

Title 371 WAC

POLLUTION CONTROL HEARINGS BOARD

Chapters

371-08 Practice and procedure.

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 371-12 PUBLIC RECORDS

371-12-010 Purpose. [Order 74-1, § 371-12-010, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-020 Definitions. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-020, filed 8/18/81; Order 74-1, § 371-12-020, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-030 Public records available. [Order 74-1, § 371-12-030, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-040 Communications with the board. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-040, filed 8/18/81; Order 74-1, § 371-12-040, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-050 Public records officer. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-050, filed 8/18/81; Order 74-1, § 371-12-050, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-060 Office hours. [Order 74-1, § 371-12-060, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-070 Requests for public records. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-070, filed 8/18/81; Order 74-1, § 371-12-070, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-080 Copying. [Order 74-1, § 371-12-080, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-090 Exemptions. [Order 74-1, § 371-12-090, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-100 Review of denials of public records requests. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-100, filed 8/18/81; Order 74-1, § 371-12-100, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-110 Protection of public records. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-110, filed 8/18/81; Order 74-1, § 371-12-110, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-120 Records index. [Order 74-1, § 371-12-120, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

371-12-130 Adoption of form. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution 82-1), § 371-12-130, filed 8/18/81; Order 74-1, § 371-12-130 and Form, filed 2/7/74.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

Chapter 371-08 WAC

PRACTICE AND PROCEDURE

WAC

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371-08-015	Board administration—Meeting of the board. [Order 75-1, § 371-08-015, filed 1/9/75; Order 70-1, § 371-08-015, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-135	Conferences—Failure to supply prehearing information. [Order 75-1, § 371-08-135, filed 1/9/75; Order 70-1, § 371-08-135, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-025	Board administration—Office of the clerk of the board. [Order 75-1, § 371-08-025, filed 1/9/75; Order 70-1, § 371-08-025, filed 12/18/70.] Repealed by 81-17-055 (Order 82-1, Resolution No. 82-1), filed 8/18/81. Statutory Authority: RCW 43.21B.170.	371-08-145	Conferences—Applicability of superior court rules. [Order 75-1, § 371-08-145, filed 1/9/75; Order 70-1, § 371-08-145, filed 12/18/70.] Repealed by 81-17-055 (Order 82-1, Resolution No. 82-1), filed 8/18/81. Statutory Authority: RCW 43.21B.170.
371-08-031	Procedures applicable. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-031, filed 8/18/81; Order 75-1, § 371-08-031, filed 1/9/75.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-160	Hearings—Notice of hearing. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-160, filed 8/18/81; Order 75-1, § 371-08-160, filed 1/9/75; Order 70-1, § 371-08-160, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-045	Appearance and practice before the board—No formal admission to practice. [Order 75-1, § 371-08-045, filed 1/9/75; Order 70-1, § 371-08-045, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-163	Hearings—Briefs. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-163, filed 8/18/81.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-060	Presiding officer—Definition. [Order 70-1, § 371-08-060, filed 12/18/70.] Repealed by Order 75-1, filed 1/9/75.	371-08-170	Hearings—Continuances. [Order 70-1, § 371-08-170, filed 12/18/70.] Repealed by Order 75-1, filed 1/9/75.
371-08-070	Presiding officer—Substitution of presiding officer. [Order 70-1, § 371-08-070, filed 12/18/70.] Repealed by Order 75-1, filed 1/9/75.	371-08-175	Hearings—Setting subsequent hearings. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-175, filed 8/18/81; Order 75-1, § 371-08-175, filed 1/9/75; Order 70-1, § 371-08-175, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-090	Appeals to the board—Granting the appeal. [Order 75-1, § 371-08-090, filed 1/9/75; Order 70-1, § 371-08-090, filed 12/18/70.] Repealed by 81-17-055 (Order 82-1, Resolution No. 82-1), filed 8/18/81. Statutory Authority: RCW 43.21B.170.		
371-08-095	Appeals to the board—Cross-appeals. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-095, filed 8/18/81; Order 75-1, § 371-08-095, filed 1/9/75; Order 70-1, § 371-08-095, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-190	Disposition of contested cases—Definition. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-190, filed 8/18/81; Order 75-1, § 371-08-190, filed 1/9/75; Order 70-1, § 371-08-190, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-102	Appeals to the board—Responsive pleadings. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-102, filed 8/18/81.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-201	Disposition of contested cases—Presentation of additional evidence. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-201, filed 8/18/81; Order 75-1, § 371-08-201, filed 1/9/75.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-105	Conferences—Two types. [Order 75-1, § 371-08-105, filed 1/9/75; Order 70-1, § 371-08-105, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-205	Disposition of contested cases—Exceptions. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-205, filed 8/18/81; Order 75-1, § 371-08-205, filed 1/9/75; Order 70-1, § 371-08-205, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-110	Conferences—Purpose of informal conferences. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-110, filed 8/18/81; Order 75-1, § 371-08-110, filed 1/9/75; Order 70-1, § 371-08-110, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).	371-08-210	Disposition of contested cases—Finality of proposed decisions and orders. [Order 75-1, § 371-08-210, filed 1/9/75; Order 70-1, § 371-08-210, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).
371-08-115	Conferences—When held. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-115, filed 8/18/81; Order 75-1, § 371-08-115, filed 1/9/75; Order 70-1, § 371-08-115, filed 12/18/70.]	371-08-225	Appeals to the courts—Notice of appeal to the court of appeals. [Order 75-1, § 371-08-225, filed 1/9/75; Order

70-1, § 371-08-225, filed 12/18/70.] Repealed by Order 77-1, filed 9/8/76. Later promulgation, see WAC 371-08-220.

371-08-245 Petitions for rule making. [Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-245, filed 8/18/81; Order 75-1, § 371-08-245, filed 1/9/75; Order 70-1, § 371-08-245, filed 12/18/70.] Repealed by 91-03-028, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.110(3).

WAC 371-08-001 Purpose and applicability. (1)

The purpose of chapter 371-08 WAC is to provide comprehensive rules of practice and procedure before the pollution control hearings board (hereinafter board).

(2) This chapter shall apply to all procedural matters before the board and replaces chapters 1-08 and 10-08 WAC, except where specifically noted.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-001, filed 1/8/91, effective 2/8/91.]

WAC 371-08-002 Commencement of adjudicative proceedings. An adjudicative proceeding before the board shall be initiated by filing a notice of appeal with the board and the service of a copy thereof on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished as provided in WAC 371-08-080.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-002, filed 1/8/91, effective 2/8/91.]

WAC 371-08-005 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of ecology from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, and from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110:

(a) Civil penalties imposed pursuant to RCW 70.94.431, 70.105.080, 70.107.050, 90.03.600, 90.48.144, and 90.48.350.

(b) Orders issued pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 90.14.130, 90.48.120.

(c) The issuance, modification, termination or denial of any permit certificate or license by the department of ecology or any air pollution control authority.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Any other decision by the department of ecology or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(3) ECPA. The board also has jurisdiction to hear and decide appeals from any final decision contained in the document issued by the department of ecology pursuant to RCW 90.62.060(6) of the Environmental Coordination Procedures Act.

(4) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-005, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-005, filed 8/18/81; Order 75-1, § 371-08-005, filed 1/9/75; Order 70-1, § 371-08-005, filed 12/18/70.]

WAC 371-08-010 Board administration—Office and address of the board. (1) The administrative business of the board, except rule making, is performed by the Environmental Hearings Office to the extent necessary for rule making, the board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is housed at the office of the Environmental Hearings Office, 4224 6th Avenue S.E., Building 2 Rowesix, Lacey, Washington. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(3) The mailing address of the board is:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

(4) The telephone number of the board is (360) 459-6327. The telefacsimile number is (360) 438-7699.

[Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-010, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-010, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-010, filed 8/18/81; Order 75-1, § 371-08-010, filed 1/9/75; Order 70-1, § 371-08-010, filed 12/18/70.]

WAC 371-08-020 Board administration—Quorum. Two members of the board shall constitute a quorum for making orders or decisions, or for promulgating rules and regulations relating to its procedures, and may act although one position on the board be vacant. One member or designated administrative appeals judge may hold hearings and take testimony when assigned by the chairperson to so do. The findings of such member or administrative appeals judge shall not become final until approved by a quorum of the board.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-020, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-020, filed 8/18/81; Order 75-1, § 371-08-020, filed 1/9/75; Order 70-1, § 371-08-020, filed 12/18/70.]

WAC 371-08-030 Board administration—Communications with the board—Public records. (1) All written communications by parties pertaining to a particular case, including notices of appeal and applications and requests for relief of any kind, shall be filed with the board either by manual delivery, by mail or by telefacsimile. Copies of all such written communications shall be furnished

to the appropriate agency and to all other interested parties and the original filed with the board shall show thereon compliance with this requirement.

(2) Public records maintained by the board are available for public inspection and copying as provided in chapter 198-12 WAC. The form for requests for public records is set forth in WAC 198-12-140.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-030, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-030, filed 8/18/81; Order 75-1, § 371-08-030, filed 1/9/75; Order 70-1, § 371-08-030, filed 12/18/70.]

WAC 371-08-032 Definitions. As used in this chapter the following terms shall have the following meaning:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The term "adjudicative proceeding" is used interchangeably with the terms "case" and "appeal" in this chapter.

(2) "Agency" means any governmental entity—department of ecology, air pollution control authority, local health department, or other agency—whose decisions the board has jurisdiction to review.

(3) "Board" means the pollution control hearings board as described in WAC 371-08-005. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Department" refers to and means the department of ecology.

(5) "Filing" of a document that is required to be filed with the board means delivery of the document to the office of the board. Filing by telefacsimile transmission is effective only where the transmission is ten pages or less and where the original is simultaneously mailed or sent by commercial service delivery company.

(6) "Party" means:

(a) A person to whom any agency decision is specifically directed; or

(b) A person named as a party to the adjudicative proceeding, or allowed to intervene, or joined as a party by the board.

(7) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency, or entity of any character.

(8) "Presiding officer" means a member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson.

(9) "Service" means posting in the United States mail, properly addressed, postage prepaid; telefacsimile transmission; or personal service. Service by mail is complete upon deposit in the United States mail. Service by telefacsimile transmission is effective only where copies are simultaneously mailed or sent by commercial service delivery company.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-032, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-032, filed 8/18/81; Order 75-1, § 371-08-032, filed 1/9/75.]

WAC 371-08-033 Service of documents on representatives. Service of any document required to be served on a party to a case, including final decisions of the board,

may be made by serving the party's representative in the matter.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-033, filed 1/8/91, effective 2/8/91.]

WAC 371-08-035 Appearance and practice before the board—Persons who may and may not appear. (1) No person may appear in a representative capacity before the board other than the following:

(a) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.

(b) A bona fide officer, partner, owner, full-time employee or member of an association, partnership, corporation, organization, government subdivision or agency who appears for such entity.

(c) Legal interns admitted to practice under APR 9 of the rules of court appearing before the board under the conditions and limitations therein specified.

(d) Any other individual designated by an entity to serve as spokesperson in a case, with the approval of the presiding offices.

(2) Nothing in this section shall be construed as limiting the right of any individual to represent himself or herself.

(3) No former employee of the department or member of the attorney general's staff may, at any time after leaving the employment of the department or the attorney general, appear, except when permitted by RCW 42.18.220, in a representative capacity on behalf of other parties in a formal proceeding in which an active part as a representative of the department was taken in the same case or proceeding.

(4) No former member of the board shall, for a period of one year after the termination of his or her membership, act in a representative capacity before the board on any matter.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-035, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-035, filed 8/18/81; Order 75-1, § 371-08-035, filed 1/9/75; Order 70-1, § 371-08-035, filed 12/18/70.]

WAC 371-08-040 Appearance and practice before the board—Appearance by representative. (1) Appearances may be made on behalf of any party by his or her attorney or other duly authorized representative as defined in WAC 371-08-035, by

(a) Filing a notice of appeal or other pleading or a written notice of appearance containing the name of the party to be represented, and the name, address and telephone number of the representative, or by

(b) Entering an appearance at the time and place of a conference or hearing on the appeal, and notifying the presiding officer conducting the same of the party to be represented and the name, address and telephone number of the representative.

(2) Copies of every written notice of appearance shall be furnished by the representative to all other parties or their representatives of record at the time the original is filed with the board.

(3) Unless the department notifies the board otherwise, the attorney general shall, in all appeals from decisions and orders of the department and director, be deemed to have entered appearance for the department, and shall be exempt

from the requirements herein relating to the filing of written notices of appearance and to the furnishing of copies of same to other parties and their representatives.

(4) After an appearance by a representative for a party has been made, all future notices and orders shall be served by the board upon such representative. Service upon the representative shall constitute service upon the party.

[Statutory Authority: RCW 43.21B.110(3), 91-03-028, § 371-08-040, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170, 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-040, filed 8/18/81; Order 75-1, § 371-08-040, filed 1/9/75; Order 70-1, § 371-08-040, filed 12/18/70.]

WAC 371-08-050 Appearance and practice before the board—Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record, together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

[Statutory Authority: RCW 43.21B.170, 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-050, filed 8/18/81; Order 75-1, § 371-08-050, filed 1/9/75; Order 70-1, § 371-08-050, filed 12/18/70.]

WAC 371-08-055 Appearance and practice before the board—Conduct. All persons appearing in a representative capacity in proceedings before the board shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standard, the presiding officer may admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or report the matter to the board which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, and refusal to permit such person to appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 43.21B.170, 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-055, filed 8/18/81; Order 75-1, § 371-08-055, filed 1/9/75; Order 70-1, § 371-08-055, filed 12/18/70.]

WAC 371-08-061 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice. The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

[Statutory Authority: RCW 43.21B.170, 94-12-027, § 371-08-061, filed 5/24/94, effective 6/24/94.]

WAC 371-08-065 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of these rules:

- (1) To administer oaths and affirmations;

- (2) To issue subpoenas and enter protective orders as provided in RCW 34.05.446;

- (3) To rule on all procedural matters, objections and motions;

- (4) To rule on all offers of proof and receive relevant evidence;

- (5) To question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

- (6) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to fairly and equitably decide the appeal;

- (7) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

- (8) To issue orders joining other parties, on motion of any party, or on its own when it appears that such other parties may have an interest in, or may be affected by, the proceedings;

- (9) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

- (10) To hold conferences for the settlement or amplification of the issues;

- (11) To take or cause to be taken depositions and interrogatories pursuant to these rules and to procedures available to litigants in civil cases in superior courts in the state of Washington;

- (12) To regulate the course of the hearing;

- (13) To take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 43.21B.110(3), 91-03-028, § 371-08-065, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170, 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-065, filed 8/18/81; Order 75-1, § 371-08-065, filed 1/9/75; Order 70-1, § 371-08-065, filed 12/18/70.]

WAC 371-08-071 Subpoenas. (1) Issuance. Subpoenas may be issued by the presiding officer assigned to the case, or by an attorney of record, as provided in RCW 34.05.446. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by the presiding officer shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, and shall prepare the subpoenas for issuance, send them to the board's office for signature, and upon return shall make arrangements for service.

- (2) **Form.** Every subpoena shall name the pollution control hearings board and the title of the proceedings, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.

- (3) **Service.** Service of subpoenas shall be made by delivering a copy of the subpoena to such person and tendering on demand, where entitled to make such a demand, the fees for one day's attendance and the mileage allowed by law. All costs shall be paid by the party seeking the attendance of the witness.

- (4) **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgement of service with

the board or presiding officer of the case. Failure to make proof of service does not affect the validity of the service.

(5) **Quashing.** Upon motion made promptly (at or before the time specified in the subpoena for compliance) by the person to whom the subpoena is directed and upon notice to the party for whom the subpoena was issued, the presiding officer may (a) quash, or (b) modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (c) condition denial of the motion upon just and reasonable conditions.

(6) **Geographical scope.** Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-071, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-071, filed 8/18/81.]

WAC 371-08-075 Appeals to the board—Contents of notice of appeal. The notice of appeal shall contain:

(1) The name, mailing address, telephone number and telefacsimile number (if available) of the appealing party, and of the representative, if any;

(2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency whose decision is being appealed and the person to whom the decision is directed shall be named as parties;

(3) A copy of the order or decision appealed from, and if the order or decision followed an application, a copy of the application;

(4) A short and plain statement showing the grounds upon which the appealing party considers such order or decision to be unjust or unlawful;

(5) A clear and concise statement of facts upon which an appealing party relies to sustain his or her grounds for appeal.

(6) The relief sought, including the specific nature and extent;

(7) A statement that the appealing party has read the notice and believes the contents to be true, followed by the party's signature and the signature of the representative, if any. If the appealing party is unavailable to sign the notice of appeal, it may be signed by the representative.

(8) All pleadings shall be so construed as to do substantial justice.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-075, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-075, filed 8/18/81; Order 75-1, § 371-08-075, filed 1/9/75; Order 70-1, § 371-08-075, filed 12/18/70.]

WAC 371-08-080 Appeals to the board—Time for filing appeals. (1) Unless provided otherwise by law, the notice of appeal shall be filed within thirty days from the date the copy of the order or decision of the agency was communicated to the appealing party. The date of filing shall be the date of actual receipt by the board. Receipt of an appeal shall be acknowledged by the board; the date stamp placed thereon shall be prima facie evidence of the date of receipt. The board may thereafter require additional copies to be filed.

(2) Within the same thirty-day period, a copy of the notice of appeal shall be served, by mail or otherwise, on the agency whose decision is being appealed. Proof of such

service may be made by certificate or affidavit filed with the board.

(3) A copy of the notice of appeal shall also be served on all other persons named as parties to the appeal.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-080, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-080, filed 8/18/81; Order 75-1, § 371-08-080, filed 1/9/75; Order 70-1, § 371-08-080, filed 12/18/70.]

WAC 371-08-085 Appeals to the board—Jurisdictional requirements—Dismissal on jurisdictional grounds.

(1) Timely filing of the notice of appeal with the board and timely service of the notice of appeal on the appropriate agency must both be accomplished for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear an appeal, and the board may on its own raise the jurisdictional issue. The board shall, when satisfied that it does not have jurisdiction, dismiss an appeal.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-085, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-085, filed 1/9/75; Order 70-1, § 371-08-085, filed 12/18/70.]

WAC 371-08-100 Appeals to the board—Correction or amendment of notice.

Within thirty days of receipt by the board, if any notice of appeal is found to be defective or insufficient, the board may require the party filing said notice of appeal to correct, clarify or amend the same to conform to the requirements of the board's rules. The board may refuse to schedule any conference or hearing thereon until compliance with such requirements, or may issue an appropriate order which may include providing for dismissal of such appeal upon failure to comply within a specified time.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-100, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-100, filed 8/18/81; Order 75-1, § 371-08-100, filed 1/9/75; Order 70-1, § 371-08-100, filed 12/18/70.]

WAC 371-08-104 Appeals to the board—Stays. (1)

A person appealing an order not stayed by the issuing agency, may obtain a stay of the effectiveness of that order only as set forth in this section.

(2) An appealing party may request a stay by including such a request in the notice of appeal or in a subsequent motion. The request must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which the request is based.

(3) Upon receipt of a request for a stay, the board will confer with the parties regarding its disposition. If necessary, a hearing on the motion will be held. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the board will advance the hearing date on its own initiative, or by request of the parties.

(4) The requestor makes a prima facie case for a stay if the requestor demonstrates either a likelihood of success on the merits of the appeal or irreparable harm. Upon such a showing, the board shall grant the stay unless the agency demonstrates either (a) a substantial probability of success on the merits or (b) likelihood of success and an overriding public interest which justifies denial of the stay.

(5) Unless otherwise stipulated by the parties, the board, after granting or denying a request for a stay, shall expedite the hearing and decision on the merits.

(6) Any party aggrieved by the grant or denial of a stay by the board may petition the superior court of Thurston County for review of that decision pending the hearing on the merits before the board.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-104, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-104, filed 8/18/81.]

WAC 371-08-106 Appeals to the board—Intervention. (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervener pursuant to Civil Rule 24.

(2) The presiding officer may impose conditions upon the intervenor's participation in the proceedings.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-106, filed 1/8/91, effective 2/8/91.]

WAC 371-08-125 Conferences—Purpose of prehearing conferences. The purpose of a prehearing conference shall be:

(1) To determine the feasibility of a settlement of the appeal or, failing settlement;

(2) To prepare the case for hearing by scheduling the hearing and interim dates, by identification of issues, and, to the extent possible, witnesses, exhibits, stipulations, and admissions.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-125, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-125, filed 1/9/75; Order 70-1, § 371-08-125, filed 12/18/70.]

WAC 371-08-130 Conferences—When held. (1) The board may, upon written request by a party, or on its own, schedule a prehearing conference on not less than seven days' notice mailed to each party to the appeal, at a time and place fixed by the board.

(2) If any party fails to appear at a prehearing conference, the presiding officer may suspend setting a hearing or may continue or deny continuance of a hearing already set or may otherwise restrict the time or location of hearing.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-130, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-130, filed 1/9/75; Order 70-1, § 371-08-130, filed 12/18/70.]

WAC 371-08-140 Conferences—Agreements at prehearing conferences—Prehearing orders. (1) When agreement concerning final disposition of the appeal is reached at a prehearing conference, the parties shall thereafter present an agreed order implementing the agreement. If the agreement is in accordance with the law, the board shall enter the agreed order disposing of the appeal.

(2) After a prehearing conference which has not resulted in settlement, the presiding officer shall set the date of hearing and interim dates and enter a prehearing order. Normally, this will include a statement of issues and lists of witnesses and exhibits or provision for filing such lists, as well as other matters which may bear on the preparation for hearing. The issues stated in the prehearing order shall

control the subsequent course of the proceedings, unless modified for good cause by subsequent order.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-140, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-140, filed 1/9/75; Order 70-1, § 371-08-140, filed 12/18/70.]

WAC 371-08-144 Prehearing procedures—Telephone. The board may schedule any conference or motion hearing, to be conducted by telephone conference call, if it appears to promote the fair, speedy and economical processing of the matter.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-144, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-144, filed 8/18/81.]

WAC 371-08-146 Prehearing procedures—Use of civil rules—Discovery. Except where in conflict with these rules, the statutes and rules regarding pretrial procedures in the superior courts of this state shall be followed in proceedings before the board. Such rules shall include but not be limited by those rules pertaining to discovery of evidence by parties to civil actions.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-146, filed 1/8/91, effective 2/8/91.]

WAC 371-08-147 Procedures—Motions. (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) Except dispositive and ex parte motions, all motions and notice of the hearing thereof shall be filed and served not later than five days before the time specified for the hearing on the motion.

(b) All dispositive motions shall be filed and served not later than twenty-eight days before the hearing on the motion. Any party opposing the motion may file and serve a response not later than eleven days before the hearing on the motion. The moving party may file and serve a reply to the response not later than five days before the hearing on the motion.

(c) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the board.

(3) Where a scheduling letter or order so provides, or by stipulation, a motion will be decided on the written record.

[Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-147, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-147, filed 1/8/91, effective 2/8/91.]

WAC 371-08-148 Prehearing procedures—Summary judgment. The board will entertain a motion for summary judgment on some or all of the substantive issues of a case pursuant to the provisions of Civil Rule 56.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-148, filed 1/8/91, effective 2/8/91.]

WAC 371-08-150 Hearings—Types of hearings.

The statute creating the board contemplates two kinds of hearings, informal and formal, without any indication as to what the distinction should be, but with very different provisions for the review of order entered. The procedures in conducting these two types of hearings by the board shall be generally the same.

[Order 75-1, § 371-08-150, filed 1/9/75; Order 70-1, § 371-08-150, filed 12/18/70.]

WAC 371-08-155 Hearings—Election of type of hearings. When a party elects a formal hearing, the hearing will be formal. If no party makes an election, the hearing will be informal. An agency whose decision is appealed shall, within ten days after receiving a notice of appeal, notify the board of its intention that the hearing be formal.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-155, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-155, filed 1/9/75; Order 70-1, § 371-08-155, filed 12/18/70.]

WAC 371-08-156 Hearings—Assignment of dates.

(1) The board will assign a prehearing conference date or date(s) for the hearing on the merits, and advise the parties thereof by letter.

(2) Normally, when a prehearing conference is held, the scheduling of the hearing on the merits will be deferred until the prehearing conference.

(3) When the board schedules a hearing, it shall mail a written notice thereof to all parties not less than ten days prior to the hearing date.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-156, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-156, filed 8/18/81; Order 75-1, § 371-08-156, filed 1/9/75.]

WAC 371-08-162 Hearings—Primary and secondary setting. (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the

parties to a primary case to learn whether or not the primary case will proceed.

[Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-162, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-162, filed 1/8/91, effective 2/8/91.]

WAC 371-08-165 Hearings—Continuances, dismissal. (1) Continuance of a hearing is within the discretion of the board, whether contested or uncontested by the parties. The board may continue a hearing on its own motion.

(2) The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

[Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-165, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-165, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-165, filed 8/18/81; Order 75-1, § 371-08-165, filed 1/9/75; Order 70-1, § 371-08-165, filed 12/18/70.]

WAC 371-08-167 Dismissal or default. (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

[Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-167, filed 5/24/94, effective 6/24/94.]

WAC 371-08-180 Hearings—Procedures at hearings. (1) **Presiding officer.** All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** Oaths shall be administered by the presiding officer or other officer with authority to administer oaths. All testimony to be considered by the board shall be sworn, and each person shall swear (or affirm) that the testimony about to be given shall be the truth, the whole truth, and nothing but the truth.

(3) **Recording.**

(a) An official record of all evidentiary hearings shall be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, the presiding

officer shall be consulted first and may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) Order of presentation of evidence.

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence, except that in case of an appeal from a regulatory order or an order assessing a penalty, the agency, shall initially introduce all evidence necessary to its case.

(b) The opposing party shall present its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) Opening statements. Unless the presiding officer rules otherwise, parties may present an oral opening statement setting out briefly a statement of the basic facts, disputes, and issues of the case.

(6) Written statement of qualifications of expert witnesses. Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) Former employee as an expert witness. No former employee of the department shall, at any time after leaving the employment of the department, appear, except when permitted by RCW 42.18.220, as an expert witness on behalf of other parties in a formal proceeding in which an active part in the investigation as a representative of the department was taken.

(8) Objections and motions to strike. Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon.

(9) Rulings. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 371-08-185 through 371-08-189.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-180, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-180, filed 8/18/81; Order 75-1, § 371-08-180, filed 1/9/75; Order 70-1, § 371-08-180, filed 12/18/70.]

WAC 371-08-183 Hearings—Standard and scope of review—Burden of proof. (1) The board will apply the specific criteria provided by law in making its decision on each case.

(2) Hearings shall be quasi-judicial in nature and shall be conducted de novo unless otherwise provided by law.

(3) The issuing agency shall have the initial burden of proof in cases involving penalties or regulatory orders. In other cases, the appealing party shall have the initial burden of proof.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-183, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-183, filed 8/18/81.]

WAC 371-08-184 Hearings—Interpreters. Whenever any person involved in an adjudicative proceeding is an "impaired person" as defined by WAC 10-08-150(1), the board shall comply with the provisions of WAC 10-08-150 and 10-08-160(2).

(1995 Ed.)

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-184, filed 1/8/91, effective 2/8/91.]

WAC 371-08-185 Hearings—Additional evidence by presiding officer. The presiding officer may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably. Any such evidence secured and presented by the presiding officer shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the presiding officer, application shall be made therefor immediately following the conclusion of such evidence. Such application shall be granted by assignment of a time and place for presentation of such rebuttal evidence.

[Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-185, filed 8/18/81; Order 75-1, § 371-08-185, filed 1/9/75; Order 70-1, § 371-08-185, filed 12/18/70.]

WAC 371-08-186 Rules of evidence—Admissibility criteria. (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. All relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington.

(2) The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-186, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-186, filed 1/9/75.]

WAC 371-08-187 Rules of evidence—Official notice—Matters of law. The presiding officer, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register.

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; Decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations.

(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, and official publications.

(5) **Rules of regional authorities.** Rules or regulations of air pollution control boards or authorities established pursuant to chapter 70.94 RCW, when such rules or regulations are filed with the board pursuant to RCW 43.21B.260.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-187, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-187, filed 8/18/81; Order 75-1, § 371-08-187, filed 1/9/75.]

WAC 371-08-188 Rules of evidence—Official notice—Material facts. In the absence of controverting evidence, the presiding officer, upon request made before or during a hearing, or in a proposed decision, may officially notice:

(1) **Board proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the board;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the board as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the presiding officer may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where a final decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by a petition for reconsideration. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the

existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the board from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-188, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-188, filed 8/18/81; Order 75-1, § 371-08-188, filed 1/9/75.]

WAC 371-08-189 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-189, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-189, filed 8/18/81; Order 75-1, § 371-08-189, filed 1/9/75.]

WAC 371-08-195 Disposition of adjudicative proceedings—Record. The record before the board in any adjudicative proceeding shall consist of the decision or order appealed from, the notice of appeal therefrom, responsive pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations or requests duly filed by any party and written reports or orders of the presiding officer. Such record shall also include all depositions, if they are admitted at the hearing, the transcript of testimony as provided in WAC 371-08-196, and other proceedings at the hearing, together with all exhibits admitted. No part of the department's record or other documents shall be made part of the record of the board unless admitted in evidence.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-195, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-195, filed 1/9/75; Order 70-1, § 371-08-195, filed 12/18/70.]

WAC 371-08-196 Disposition of adjudicative proceedings—Transcripts. (1) The board, in its discretion, may at any time cause a transcript to be printed, but will not normally do so.

(2) When the board shall not cause a transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to order the same from the board reporter and assume the cost of printing same.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-196, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-196, filed 8/18/81; Order 75-2, § 371-08-196, filed 11/5/75; Order 75-1, § 371-08-196, filed 1/9/75.]

WAC 371-08-197 Disposition of adjudicative proceedings—Preparation of findings, conclusions and orders. Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

[Statutory Authority: RCW 43.21B.170. 94-12-027, § 371-08-197, filed 5/24/94, effective 6/24/94.]

WAC 371-08-200 Disposition of adjudicative proceedings—Final decisions and orders—Petition for reconsideration. (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law.

(2)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed within ten days of mailing of the final decision. The board may require an answer to the petition. Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within twenty days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(d) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) Copies of the final decision and order and of the board's disposition of any petition for reconsideration shall be mailed by the board to each party to the appeal or to the attorney or representative of record. Service on the representative shall be deemed to be service on the party.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-200, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-200, filed 8/18/81; Order 75-2, § 371-08-200, filed 11/5/75; Order 75-1, § 371-08-200, filed 1/9/75; Order 70-1, § 371-08-200, filed 12/18/70.]

WAC 371-08-215 Disposition of adjudicative proceedings—Final decisions and orders. The record before the board shall be considered by at least two of the members of the board: *Provided*, That if two members cannot agree on a decision, the third member must consider the record before the board: *And further provided*, That if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control in those cases where the appealing party has the burden of proof.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-215, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-215, filed 8/18/81; Order 75-1, § 371-08-215, filed 1/9/75; Order 70-1, § 371-08-215, filed 12/18/70.]

WAC 371-08-220 Appeals to the courts—Notice of appeal to the superior court. All appeals from orders of the board, whether after a formal or informal hearing, shall be to a superior court. The appealing party shall file with the board and all parties of record a copy of the notice of appeal to the superior court.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-220, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-220, filed 8/18/81; Order 77-1, § 371-08-220, filed 9/8/76; Order 75-1, § 371-08-220, filed 1/9/75; Order 70-1, § 371-08-220, filed 12/18/70.]

WAC 371-08-230 Appeals to the courts—Certification of record. Upon receipt of a copy of the notice of appeal to the superior court, the board shall certify and transmit to the reviewing court the record made before the board. Normally this will not include a transcript of the testimony. Unless the board has caused a transcript to be printed, arrangements for and costs of the written transcript shall be the obligation of the party appealing to the Superior Court.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-230, filed 1/8/91, effective 2/8/91. Statutory Authority: RCW 43.21B.170. 81-17-055 (Order 82-1, Resolution No. 82-1), § 371-08-230, filed 8/18/81; Order 77-1, § 371-08-230, filed 9/8/76; Order 75-1, § 371-08-230, filed 1/9/75; Order 70-1, § 371-08-230, filed 12/18/70.]

WAC 371-08-235 Computation of time. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, a Sunday, nor a legal holiday, is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Order 75-1, § 371-08-235, filed 1/9/75; Order 70-1, § 371-08-235, filed 12/18/70.]

WAC 371-08-240 Petitions for declaratory ruling. Right to petition for declaratory ruling. As prescribed by RCW 34.05.240, any interested person may petition the board for a declaratory ruling. The provisions of RCW 34.05.410 through 34.05.494 and the provisions of these rules shall apply to petitions for declaratory rulings as to other cases brought before the board.

[Statutory Authority: RCW 43.21B.110(3). 91-03-028, § 371-08-240, filed 1/8/91, effective 2/8/91; Order 75-1, § 371-08-240, filed 1/9/75; Order 70-1, § 371-08-240, filed 12/18/70.]

WAC 371-08-250 Review of permits under the National Pollutant Discharge Elimination System. (1) The provisions of this section shall apply only to review proceedings before the board pertaining to permits issued by the department of ecology under the provisions of the National Pollutant Discharge Elimination System.

(2) In those cases where the board determines that a permit issued by the department of ecology is invalid in any respect, the board shall issue an order directing the department of ecology to reissue the permit in accordance with said order and consistent with the provisions of said order and with all applicable federal statutes and guidelines as well as with applicable state statutes and guidelines.

[Order 75-1, § 371-08-250, filed 1/9/75; Order 74-2, § 371-08-250, filed 2/7/74.]

WAC 371-08-255 Review of permits issued under chapter 173-303 WAC. (1) The provisions of this section shall apply only to review proceedings before the board pertaining to permits issued by the department of ecology under chapter 173-303 WAC.

(2) In the event that the board determines that a permit issued by the department of ecology under chapter 173-303 WAC is invalid in any respect, the board shall issue an order remanding the permit to the department of ecology for reconsideration and appropriate action consistent with the provisions of said order and federal and state law.

[Statutory Authority: RCW 43.21B.170. 83-14-074 (Order 83-1, Resolution No. 83-1), § 371-08-255, filed 7/6/83.]

WAC 371-08-260 Applicability of SEPA guidelines. The board has reviewed its authorized activities pursuant to WAC 197-10-800(4) and has found them all to be exempt from the provisions of chapter 197-10 WAC.

[Order 77-2, § 371-08-260, filed 12/6/77.]