#### WAC

463-39-130 Repealed.

463-39-150 Variance.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-39-130 Regulatory actions. [Statutory Authority: RCW 80.50.040(1), 79-09-006 (Order 79-1), § 463-39-130, filed 8/6/79.] Repealed by 91-03-090, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040.

**WAC 463-39-130 Repealed.** See Disposition Table at beginning of this chapter.

**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 34.05 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. 91-03-090, § 463-39-150, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 79-09-006 (Order 79-1), § 463-39-150, filed 8/6/79.]

#### Chapter 463-42 WAC

### PROCEDURE--GUIDELINES--APPLICATIONS FOR SITE CERTIFICATION

WAC

463-42-680 Site restoration--Terminated projects.

**WAC 463-42-680 Site restoration--Terminated projects.** In the absence of a council determination as to the level of site restoration, restoration of the site to a reasonable approximation of its original condition prior to construction shall be required.

[Statutory Authority: RCW 80.50.040. 91-09-040, § 463-42-680, filed 4/15/91, effective 5/16/91.]

#### Chapter 463-43 WAC

### PROCEDURE--APPLICATIONS FOR EXPEDITED PROCESSING

WAC

463-43-060 Effect of expedited processing.

**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 an adjudicative proceeding hearing under chapter 34.05 RCW.

[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-43-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50-071. 78-05-054 (Order 78-2), § 463-43-060, filed 4/26/78.]

#### Chapter 463-47 WAC

### SEPA RULES

WAC

463-47-060 Additional timing considerations.

**WAC 463-47-060 Additional timing considerations.**

(1) The council will determine when it receives an application whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the council will request the applicant to complete an environmental checklist. A checklist is not needed if the council and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the council is unsure whether the proposal is exempt.

(2) The council when it receives an application and environmental checklist will determine whether the council or another agency is SEPA lead agency (see WAC 197-11-050 and 197-11-922 through 197-11-940) within five working days. If the council is not the lead agency, the council shall send the completed environmental checklist, a copy of the permit application, to the lead agency, and an explanation of the determination to the identified lead agency.

(3) The council may initiate an adjudicative proceeding hearing required by RCW 80.50.100 prior to completion of the draft EIS. The council shall initiate and conclude an adjudicative proceeding hearing required by RCW 80.50.100 prior to issuance of the final EIS.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-47-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-060, filed 9/14/84.]

### Chapter 463-50 WAC

#### INDEPENDENT CONSULTANTS--GUIDELINES

WAC

463-50-030 Principles governing selection of independent consultants.

**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 adjudicative proceeding.

[Statutory Authority: RCW 80.50.040, 91-03-090, § 463-50-030, filed 1/18/91, effective 2/18/91; Order 110, § 463-50-030, filed 11/16/76.]

### Chapter 463-54 WAC

#### CERTIFICATION COMPLIANCE DETERMINATION AND ENFORCEMENT

WAC

463-54-070 Enforcement actions.

**WAC 463-54-070 Enforcement actions.** (1) General. The council establishes four types of enforcement action in order to provide the council with a range of responses to apparent violations of a site certification agreement or the laws and rules enforced by the council. The range allows the chair or the council to choose an approach which it determines, in its discretion, to be best suited in light of the apparent seriousness of an apparent violation, the potential danger to humans or the environment, the willingness and ability of the violator to make required corrections, and the speed with which corrective action should be taken.

(2) Emergency action by chair.

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

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

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

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

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

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

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

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

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

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

(4) Notice of violation.

(a) A notice of violation is appropriate when the council believes: That a violation has occurred; that a



violation is not being timely or effectively corrected; that a violation may cause a substantial risk of harm to humans or the environment; or that a penalty may be appropriate as an incentive to future compliance.

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

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

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

(ii) An appeal of a notice of violation must be filed within thirty days after service of the notice of violation. The appeal is an application for an adjudicative proceeding under RCW 34.05.410. It must be in writing, timely filed in the offices of the council, and state the basis of the contention and exactly what change or remedy is sought from the council. Unless the application is denied or settled, the council shall conduct an adjudicative proceeding upon the challenge pursuant to chapter 34.05 RCW.

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

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

(6) Judicial enforcement.

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

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

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

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

[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-54-070, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 81-11-011 (Order 81-3), § 463-54-070, filed 5/13/81; 78-07-036 (Order 78-3), § 463-54-070, filed 6/23/78.]

### Chapter 463-58 WAC

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

WAC

463-58-030 Fees for regular application processing.

**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 an adjudicative proceeding hearing, council meetings or public sessions which the council shall consider necessary,

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period, 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 80.50.040. 91-03-090, § 463-58-030, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50-.071. 78-05-054 (Order 78-2), § 463-58-030, filed 4/26/78.]

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